State of Idaho
Real Estate Commission

Idaho Real Estate License Law and Rules

July 2016

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This booklet contains the Idaho Real Estate License Law and Rules effective on July 1, 2016.

An underline indicates text has been added;

~~A strikethrough indicates deleted text.~~

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Title 54
Idaho Real Estate License Law
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Costs associated with this publication are available from the Idaho Real Estate Commission in accordance with Idaho Code 60-202, July 2016/12000/429.

IDAHO REAL ESTATE LICENSE LAW

Chapter 20, Title 54, Idaho Code, in effect July 1, 2016.

54-2001. Short Title.

Sections 54-2001 through 54-2081, Idaho Code, shall be known and may be cited as "Idaho Real Estate License Law."

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 therefor. 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.

54-2003. Exceptions to Licensure – Active Licensees - Transactions Involving Personal Property.

(1) Exceptions to licensure. Except as otherwise stated below, an Idaho real estate license is not required for the following:

(a) The purchase, option, exchange or sale of any interest in real property, or business opportunity for a person's own account or use;

(b) The acquisition, exchange or other disposition of any interest in real property or business opportunity by its owner or a regular employee of the owner, acting within the scope of his or her employment;

(c) The sale, exchange, purchase or other disposition of any interest in real property or business opportunity by a duly authorized attorney in fact whose power of attorney is granted for the purpose of consummating a single transaction involving the conveyance of a single or undivided interest in a parcel of real property or in a business opportunity;

(d) The acquisition or other disposition of any interest in real property or business opportunity by the following parties only if such acquisition or disposition is undertaken in the performance of their duties as:

(i) A receiver, trustee in bankruptcy, legal guardian or conservator;

(ii) An administrator, executor or personal representative of an estate;

(iii) Any person selling pursuant to the default provisions of a deed of trust, or any duly authorized agent thereof.

(e) The acquisition or other disposition of any interest in real property or business opportunity by an attorney at law in connection with client representation, and if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson.

(2) Active real estate licensees. An actively licensed real estate broker, associate broker or salesperson must comply with this chapter, regardless of whether the licensee otherwise qualifies for any of the exceptions of subsection (1) of this section.

(3) Transactions involving personal property. An active licensee who, while acting on behalf of another, for compensation or for a promise or expectation of compensa-

tion, sells, lists, buys or negotiates, or offers to sell, list, buy or negotiate, the purchase or sale of a mobile home, manufactured home or floating home as defined by Idaho law, shall comply with this chapter regardless of whether such activity would otherwise require an Idaho real estate license.

(4) Exceptions to licensure shall not be used in any way to evade the purposes of this chapter. Any such attempt to evade this chapter shall be considered the unlicensed and unlawful practice of real estate.

54-2004. Definitions.

As used in this chapter:

(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) "Acting in this state" means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(3) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(4) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (36) of this section.

(5) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(6) "Broker price opinion" means a written price opinion of the estimated price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale, and that complies or purports to comply with the requirements and content provision of section 54-4105, Idaho Code.

(7) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, that is conducting or holding itself out as conducting the business of real estate through a designated broker.

(8) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(9) "Business conduct and office operations course" means the component of the advanced real estate course that is required in order to obtain a broker's license and that teaches business practices and office operations of the brokerage, including record-keeping, trust account procedures and the laws governing those practices.

(10) "Business day" means and includes each day of the week except Saturday, Sunday or any other legal holiday enumerated in section 73-108, Idaho Code.

(11) "Business name" means the name in which the brokerage company is licensed by the commission.

(12) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(13) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(14) "Commission core course" means the annual course covering the twelve (12) month period between July 1 and June 30, which contains curriculum identified by

the commission that stresses that year's trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(15) "Continuing education elective course" means a real estate course offering, other than the commission core course, for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.

(16) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(17) "Cooperative sale" means a transaction involving two (2) or more brokers.

(18) "Council" means the Idaho real estate education council.

(19) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(20) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(21) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by both distance and time.

(22) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sale price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(23) "Executive director" means the executive director of the Idaho real estate commission.

(24) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(25) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(26) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(27) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(28) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(29) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(30) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication.

(31) “Main office” means the principal location where the real estate broker is licensed to transact business.

(32) “Person” means and includes an individual, or any legal business entity.

(33) “Post license course” means a commission-approved or certified elective course that is specifically oriented toward salespersons in their first two (2) years of Idaho practice. The course must contain no more than twelve (12) classroom hours of instruction.

(34) “Primary Idaho license” means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(35) “Provisional license” means an extension of the period of active licensure, beyond the licensee’s expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(36) “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.

(37) “Real estate salesperson” or “salesperson” means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (36) of this section.

(38) “Real estate settlement procedures act” means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

(39) “Regular employee” means an individual who performs a service for wages or other compensation and whose employer withholds federal employment taxes under a contract for hire, written or oral, express or implied.

(40) “Regulated real estate transaction” means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(41) “Responsible broker” means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(42) “Revoked license” means a license that has been permanently revoked by the issuing authority.

(43) “Sales associate” means a salesperson or an associate broker licensed under and associated with a designated broker.

(44) “State or jurisdiction” means and includes any state or territory of the United States, the District of Columbia and any foreign jurisdiction that issues real estate licenses substantially similar to those provided for in this chapter.

(45) “Successfully completed” means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved assessment or final examination.

(46) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(47) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

54-2005. The Idaho Real Estate Commission.

There is hereby created in the department of self-governing agencies the Idaho real estate commission, for the purpose of administering this chapter. The commission shall consist of ~~four~~ five (~~4~~5) members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Members who are licensed under this chapter shall be appointed as follows: one (1) from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; and one (1) from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties.

54-2006. Qualifications of Commissioners, Term and Organization.

(1) ~~Each~~Four (4) members of the commission shall be ~~an~~ actively licensed Idaho designated real estate brokers or associate brokers who ~~has~~ have had at least five (5) years active license experience as a designated broker or associate broker in the real estate business in Idaho. One (1) member shall be a member of the public from the state at large with an interest in the rights of consumers of real estate services.

(2) Each regular appointment, other than an appointment to fill an unexpired term, shall commence on July 1 of the year of appointment and be for a term of four (4) years. Each commissioner shall hold office until a qualified successor is appointed. Upon the death, resignation or removal of any member of the commission, the governor shall appoint a qualified ~~licensed real estate broker or associate broker~~person to fill out the unexpired term. ~~The governor may remove any member from the commission for neglect of duty required by law, for incompetency, or for unprofessional or dishonorable conduct.~~

Each year, within thirty (30) days after the appointment of the members of the commission, the commission shall call a meeting and elect a chair, a vice chair, and a commissioner to serve on the Idaho real estate education council. Thereafter, the chair may call meetings of the commission whenever he or she deems it advisable, but if the chair refuses to call a meeting upon written demand of the other three (3) members of the commission, then such members may call the meeting.

(3) The commission may hire an executive director and such other assistants as it may require from either within or without the commission~~,~~ and shall pay these persons a compensation as determined by the commission. The position of executive director shall be a nonclassified state employee, and such person shall be an at-will employee of the commission.

54-2007. Compensation, Powers and Duties of Commission.

Members shall be compensated as provided by section 59-509(n), Idaho Code. The commission is charged with administering and enforcing all provisions of this chapter, and is expressly vested with the power and authority to make and enforce any and all reasonable rules as it deems necessary for administering and enforcing this chapter.

54-2008. Establishment of Idaho Real Estate Education Council.

An education council consisting of six (6) members, four (4) of whom are to be appointed by the Idaho real estate commission, plus one (1) commissioner and the commission's executive director, may be established to act as an advisory group to the commission, and to perform functions as set forth in this chapter and in the council's bylaws, which bylaws must be approved by the commission. The council shall recommend to the commission real estate education policy and course content quality for all education courses approved by the commission as meeting the education requirements of this chapter and its rules, and for such other courses or clinics deemed advisable by the commission for promoting higher standards of practice in the real estate business. The council will prepare for approval by the commission any additional recommended procedures or guidelines for certifying educational courses, instructors and providers.

54-2009. Council Appointment, Qualifications and Term.

One (1) member of the council shall be named from each of the four (4) geographic districts of the state: north, south, east and west. The education director of the commission shall serve as the council executive at all council meetings and functions. Each education council member shall be appointed for a term of four (4) years. The commission may remove any council member for neglect of duty, for incompetency, or for unprofessional, dishonorable or any other conduct which the commission believes interferes with that person's ability to properly act or serve as a council member.

54-2010. Compensation.

Members of the education council are not employees of the state of Idaho, but shall be reimbursed expenses in the same manner as state employees in addition to a per diem allowance in the same amount as that received by the commissioners for each day of approved service.

54-2011. Types of Licenses.

The commission may issue a primary Idaho real estate license to any individual, sole proprietorship or legal business entity in accordance with the requirements of this chapter. An individual may be licensed as a real estate salesperson, an associate broker or a designated broker acting for a sole proprietorship or legal business entity.

54-2012. Minimum Requirements for an Individual Primary Idaho License.

(1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license suspended or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have had a real estate or other professional or occupational license revoked for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction; provided that, after a period of five (5) years from the date the license was revoked, the applicant may make a written request to the commission for an exemption review to determine the applicant's

suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the disciplinary action that resulted in the license revocation and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors and evidence:

1. The severity or nature of the disciplinary violation for which the applicant's license was revoked;

2. The period of time that has passed since the disciplinary violation occurred;

3. The existence, number and pattern of any other misconduct for which the applicant has been disciplined;

4. The circumstances surrounding the disciplinary violation that would help the commission determine the risk of repetition;

5. The relationship of the disciplinary violation to the licensed practice of real estate; and

6. The applicant's activities since the disciplinary violation under review, such as employment, education, participation in treatment, payment of restitution or any other factors that may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(f) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(g) Not have been convicted of any felony in a state or federal court or convicted by military general court-martial; provided that, after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence of confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors or evidence:

1. The severity or nature of the felony;

2. The period of time that has passed since the felony under review;

3. The number or pattern of felonies or other similar incidents;

4. The circumstances surrounding the crime that would help determine the risk of repetition;

5. The relationship of the crime to the licensed practice of real estate; and

6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution~~,~~ or any other factors that may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(h) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(i) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(j) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission;

(k) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known address of the licensee. All licensees shall provide the commission a full and current mailing address and shall notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(l) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(m) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(n) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this paragraph shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing and pay associated fees.

54-2013. Errors and Omissions Insurance. (*See also* ***Rules 117-122****.)**

(1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive~~, sealed~~ bidding in accordance with chapter ~~57~~92, title 67, Idaho Code. The exact premium shall be set by the commission by motion.

(3) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining errors and omissions insurance independently if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) A licensee seeking to obtain or renew an active license shall certify to the commission that he is in compliance with the insurance requirements of this section. A licensee who elects not to participate in the insurance program administered by the commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the commission. Upon request by the commission the licensee shall produce the certificate for inspection. Requests for certificates shall be sent by first class mail to the licensee's business or residence address as reflected by the commission's records and a copy of the request shall be sent to the licensee's designated broker, if any. A licensee failing to produce a certificate of coverage within thirty (30) days of a request to do so may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission a certificate of coverage reflecting proof of insurance meeting the requirements of the commission. Nothing in this subsection shall limit the ability of the commission to investigate or discipline a licensee for failing to maintain insurance while on active status in violation of subsection (1) of this section or for violating any other section of chapter 20, title 54, Idaho Code, or any rule of the commission.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed two hundred fifty dollars ($250) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

54-2014. License Exams.

(1) Exam required. Unless a written certificate of waiver is obtained from the commission and submitted with the application, an individual applicant seeking a primary Idaho real estate license shall take and pass the national portion and the Idaho state

portion of an approved exam administered by or through the commission. The license applicant shall take and pass the required portion or portions of the exam within no more than twelve (12) months immediately preceding the date of the license application.

(2) Registration for the exam and exam fee. An individual shall register for the exam in a manner authorized by the commission and shall pay at the time of registration the nonrefundable exam fee in an amount established by motion of the commission, not to exceed one hundred fifty dollars ($150).

(3) Waiver of national portion of exam. An individual who has obtained a written certificate from the commission waiving the national portion of the exam shall be required to take and pass the Idaho state portion of the exam only. The certificate of waiver and exam fee shall be submitted with the application for exam.

(4) Failure to appear for the exam or to pass the exam. An individual who fails to appear for the exam or to pass the exam may register to take another exam. The individual must register and submit a new exam fee.

(5) The commission shall establish, by motion, fees for the exam which, in its discretion, are sufficient to raise the revenue required to administer the exam. Fees so established shall remain effective from year to year and may be altered only upon motion by the commission.

54-2015. Individuals Actively Licensed in Another State or Jurisdiction Seeking Primary Idaho Licensure.

(1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in section 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsection (1)(h) of section 54-2012, Idaho Code; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

(2) An individual who holds an active license in good standing in another state or jurisdiction may, upon written request to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver shall be submitted with the application for exam as provided in subsection (3) of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code, notwithstanding the terms of the agreement.

54-2016. Primary Idaho Licenses for Legal Business Entities, Sole Proprietorships and Branch Offices - Additional Requirements.

(1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees and meet all requirements below:

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity.

(b) The individual designated broker shall, within three (3) years immediately prior to the designation, satisfactorily complete a commission-approved business conduct and office operations course.

(c) The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation — an officer;

(ii) Partnership or limited partnership — a general partner;

(iii) Limited liability company — a member or manager.

The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(d) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(e) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(f) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(g) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship.

(c) The individual designated broker shall have satisfactorily completed a commission-approved business conduct and office operations course within three (3) years immediately prior to the application for license.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The designated broker shall designate in the application a branch manager, who shall be an associate broker and who, within three (3) years immediately prior to the designation, shall have completed a commission-approved business conduct and office operations course, to regularly occupy and be responsible for the supervision of the branch office. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated broker remains in active status.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

54-2017. Reciprocal Idaho Licenses. ***REPEALED*** *(See Section* ***54-2015.****)*

54-2018. License Renewals - Inactive Licenses Status - Personal Changes - Effective Dates - Fees Nonrefundable. *(See also* ***Rule 105.****)*

(1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on the last day of the month of the birth date of the licensee. A salesperson licensed in this state who applies for and obtains a broker license shall retain the license renewal period and expiration date of his salesperson license. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the commission office on or before 5 p.m., mountain time, of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(ii) Certification that the applicant has met the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may activate an inactive license by meeting each of the following:

(a) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the commission;

(b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the commission;

(c) Paying any required fees;

(d) Obtaining and maintaining a policy of errors and omissions insurance as required by section 54-2013, Idaho Code, and in accordance with the rules of the commission and certifying the same; and

(e) Successfully completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period.

(5) Continuing education. A licensee shall not submit an application to renew a license on active status or to activate an inactive license without having obtained the continuing education credit hours required by section 54-2023, Idaho Code. A licensee who violates this subsection (5) shall be subject to disciplinary action by the commission.

(6) Time required. The commission may request satisfactory proof of continuing education compliance from any licensee who has certified to the commission that he has completed the requirement. The request shall state the time within which the proof must be received at the commission office, which time shall not be less than ten (10) business days.

(7) Satisfactory proof. Upon request from the commission, the licensee shall submit satisfactory proof of having met the continuing education requirement set forth in section 54-2023, Idaho Code. "Satisfactory proof" shall, for each course, consist of documentation:

(a) Identifying the licensee, the title of the course, the course certification number, the course provider, the number of classroom hours, the completion date of the course, and including:

(i) A transcript of the course taken;

(ii) A letter from the provider verifying successful completion of the course; or

(iii) A course completion certificate; and

(b) Identifying the course certification approval number to establish that the course is approved for continuing education credit as provided by section 54-2023, Idaho Code. The commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit.

(8) Failure to submit proof. A licensee failing to submit satisfactory proof of completing the continuing education requirement after being requested to do so by the commission may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission satisfactory proof that he meets the continuing education requirements of section 54-2023, Idaho Code. Nothing in this section shall limit the ability of the commission to investigate or discipline a licensee for violating subsection (5) of this section or for violating any other section of this chapter.

(9) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) business days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and, if an active licensee, he shall have the broker submit the written notice of change to the commission.

(10) Issuance of the license and effective dates. A real estate license shall be deemed issued, and any requested license changes shall become effective, when the completed application, attachments and any required fee are received at and approved by the commission. An application that is incomplete or lacking the required fees shall be returned to the applicant and no license shall be issued until a completed application and all required fees are received at and actually approved by the commission. A brokerage is not required to obtain, display or possess a physical license certificate as evidence of the individual's active licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. A brokerage shall not display or otherwise make available to the public a license certificate for any individual who does not hold an active license with the brokerage.

(11) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

54-2019. Denial of License Applications.

(1) The commission may deny any license application, including an application for license renewal, upon the commission's determination of any of the following:

(a) The applicant does not possess all of the qualifications required for the license sought;

(b) The applicant employed fraud, deception, misrepresentation, misstatement or omission or any unlawful means in applying for a license or taking the exam;

(c) Within the five (5) year period immediately preceding the application, the applicant committed any act for which a real estate license in Idaho may be revoked or suspended;

(d) Payment of any licensing fee by check that is returned by the banking institution due to insufficient funds, unless the reason for not paying of the check is the fault of the banking institution, or by any other type of insufficient payment; or

(e) There exist any other specific facts about the applicant that cause the commission to reasonably conclude that granting the applicant's request for Idaho licensure is not in the best interests of the citizens of the state of Idaho.

(2) Where any of the facts referenced above warranting denial of the application are not discovered or determined by the commission until after the license has been issued, such facts may be grounds for the inactivation, expiration, termination, suspension or revocation of the license.

54-2020. Fees. (*See also* ***Rules 100-104.***)

The Idaho real estate commission shall establish fees which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter. The commission shall assess the following fees, in addition to any other fees established in this chapter or by rule, provided that all fees established by administrative rule of the commission shall remain effective from year to year unless changed through the rulemaking process prescribed in chapter 52, title 67, Idaho Code:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred fifty dollars ($150), the exact fee to be established by administrative rule of the commission.

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

(3) A late license renewal fee in an amount not to exceed twenty-five dollars ($25.00), the exact fee to be established by administrative rule of the commission;

(4) For the printing of a license certificate, a fee in an amount not to exceed fifteen dollars ($15.00), the exact fee to be established by administrative rule of the commission;

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) For the compilation of each certified copy of a licensee's education history or license history, a fee in an amount not to exceed ten dollars ($10.00), the exact fee to be established by administrative rule of the commission;

(7) For issuance or renewal of a branch office license, a fee in an amount not to exceed fifty dollars ($50.00), the exact fee to be established by administrative rule of the commission;

(8) An application fee for the certification and recertification of each real estate education provider, instructor or course as follows:

(a) For providers, an application fee in the amount of seventy-five dollars ($75.00) for initial certification and fifty dollars ($50.00) for recertification;

(b) For instructors, an application fee in the amount of fifty dollars ($50.00) for initial certification and twenty-five dollars ($25.00) for recertification;

(c) For courses, an application fee in the amount of fifty dollars ($50.00) for initial certification and twenty-five dollars ($25.00) for recertification.

Provided however, that lower fee amounts may be established by administrative rule of the commission.

54-2021. Disposition of Funds.

All fees collected by the commission under the provisions of this chapter, except as designated in section 54-2070, Idaho Code, shall be deposited at least monthly in the state treasury and all moneys so deposited shall be deposited to the credit of the special real estate fund, which fund is hereby created. All moneys so deposited in the special real estate fund are hereby perpetually appropriated for the purpose of carrying out the provisions of this chapter. All expenditures from the fund by the commission under the

provisions of this chapter shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the commission. Such claims and supporting vouchers shall be examined by the state board of examiners in the same manner as other claims against the state of Idaho. For the purposes of carrying out the objectives of this chapter and in the exercise of the powers herein granted, the commission shall have power to make orders concerning the disbursement of the moneys in the special real estate fund, including the payment of compensation and expenses of its members, clerks and employees and for the payment of printing and for the training and education of all licensees under this chapter. Moneys in the fund may be expended by the commission for the promotion and improvement of the real estate profession, the advancement of education and research in the field of real estate including, but not limited to, courses sponsored by the commission or in conjunction with any university or college in the state and/or contracting for a particular research project in the field of real estate, and the promotion and advertising of the state of Idaho.

54-2022. Real Estate Education – Prelicense Requirements.

(1) Except as provided in section 54-2015, Idaho Code, an applicant seeking a primary Idaho license as a real estate salesperson, broker or associate broker shall furnish satisfactory proof to the commission that the applicant has successfully completed current commission-approved and accredited courses of real estate study as follows:

(a) Salesperson's license. For a salesperson's license, the applicant shall complete a total of ninety (90) classroom hours;

(b) Broker's or associate broker's license. Applicants seeking a broker's or associate broker's license shall, in addition to meeting the requirements for a salesperson's license, successfully complete four (4) specified courses in advanced real estate study, for a minimum of ninety (90) additional classroom hours.

(2) Each applicant shall successfully complete all prelicense real estate courses within no more than three (3) years prior to the date of the license application. However, upon written request for special consideration by the license applicant, the commission may waive or modify the three-year requirement at its discretion, based on the applicant's experience or additional education. Each waiver request shall be submitted with a current certified license history from Idaho or the applicant's other licensing jurisdiction, which history shall indicate all disciplinary actions taken against the applicant's license and the status and standing of such license in such licensing state or jurisdiction, along with sufficient proof of education completion.

(3) To receive credit for prelicense real estate courses, a student must regularly attend and complete the course, and such course must meet all requirements set forth in section 54-2036, Idaho Code.

(4) No credit will be given for courses taken for audit.

(5) Credit for completion of approved prelicense education coursework will not be granted when the content of a course repeats that for which credit has been previously received.

(6) Upon written request from a license applicant, the commission may waive or modify one (1) or more prelicense course requirements based upon the applicant's satisfactory completion of similar real estate courses in Idaho or another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and the number of classroom hours involved in the instruction. "Satisfactory completion" means the applicant regularly attended the course and received a final grade of "C" or better.

54-2023. Continuing Education Requirements. (*See also* ***Rule 305, Rule 402.***)

(1) Each licensee applying to renew an Idaho broker or salesperson license on active status, and each Idaho broker or salesperson applying to change from inactive to

active license status after having renewed the license on inactive status, shall successfully complete two (2) commission core courses, plus twelve (12) classroom hours of continuing education credit. If the inactive licensee is within the initial licensing period, no continuing education is required to change to active license status. Provided that:

(a) Salesperson -- First active renewal or activation. To renew an Idaho salesperson license on active status for the first time, or to change from inactive to active status for the first time after the expiration of the initial license period, a salesperson shall complete two (2) commission core courses, plus the post license course.

(b) Inactive broker activating as a designated broker or branch manager. To activate as a designated broker or branch manager, a broker on active status shall, in addition to meeting the continuing education requirements of this subsection, have completed a commission-approved business conduct and office operations course within three (3) years immediately prior to the license activation.

(2) Credits used to reactivate license. Continuing education credit hours applied to activate an inactive license are considered "spent" and may not thereafter be applied toward the continuing education requirements for subsequent license renewal.

(3) No duplicate credit. No licensee may obtain continuing education credit for completing:

(a) Any core course curriculum for which the licensee has previously received continuing education credit; or

(b) Any course curriculum for which the licensee has received continuing education credit in the same license period.

(4) Excess credits. The classroom hours shall apply to the license period in which such course is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(5) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(6) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee must:

(a) Successfully complete a commission-approved continuing education or post license course;

(b) Attend a regularly-scheduled meeting of the commission from the time the meeting is called to order until the meeting is adjourned or until the licensee is excused by the commission chairperson. A maximum of four (4) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(c) Successfully complete a commission-approved broker prelicense course. Continuing education credit may be obtained for retaking the same broker prelicense course only if completed after three (3) years of completing the previous course; or

(d) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses without commission preapproval of the curriculum, instructors or providers:

(i) Professional designation courses. Any course developed by national professional organizations that is required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice;

(ii) Courses accredited by another profession or jurisdiction. Any course approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if the commission determines that the course is within the approved topic areas established by the commission and if the course otherwise meets commission standards for course certification including distance learning and minimum classroom hour requirements; or

(iii) Courses offered by an accredited college or university. Any course offered in satisfaction of a degree requirement by an accredited college or university if

the commission determines that the course is within the approved topic areas established by the commission.

(e) If a certified course instructor, teaches a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.

(7) Licensee duty to keep satisfactory proof. The licensee shall keep satisfactory proof of having completed the continuing education requirement and shall submit such proof at the request of the commission as provided in section 54-2018, Idaho Code.

(8) Provisional license — Extension of time. A three (3) month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence shall be:

(a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;

(b) Health reasons preventing attendance or completion; or

(c) Other compelling cause beyond the control of the applicant while engaged in the real estate business. If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

54-2024. Purpose of Certification.

It is the intent of this chapter that delivery of high quality real estate education to licensees and to those seeking to become licensed in the state of Idaho is a necessary and reasonable way to protect the citizens, businesses and public interests in Idaho. Therefore, the commission shall create and maintain a certification program for real estate education providers, instructors and course content.

54-2025. Certification Requirements.

(1) Certification required. Except as otherwise provided in section 54-2023(6)(d), Idaho Code, certification must be obtained by all course providers, instructors teaching any course other than a continuing education elective course, and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under this chapter.

(2) Courses, instructors and providers monitored. The commission or its representative may monitor any course for the purpose of course, instructor or provider certification.

(3) If the commission at any time determines that an instructor, course or provider is not meeting the requirements for continued commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the commission's satisfaction, the commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and the rules of the commission.

54-2026. Certification of Course Providers.

(1) Degree-granting institutions. Degree-granting, accredited colleges and universities in any state or jurisdiction shall be deemed to be approved course providers in

Idaho. However, course content must still be approved for the real estate education course to receive credit toward prelicense or continuing education licensing requirements in Idaho.

(2) Other course providers. All other course providers desiring to offer real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following qualifications and receive certification. Each applicant seeking certification as a course provider shall comply with the following:

(a) File an application for certification in the form and manner required by the commission, along with proper fees, at least two (2) months prior to contemplated date of opening or first accredited course offering;

(b) Designate a "director" or "individual in charge," who shall be responsible for the course provider's operation and its real estate courses, and with whom the commission may communicate. Unless this requirement is waived upon special review of the commission in the manner stated below, the individual in charge shall:

(i) Not have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction~~.~~;

(ii) Not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of proper jurisdiction; and

(iii) Have attended a commission-approved provider training within the two (2) years immediately preceding the designation.

The failure of the provider to have in place a designated individual meeting the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the provider's certificate as provided in section 54-2025(3), Idaho Code.

(c) File a properly executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and in substantial accordance with section 54-2012(1)(k), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certification as it deems advisable and, if good cause exists, may deny or accept the application for certification.

54-2027. Duties and Requirements of All Certified Course Providers. (*See also* ***Rule 500.*****)**

Failure of a certified course provider to comply with the following duties and requirements shall be grounds for the commission to withdraw or cancel the provider's certification for cause.

(1) Discrimination prohibited. Each certified course provider shall at all times be in compliance with state and federal laws, rules and regulations regarding all aspects of equal opportunity and protection of civil rights. No course provider shall engage in discriminatory practices, nor allow their course instructor, or method of delivery to violate laws prohibiting discrimination. Each course provider will fully comply with any requirements of the Americans with disabilities act regarding access to and delivery of its courses, including the provision of accessible facilities and reasonable accommodations for students.

(2) Open access to course offerings. Registration and attendance at all certified courses offered for credit toward the education requirements of this chapter shall be open to all persons meeting normal course prerequisites; provided however, a certified course provider located in or affiliated with a licensed real estate brokerage company or professional association may refuse access to any licensee or unlicensed person based on that licensee's or unlicensed person's affiliation with another organization or brokerage company, or the licensee's or unlicensed person's membership status in any professional organization unless such course provider has received financial support

from the commission for its particular course offering. Nothing in this section shall restrict a course provider from charging a separate and reasonable course fee to nonaffiliated or nonmember licensees or unlicensed persons.

(3) Disclosure of fees. All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books required for coursework, such fees shall be itemized by the provider and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees and the manner in which they are to be paid shall be stated in a student contract, in a form approved by the commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course.

(4) Facilities and supportive personnel. The provider shall provide the facilities and all supportive qualified personnel or approved proctors necessary to adequately implement its real estate program.

(5) Student records and other requirements. Each Idaho certified course provider shall comply with the following requirements:

(a) Records. For each individual student, create and retain for a period of five (5) years, a complete, accurate and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study;

(b) Course completion lists. Within five (5) business days after conclusion of each course of instruction, the provider shall submit to the council or commission, in the form and manner designated by the commission, a list that shall include the legal names and social security numbers or, if licensed, the license numbers, of the students completing the course of instruction, the name of the course, the name of the instructor, the number of hours included in the course, the date of the course and the location. The list shall be certified by the instructor from whom the students received instruction and an authorized representative of the provider;

(c) Grades. The provider will provide written notification to students who successfully or unsuccessfully complete a course within thirty (30) days of the course completion date;

(d) Evaluations. Upon the conclusion of each course, the provider shall collect written evaluations from students for the course and instructor, using an evaluation form approved by the commission. The provider shall keep such evaluations for a period of one (1) year from the course completion date. Upon written request from the commission, the provider shall submit either the student evaluations for the course and instructor, or a written summary of those evaluations using a form approved by the commission; and

(e) Course schedules. Each provider shall submit schedules of courses and instructors as requested by the commission and submit changes promptly as they occur. Whenever there is a change in a course including, but not limited to, a change in curriculum, course length or instructor, the provider shall promptly notify the commission in writing of the change.

(6) Instructors. A certified provider may offer a continuing education elective course without obtaining approval or certification for the course instructor; provided however, the provider shall take reasonable steps to ensure that the instructor is competent to teach the course and shall maintain resumes or other biographical information that documents the qualifications of the instructor. The provider shall make such documentation available to the public and commission upon written request. A course provider shall not offer for credit any course that is being taught below the minimum teaching standards established by the commission or that is being taught in a manner that is detrimental to the purpose of educating licensees.

(7) Posting and recording fees. The commission may require that course providers pay to the commission a nonrefundable posting and recording fee to defray normal

expenses incurred in maintaining the certificate program. The fee amount shall be established by the commission by motion.

(8) Advertising restrictions:

(a) Providers may advertise that they are currently certified by the commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the commission or the council;

(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

(9) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to the commission, at least one (1) month in advance of the effective date of the proposed changes.

54-2028. Term of Provider Certification and Renewal.

(1) Each course provider's certification issued by the commission shall be for a term of up to one (1) year and shall expire annually on June 30.

(2) In order to maintain certification, each provider shall:

(a) Return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date for commission approval; and

(b) Certify that its designated director or person in charge has, within the past two (2) years, attended a commission-approved provider training.

(3) Recertification is not effective until the commission has formally approved the application for renewal.

(4) Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for courses not yet successfully completed by the expiration date.

54-2029. Notice of Potential Expiration of Certification.

Certified providers who have not applied for renewal of certification or whose renewal applications do not meet the qualifications for renewal of certification shall be notified by the commission of potential termination at least fifteen (15) days before termination occurs.

54-2030. Expiration or Withdrawal of Provider Certification – Notice to Students.

If a provider's certification expires, is terminated or is withdrawn for any reason, the provider will no longer be approved by the commission, and no credit will be given to students for any courses not yet successfully completed by the expiration date. A provider whose certification has expired, been terminated or withdrawn for any reason, shall immediately notify every present or future student in writing that it is not a certified provider of approved real estate courses in Idaho, and that no credit for prelicense or continuing education will be given for its courses.

54-2031. Withdrawal of Idaho Certification for Cause – Process.

The commission may withdraw a provider's certification at any time, for cause, including the violation of any provision of this chapter by the provider or those for whom the provider is responsible. Any withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the rules of practice and procedure of the Idaho real estate commission, this chapter and all laws of the state of Idaho.

54-2032. Certification of Instructors.

All individuals wishing to teach real estate courses for credit toward prelicense, post license or the commission continuing education core course requirements in Idaho must first be approved or certified by the commission for each course the individual wishes to teach.

54-2033. Instructor Qualifications.

(1) Qualified instructors at degree-granting institutions. A qualified or full-time instructor or professor of an accredited college or university in any state or jurisdiction and who teaches real estate-related courses is deemed to be an approved instructor of such courses, in Idaho, for the purposes of this chapter.

(2) Other instructor applicants. All other individuals wishing to teach any real estate courses for credit toward Idaho prelicense requirements, including the business conduct and office operations course, or the post license or the commission continuing education core course requirements, must first meet the following additional qualifications and receive separate certification for each course to be taught:

(a) Unless this requirement is waived upon special review of the commission in the manner stated below, no individual instructor seeking certification may have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. Further, the individual may not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing, in a court of proper jurisdiction. The failure of a certified instructor to maintain the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the instructor's certificate as provided in section 54-2025(3), Idaho Code.

(b) Each applicant for certification shall also:

(i) Submit a completed application for instructor certification in the form and manner required by the commission, with all required fees;

(ii) File an executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and according to section 54-2012(1)(k), Idaho Code;

(iii) Qualify as at least one (1) of the following:

1. An attorney at law actively licensed in any state or jurisdiction with at least five (5) years of active practice in the areas of study proposed to be taught, and who has also successfully completed a commission-approved instructor training course or procedure, including an assistant teaching period;

2. An individual currently approved or certified and in good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;

3. An individual who is appointed to teach a nationally recognized real estate course which is generally accepted in other states or jurisdictions; or

4. An individual with at least five (5) years active real estate-related experience who has also successfully completed a commission-approved instructor training procedure, including an assistant teaching period.

(3) Instructor teaching standards. An instructor certified to teach any real estate course for credit toward the requirements of this chapter shall comply with the minimum teaching standards established by the commission. A certified instructor shall not teach the course in a manner that is detrimental to the purpose of educating licensees.

54-2034. Special Consideration – Discretion of the Commission.

The commission may, in its discretion, make such additional investigation and inquiry relative to the applicant for instructor certification as it shall deem advisable, and if other good cause exists, may deny or accept the application for certification. Based upon an applicant's educational background, experience in related activities, or a review of the applicant's evaluations as an assistant teacher, the commission may modify the requirements for instructor certification; such modification may include reducing the requirements or assigning additional requirements for certification.

54-2035. Term of Instructor Certification and Renewal. (1) Certification. Each instructor certification issued by the commission shall be for a term of up to one (1) year and shall expire annually on June 30.

(2) Recertification.

(a) In order to be recertified, each instructor shall:

(i) Return a completed recertification application on a form provided by the commission, along with all necessary attachments and fees, to the commission office prior to the expiration date for commission approval;

(ii) Demonstrate the ability to adequately teach the course. The ability to adequately teach shall be determined by the commission based upon any or all of the following:

1. Evaluations received from students;

2. Direct observation of the instructor's teaching performance by a commission representative; or

3. Review of the outline and reference materials provided for the course; and

(iii) Have attended a commission-sponsored instructor development seminar or received other acceptable training in methods of teaching adults during the preceding two (2) years.

(b) Recertification shall not be effective until the commission formally approves the application for renewal. An instructor's failure to obtain approved recertification prior to the expiration of the certification will result in no credit being given for any course taught by the instructor whose certification has expired prior to conclusion of the course.

54-2036. Certification of Courses and Course Content.

Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho real estate commission.

(1) An application for course certification must be submitted in the form and manner required by the commission, with the required fees, at least two (2) months prior to the contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each prelicense course must contain at least twenty (20) classroom hours, and each continuing education course must contain at least two (2) classroom hours.

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A classroom hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning courses. The design and delivery of each distance learning course shall be certified by the association of real estate license law officials or by another institution whose certification standards are deemed equivalent by the commission. The credit hours for a certified distance learning shall be based upon the same

number of hours which would be credited for an equivalent live course, and must include a commission-approved assessment.

(f) Each prelicense course must include a commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(g) Continuing education course exam. A licensee may receive continuing education course credit without having to take or pass an exam if the licensee personally attends the entire live presentation of an approved course.

(h) Exam retake policy. Each certified course provider may, at its option, allow students who complete a course and then fail the course exam one (1) opportunity to retake the approved course exam within the following time periods:

(i) Prelicense course exam retakes must occur within one (1) month of the original course exam;

(ii) Continuing education course exam retakes must occur within that course's certification period;

(iii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit.

(i) Challenge exams. Except where the prelicense requirements have been waived or modified by the commission pursuant to section 54-2002(6), Idaho Code, a student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements.

(3) Approved topics. The commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

54-2037. Term of Course Certification and Renewal.

Each course certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the course certificate. In order to maintain certification a course provider, for each course, must return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date and within sufficient time for commission review and approval. Recertification is not effective until the commission has formally approved the application for renewal. Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for a course if its certification has expired prior to conclusion of the course.

54-2038. Designated Broker – General Responsibilities – Broker Price Opinions. (*See also* *Rule 305*.)

The requirement that each brokerage company be maintained and conducted in compliance with the Idaho real estate license law and the Idaho real estate brokerage representation act is the responsibility of its designated broker. The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company's business or where representation is conducted.

(1) A designated broker is required to:

(a) Supervise and control, in the manner required by law and rule, all office locations, and the activities of all licensees and unlicensed persons associated with that brokerage company or for whom that designated broker is responsible;

(b) Review and approve all real estate agreements including, but not limited to, those related to listing, selling or purchasing property and brokerage representation agreements;

(c) Be reasonably available to manage and supervise the brokerage company during regular business hours. When a broker is a regular full-time employee or is

engaged in a full-time activity at a location other than where the broker is licensed to do business, a presumption will be made that the broker is unable to manage and supervise the brokerage company in accordance with these requirements, and no sales associate shall be licensed under the broker until such presumption is overcome by evidence to the contrary, satisfactory to the Commission.

(2) A broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to this section, may be licensed as a "limited broker" in Idaho and shall not have any sales associates licensed under that broker.

(3) An actively licensed salesperson or broker may, in the ordinary course of business, give an opinion of the price of real estate for the purpose of a prospective listing or sale. Only an actively licensed broker or associate broker may prepare and render a broker price opinion, as defined in this chapter. An associate broker who prepares and renders a broker price opinion shall notify the designated broker and the associate broker may not accept any fee except through the designated broker. Any licensee who renders a price opinion that does not comply with this subsection or with the requirements of section 54-4105, Idaho Code, is subject to discipline by the commission.

(4) A designated broker shall not allow any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license. "Properly licensed" means a license or a change in license that has been made effective by the commission.

54-2039. Broker and Branch Manager Absences and Changes.

Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch manager.

(1) Broker or branch manager absent for more than twenty-one days. A designated broker who is absent from his main office for more than twenty-one (21) consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch manager. If a designated broker or branch manager is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker or branch manager is appointed to act as broker or branch manager, the commission shall place on inactive status the licenses of the absent broker or branch manager and all licensees associated with him, and in the case of a brokerage company, all brokerage listing agreements and all buyer brokerage agreements shall be terminated.

(3) Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission,

or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(4) Effective date of changes. No change in designated broker shall be effective until written notice is received and approved by the commission, in the form required.

(5) Failure to comply -- Original broker to remain responsible except in the case of revocation. Where a licensed brokerage company fails to comply with this section and its office is closed, or during any period where the designated broker has left the brokerage company and no new broker has been designated to act for the company, the original designated broker shall remain responsible for trust account funds, pending transactions and records in the manner described in sections 54-2041 through 54-2049, Idaho Code. However, if the license of the original designated broker of the brokerage company is revoked, the license of that brokerage company shall be made inactive and its office closed until the company designates another qualified individual to act as broker.

54-2040. Main Office or Business Location.

(1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the commission of any change by the broker of the business name, location, or mailing address. No other location may be used as a main office location until proper notice is acknowledged by the commission. A change of business name or location without notification to the commission shall automatically inactivate the license previously issued. The broker shall also notify the commission in writing of any change in the business telephone number. A designated broker is not required to obtain, display or possess a physical license certificate as evidence of the business's licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. The broker shall not display or otherwise make available to the public any license certificate bearing a former business name or former location.

(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name. A broker shall not conduct business under any name other than the one in which the license is issued.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4) and 54-2039(1), Idaho Code.

54-2041. Trust Account and Entrusted Property.

(1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker. For purposes of this section, moneys or property shall not be considered entrusted to the broker or to any licensee representing the broker when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys or property to a third party, including, but not limited to, a title, an escrow or a trust company if upon transfer, the broker or its licensees have no right to exercise control over the safekeeping or disposition of said moneys or property.

(2) Unless otherwise instructed by the parties in writing to deposit entrusted moneys on a later day, immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account pursuant to section 54-2042, Idaho Code, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) A licensed real estate broker shall not be responsible for depositing moneys into the broker's real estate trust account, nor responsible for creating a real estate trust account with an approved depository as set forth in section 54-2042, Idaho Code, when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys to a third party, including, but not limited to, a title, an escrow or a trust company. Provided however, a broker shall be responsible for maintaining a record of the time and date that said moneys or property was transferred from the broker to a third party.

(5) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

54-2042. Creation of Noninterest-bearing Trust Accounts – Requirements.

A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository and must be non interest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, or an actively licensed attorney at law.

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A commission-approved form giving notice of opening a trust account and giving authorization for the commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars ($300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the commission as an escrow depository upon disclosure of the following:

(a) The details of the entity's financial structure;

(b) The amount and terms of errors and omissions insurance and any bonding;

(c) A copy of the entity's last audit and financial statement;

(d) A copy of any license or certificate issued to the entity; and

(e) Any other information that may help the commission make its determination.

54-2043. Interest-bearing Trust Accounts.

The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

(1) The interest-bearing trust account must be established in accordance with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository.

(2) The deposit shall be made in the name of the broker, as described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

54-2044. Trust Account Record Keeping – Format of Records Required.

In order that the financial interests of the consumers of Idaho be adequately protected, each designated broker is required to create and maintain the following records regarding any real estate trust account, and is required to reconcile and balance each trust account with all ledger records, the check register and the bank statement at least once each month. Any electronic record keeping system is required to have a generally accepted and adequate backup system in use at all times.

(1) Maintenance ledger record. A separate ledger card or record, herein called "ledgers," identified as "trust account maintenance fund" shall be initiated when the broker's or firm's funds are initially deposited into the trust account. These ledgers shall be filed at all times with the broker's current "open" ledgers of pending transactions. Additions or deductions to trust account maintenance funds shall be posted to the ledger records as soon as the broker is given notice of the deposit or deduction. The balance on this maintenance fund ledger shall be kept current at all times.

(2) Individual trust ledger records. An individual trust ledger shall be immediately created whenever a broker, or any licensed or unlicensed person representing the broker, receives earnest money or other consideration, even if the consideration will be deposited with, held by, paid directly to, transferred or delivered to a title company, other approved depository, or any other person, as directed in writing, and signed by both parties to the transaction. Receipt of consideration, for purposes of this chapter,

occurs when the broker or any person representing the broker, takes physical possession of the consideration or assumes the responsibility to deliver or deposit it.

(3) When a broker deposits funds with another broker, an approved depository, or directly to the seller or any other person, as directed in writing by both parties to the transaction, a ledger record must be created by the transferring broker, with a transaction number assigned. Upon transfer of funds or consideration, a receipt for such deposit shall be obtained and retained in the transaction files of the transferring broker. The receipt must show the name of the payee and date of transfer.

(4) Additional requirements for creating an individual trust ledger record are set forth in section 54-2045, Idaho Code. Individual trust ledger records must each be assigned a transaction number. In addition, each individual trust account ledger record created must contain:

(a) The next chronological transaction number for each transaction;

(b) The names of both parties to the transaction;

(c) The location of the property;

(d) The date of each deposit and disbursement;

(e) The name of the payor or payee;

(f) The amount and check number of each disbursement;

(g) The amount and nature of the deposit;

(h) The current balance; and

(i) After the transaction is closed, each individual ledger record must show the final disposition of the transaction and funds.

A broker's trust account ledger records must be maintained with one (1) file, electronic or hard copy, for closed, terminated and rejected transactions, and a separate file for transactions pending but not closed. Ledger records shall be kept in alphabetical order or by transaction number. Ledger posting must be kept current at all times.

(5) Trust account checks. The broker shall maintain consecutively numbered checks for each trust account, which checks must:

(a) Contain the broker's licensed business name and current business address; and

(b) Be imprinted with the words "real estate trust account."

(6) Check register or journal. A check register or journal must be posted properly, maintained and kept current by the broker at all times even if funds are held at a title company or other approved depository. The register must itemize deposits and disbursements in consecutive order, and must also clearly show:

(a) The date of the deposit or disbursement;

(b) The payee or payor;

(c) The amount and purpose of any deposits or disbursements;

(d) The check number;

(e) The transaction number; and

(f) The current cash balance remaining in that trust account.

(7) Duplicate bank deposit record. For each trust account, the broker shall maintain, in hard copy, a duplicate bank deposit record, which shall be imprinted with the broker's business name and the words, "real estate trust account." Each deposit record shall state:

(a) The name of the person or firm placing the money with the broker's office;

(b) The date of the deposit; and

(c) The transaction number. The duplicate deposit record shall be retained in the bank deposit records in proper chronological sequence and shall be date stamped by the bank or the bank deposit receipt shall be attached to the duplicate deposit record in the deposit records.

(8) Real estate trust account checks. For each trust account, the broker shall maintain a set of consecutively numbered checks, which shall be imprinted with the broker's business name and address and the words "real estate trust account." Any check

drawn on such a trust account shall be identified by a transaction number noted on the face of the check. Any voided trust account check shall be marked "VOID" and retained in numerical sequence with the other checks for the banking month.

54-2045. Trust Account Deposits and Receipt of Consideration.

Except as otherwise provided in this section, all entrusted funds received by a broker in connection with a regulated real estate transaction, including, but not limited to, earnest money, shall be deposited into a real estate trust account maintained by the broker at an approved depository. In addition, all earnest money, option money, promissory notes, tangible personal property and any other consideration received by a broker, regardless of form, must be accounted for upon receipt and in the following manner:

(1) Time of deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in the funds direct the broker to do otherwise.

(2) Checks held in uncashed form. A ledger record must also be created when the broker or associate receives a check to be held for later deposit. However, such a check must be accompanied by written instructions in the purchase and sale agreement or offer to withhold deposit until a time certain, such as acceptance of the offer by the seller.

(3) Consideration returned before deposit. A ledger record must also be created even if the consideration received by a broker or salesperson is to be returned before it has been deposited or otherwise transferred. A written and dated notation must be placed on both the purchase and sale agreement, offer or other document dealing with the consideration, and on the ledger record. No consideration is to be returned without the knowledge and consent of the broker.

(4) Consideration received by sales associate. All consideration, including cash, checks held in uncashed form and promissory notes, received by a sales associate in connection with a real estate transaction shall be immediately delivered to the broker or the broker's office.

54-2046. Trust Account Disbursements.

The broker who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker to discipline.

(1) Written authorization required. No disbursements shall be made without a written, signed authorization by the parties to the transaction or an order of the court. Written and signed instructions from parties to the transaction may be in the purchase and sale agreement or in a separate document.

(2) Disbursements in advance of closing. No disbursements shall be made in advance of closing or before the happening of a condition set forth in the purchase and sale agreement or other agreement in a regulated real estate transaction to the seller, closing agent or any other person without the required written and signed authorization.

(3) Disbursements to escrow agent. When set forth in the purchase and sale agreement that funds are to be disbursed to the person or company named as the escrow closing agent or agency, such disbursement shall be made to the person, company, agent or agency on or before the day of closing, and receipt for such disbursement shall be retained in the broker's transaction file.

(4) Withdrawal of broker's commission. No disbursement of any portion of the broker's commission shall take place without prior written, signed authorization from the buyer and seller or until copies of the closing statements, signed by the buyer and seller, have been delivered to the broker and until the buyer or seller has been paid the amount due as determined by the closing statement.

(5) Provision for forfeited earnest money. The purchase and sale agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

54-2047. Disputed Earnest Money.

(1) Any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall:

(a) Notify each party, in writing, of the demand of the other party; and

(b) Keep all parties to the transaction informed of any actions by the broker regarding the disputed funds or other consideration, including retention of the funds by the broker until the dispute is properly resolved.

(2) The broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine how to disburse the disputed money and may, at the broker's own discretion, make such disbursement. Discretionary disbursement by the broker based on a reasonable review of the known facts is not a violation of license law, but may subject the broker to civil liability.

(3) If the broker does not believe it is reasonably possible to disburse the disputed funds, the broker may hold the funds until ordered by a court of proper jurisdiction to make a disbursement. The broker shall give all parties written notice of any decision to hold the funds pending a court order for disbursement.

54-2048. Responsible Broker for the Transaction – Duties and Recordkeeping.

The "responsible broker," as referred to in this section, shall be responsible to the commission for the transaction, transaction records, the funds and closing in accordance with the requirements of this chapter. The broker who lists and sells any real property shall be deemed the responsible broker in the transaction. In the case of a cooperative sale, the broker who holds entrusted funds in a real estate trust account while the transaction is pending, or who delivers or transfers the funds to the closing agency or any authorized party other than the cooperating broker in the transaction, shall be deemed the broker responsible for the transaction. The responsible broker shall:

(1) Ensure the correctness and delivery of detailed closing statements which accurately reflect all receipts and disbursements for their respective accounts to both the buyer and seller in a transaction, even if the closing is completed by a real estate escrow closing agent, title company or other authorized third party and regardless of the responsible broker's agent or nonagent relationship to the buyer or seller.

(2) Show proof of delivery of the closing statement to the buyer and seller by their signatures on copies of such closing statements which shall be retained in the broker's transaction file. When signatures of the parties cannot be obtained, a copy of the closing statement transmittal letter, sent by certified mail, return receipt requested, or a written certification of delivery signed by an officer of the escrow closing agency, shall be retained in the broker's transaction files.

(3) Create and maintain, for the retention period required in section 54-2049, Idaho Code, a transaction file containing the following documents, as applicable. For all pending, closed or fallen transactions, the original or a true and correct copy of:

(a) Signed closing statements, if applicable;

(b) Written and signed brokerage representation agreements, if any. A responsible broker who is representing both the seller and the buyer in a transaction shall retain properly executed brokerage representation agreements in the transaction file,

and, if appropriate to the transaction, a properly executed "consent to limited dual representation" statement. A responsible broker who has a signed brokerage representation agreement with only one (1) party to the transaction, either buyer or seller, must only retain that one (1) agreement in the transaction file;

(c) All offers accepted, countered or rejected, which must each be retained in the manner required in section 54-2049, Idaho Code;

(d) All offers presented to the seller and not accepted by that seller shall be clearly marked and dated as rejected. The original or a true and correct copy of all rejected offers must be retained in the files of the selling broker for the statutory records retention period in section 54-2049, Idaho Code.

54-2049. Record Retention Schedules.

All records required in this chapter to be kept and maintained by a real estate broker, including trust account and financial records, transaction files and other records are to be kept in the broker's files according to this section. The following records must be kept by a broker for three (3) calendar years after the year in which the event occurred, the transaction closed, all funds were disbursed, or the agreement and any written extension expired:

(1) The original or true copy of all accepted, countered or rejected offers;

(2) Listing or buyer brokerage representation agreements and "consent to limited dual representation" forms;

(3) Transaction files and the contents required in section 54-2048(3), Idaho Code;

(4) Trust account ledger records; and

(5) All trust account reconciliation records, as defined in this chapter.

54-2050. Brokerage Representation Agreements – Required Elements.

All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) A description of the property to be bought or sold which sufficiently identifies the property so as to evidence an understanding of the parties as to the location of the real property. Nothing in this section shall be construed to require a legal description, nor a metes and bounds description of the property. Provided further, a representation agreement shall not be held invalid for lack of a legal description or a metes and bounds description;

(c) Price and terms;

(d) All fees or commissions; and

(e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

(2) Buyer representation agreements. Each buyer representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) All financial obligations of the buyer or prospective buyer, if any, including, but not limited to, fees or commissions;

(c) The manner in which any fee or commission will be paid to the broker; and

(d) Appropriate signatures and their dates.

(3) Prohibited provisions and exceptions – Automatic renewal clauses. No buyer or seller representation agreement shall contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement after the definite expiration date, unless the representation agreement states that it is

completely nonexclusive and it contains no financial obligation, fee or commission due from the party signing the agreement.

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct.

(5) Electronically generated agreements. To the extent the parties have agreed in writing, brokerage representation agreements with a buyer or seller that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct and enforceable as originals.

54-2051. Offers to Purchase.

(1) A broker or sales associate shall, as promptly as practicable, tender to the seller every written offer to purchase obtained on the real estate involved, up until time of closing. A purchase and sale agreement signed by the prospective buyer shall be deemed in all respects an offer to purchase.

(2) Immediately upon receiving any offer to purchase signed and dated by the buyer and any consideration, a broker or salesperson shall provide a copy of the offer to purchase to the buyer as a receipt.

(3) Upon obtaining a properly signed and dated acceptance of an offer to purchase, the broker or sales associate shall promptly deliver true and legible copies of such accepted offer to both the buyer and the seller.

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

(a) All terms and conditions of the real estate transaction as directed by the buyer or seller;

(b) The actual form and amount of the consideration received as earnest money;

(c) The name of the responsible broker in the transaction, as defined in section 54-2048, Idaho Code;

(d) The "representation confirmation" statement required in section 54-2085(4), Idaho Code, and, only if applicable to the transaction, the "consent to limited dual representation" as required in section 54-2088, Idaho Code;

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

(f) All appropriate signatures and the dates of such signatures; and

(g) A legal description of the property.

(5) All changes made to any offer to purchase or other real estate purchase agreement shall be initialed and dated by the parties to the transaction.

54-2052. Electronically Generated Agreements.

To the extent the parties to the transaction have agreed in writing offers to purchase, counteroffers and acceptances may be electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct and enforceable as originals.

54-2053. Advertising.

(1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

54-2054. Compensation, Commissions and Fees – Prohibited Conduct.

(1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(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. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to an unlicensed legal business entity, if:

(a) All of the entity's shareholders, members or other persons having a similar ownership interest are active real estate licensees; and

(b) An owner licensed under the broker performed the licensed activities for which the payment is made.

An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(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.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dis-

honorable and dishonest dealing and shall subject the licensee to disciplinary action by the commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement procedures act. However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction.

It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, if authorized by the broker, a sales associate may:

(a) Pay all or any portion of the accepted commission, compensation or fee to any other sales associate who is licensed with the same broker; or

(b) Accept payment from an unlicensed entity paid by the broker in accordance with subsection (2) of this section.

A broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

54-2055. Licensees Dealing with Their Own Property.

(1) Any actively licensed Idaho broker, sales associate, or legal business entity shall comply with this entire chapter when that licensee is buying, selling or otherwise acquiring or disposing of the licensee's own interest in real property in a regulated real estate transaction.

(2) A licensee shall disclose in writing to any buyer or seller no later than at the time of presentation of the purchase and sale agreement that the licensee holds an active Idaho real estate license, if the licensee directly, indirectly, or through a third party, sells or purchases an interest in real property for personal use or any other purpose; or acquires or intends to acquire any interest in real property or any option to purchase real property.

(3) Each actively licensed person buying or selling real property or any interest therein, in a regulated real estate transaction, must conduct the transaction through the broker with whom he is licensed, whether or not the property is listed.

54-2056. Terminating or Changing Licensed Business Relationships.

(1) Termination of licensed association. A sales associate who terminates his licensed association with a broker shall provide the broker written notice of the termination no later than three (3) business days after the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination no later than three (3) business days after the effective date. A licensee's written notice to the commission does not relieve him of the duty to provide written notice to the other licensee that he is terminating the licensed assocation.

(2) New association. The broker shall submit a written application, in the form and manner approved by the commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall, within ten (10) business days of the termination, notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. Immediately upon closing a branch office, the broker shall provide the commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall remove from public view any license certificates for the branch office.

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the commission for three (3) years following the year in which each transaction was closed.

54-2057. Death or Incapacity of a Designated Broker.

(1) Legal business entities. Upon the death or incapacity of a designated broker for a legal business entity licensed as a real estate brokerage company in Idaho, the licensed entity shall appoint and designate a qualified individual as designated broker in the manner and within the time required in section 54-2039, Idaho Code, or shall cease to be licensed.

(2) Sole proprietorships. Upon the death or incapacity of a sole proprietor broker, the commission may issue a limited authorization for an executor, administrator, conservator, personal representative, court-appointed guardian, or some other person or agency to close out the pending transactions on behalf of the deceased or incapacitated broker, and only in accordance with the provisions of this section. The person given temporary authority shall close out the affairs of the deceased or incapacitated sole proprietor broker by taking the following actions:

(a) Termination of listings and buyer brokerage agreements. Termination of all listings and buyer brokerage agreements in which there are not outstanding offers or earnest money receipts.

(b) Completion of negotiations. Completion of all negotiations between buyers and sellers on transactions in which an offer to purchase has been written or received.

(c) Accounting for moneys. Depositing and withdrawing moneys from the real estate trust account in connection with completion of all transactions still pending at the time of death of a sole proprietor broker.

(d) Commissions. Prompt payment of all real estate commissions owing after closing of all transactions, both to the decedent broker's duly appointed personal representative and to sales associates of the deceased broker or participating brokers entitled to commissions resulting from the transactions.

54-2058. Authority to Investigate and Discipline.

(1) General authority to investigate. The commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson in this state, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the executive director, the executive director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the executive director shall transmit to the commission a report, in writing, signed by the executive director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the commission, no further action shall be taken, unless the executive director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the commission deem that the facts set forth in the report are sufficient to proceed with a formal action, the commission shall authorize the filing of an administrative complaint against such person.

(2) Audits. The commission or its duly authorized representative is vested with the authority to conduct periodic inspections, surveys and audits of the transaction records and real estate trust accounts of all Idaho licensed designated brokers. Any transaction records or real estate trust account records located outside the state of Idaho shall promptly be made available to the commission upon request at the licensee's own cost and at the location or in the manner requested by the commission. If the analysis of a broker's real estate trust account indicates a deficiency or any irregularity which cannot be resolved between the commission and the broker, the commission may order a complete audit of the trust account by a certified public accountant at the broker's expense.

(3) The commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon request, any and all records to the commission at the licensee's own cost and at the location or in the manner requested by the commission.

54-2059. Disciplinary Powers – Revocation, Suspension or Other Disciplinary Action.

(1) The commission may temporarily suspend or permanently revoke licenses issued under the provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to exceed five thousand dollars ($5,000), and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any licensee who is found to have violated any section of the Idaho Code, the commission's administrative rules or any order of the commission. The

executive director may issue informal letters of reprimand to licensees without civil penalty or cost assessment.

The commission may impose a civil penalty in an amount not to exceed five thousand dollars ($5,000) and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of section 54-2002, Idaho Code. The civil penalty provisions of this section are in addition to and not in lieu of any other actions or criminal penalties for acting as a broker or salesperson without a license which might be imposed by other sections of this chapter or Idaho law.

The commission may also accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

(2) If the commission suspends or revokes a license, or imposes a civil penalty, or assesses costs and attorney's fees, the commission may withhold execution of the suspension, revocation or civil penalty, or costs and attorney's fees on such terms and for such time as it may prescribe.

(3) If any amounts assessed against a defendant by final order of the commission become otherwise uncollectible or payment is in default, and only if all the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution.

(4) All civil penalties, costs, and attorney's fees collected by the commission under this chapter shall be deposited in the state treasury to the credit of the special real estate fund established by section 54-2021, Idaho Code. Any amounts of civil penalties so collected, deposited and credited shall be expended for exclusive use in developing and delivering Idaho real estate education.

54-2060. Grounds for Disciplinary Action.

A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section:

(1) Making fraudulent misrepresentations;

(2) Engaging in a continued or flagrant course of misrepresentation or making of false promises, whether done personally or through agents or salespersons;

(3) Failure to account for or remit any property, real or personal, or moneys coming into the person's possession which belong to another;

(4) Failure to keep adequate records of all property transactions in which the person acts in the capacity of real estate broker or salesperson;

(5) Failure or refusal, upon lawful demand, to disclose any information within the person's knowledge, or to produce any documents, books or records in the person's possession for inspection by the commission or its authorized representative;

(6) Acting as a real estate broker or salesperson under an assumed name;

(7) Employment of fraud, deception, misrepresentation, misstatement or any unlawful means in applying for or securing a license to act as a real estate broker or salesperson in the state of Idaho;

(8) Using, proposing to use, or agreeing to use a "double contract" as prohibited in section 54-2054(5), Idaho Code;

(9) Seeking or receiving a "kickback" or rebate prohibited in section 54-2054(6), Idaho Code;

(10) Violation of any provision of sections 54-2001 through 54-2097, Idaho Code, or any administrative rule made or promulgated by the commission or any final order of the commission;

(11) Any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;

(12) Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

54-2061. Additional Grounds for Disciplinary Action – Court Actions – Licensee to Report to Commission.

(1) The commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee:

(a) Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee's lack of trustworthiness to engage in the real estate business;

(b) Has been declared to lack capacity or to be incompetent or under an infirmity, for the duration of such declaration only;

(c) Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate-related transaction.

(2) The court's record of conviction, order determining legal competency, or the order entering judgment in a civil case, or certified copies thereof, shall be prima facie evidence of a conviction, or the court's action.

(3) A licensee who is convicted, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the commission a copy of the legal document evidencing the same.

54-2062. Additional Grounds for Disciplinary Action – Other Administrative Actions – Licensee to Report to Commission.

(1) The commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

(a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or

(b) Has a real estate or other professional license suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

(2) A licensee against whom a final administrative action has been taken as described in subsection (1) of this section, shall, within twenty (20) days of such action, forward to the commission a copy of the legal document evidencing the same.

54-2063. Disciplinary Procedure and Review of Agency Action.

All disciplinary actions under this chapter and all rights of review or appeal are governed by chapter 52, title 67, Idaho Code, and the rules of practice and procedure of the Idaho real estate commission.

54-2064. Proof of Complaint – Prosecution by County Prosecuting Attorney.

The commission may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county in the state to prosecute all violations of the provisions of this chapter in their respective counties in which the violations occur.

54-2065. Penalty for Acting as a Broker or Salesperson Without License.

Any person acting as a real estate broker or real estate salesperson within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, if a natural person, be punished by a fine of not to exceed five thousand dollars ($5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court; or if a limited liability company or corporation, by a fine of not to exceed ten thousand dollars ($10,000). Additionally, the court may assess a civil penalty against a natural person in an amount not to exceed five thousand dollars ($5,000), and against a limited liability company or corporation, in an amount not to exceed ten thousand dollars ($10,000). All civil penalties shall be credited to the special real estate fund.

54-2066. Injunctive Relief.

The commission is hereby authorized to institute injunction proceedings in the district court of competent jurisdiction, pursuant to the Idaho rules of civil procedure, for cause shown, to restrain any person or persons from violating any provision of this chapter regardless of whether or not there exists an adequate remedy at law.

54-2067. Cease and Desist Orders.

The commission is authorized to order that any person violating any provision of this chapter cease and desist such activity immediately. Violation of the cease and desist order shall be a violation of this chapter and shall subject the person to any and all remedies available to the commission in this or other chapters of the Idaho Code.

54-2068. Witnesses – Depositions – Fees – Subpoenas.

(1) The commission, or any member thereof, the executive director of the commission, or such other person so designated by the commission by rule, shall have power to administer oaths, certify to all official acts, issue subpoenas for attendance of witnesses and the production of books and papers, take the testimony of any person by deposition in the manner prescribed for in the rules of procedure of the district court of this state, in civil cases, in any investigation or hearing in any part of the state.

(2) Each witness who appears pursuant to a subpoena shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the district court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

(3) If a witness, who has not been required to attend at the request of any party, is subpoenaed by the commission or executive director, his fees and mileage shall be paid from funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid.

54-2069. Real Estate Recovery Fund Established.

There is hereby created in the state treasury the real estate recovery fund. A balance of not more than twenty thousand dollars ($20,000) shall be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in sections 54-2069 through 54-2078, Idaho Code. Any balance over twenty thousand dollars ($20,000) shall be deposited in the special real estate fund and be subject to appropriation by the legislature for the use of the commission to carry out the provisions of this chapter.

54-2070. Augmentation of Fund.

Upon the original application or renewal of every real estate broker's, associate broker's and salesperson's license for a two-year period, the licensee shall pay, in addition to the original or renewal license fee, a fee of twenty dollars ($20.00). Such additional fees and all education fees charged and collected for tuition or registration,

course materials and such other fees involved with the commission education programs shall be paid into the state treasury and credited to the special real estate fund as provided in section 54-2021, Idaho Code, except for such funds as are required to maintain a balance of twenty thousand dollars ($20,000) in the real estate recovery fund as provided for in section 54-2069, Idaho Code.

54-2071. Recovery from Fund – Procedure – Grounds – Amount – Hearing.

(1) When any person obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required under this chapter, such person may, upon termination of all proceedings, including appeals in connection with any judgment, file a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery fund in the amount of actual damages included in the judgment and unpaid, but not more than ten thousand dollars ($10,000) per licensee per calendar year. The recovery fund's liability for all claims arising from the acts or omissions of any one (1) licensee in any calendar year shall be limited to a payment of not more than ten thousand dollars ($10,000), regardless of the number of persons damaged by the acts or omissions of a licensee, or the total amount of damage caused by such licensee, in any one (1) calendar year. If a claim is made against the fund and the commission has actual knowledge of any other claims against the recovery fund which have been filed or asserted against the same licensee and arise from acts or omissions of the licensee in the same calendar year, then the commission shall file an interpleader action in accordance with the applicable statutes and the Idaho rules of civil procedure against all known parties who may claim a right to payment from the fund. Unless the commission has actual knowledge of other potential claims, as stated above, and so files the interpleader action, the first person who obtains a final judgment against a licensee shall be entitled to the payment of that amount equal to the lesser of the judgment or ten thousand dollars ($10,000), providing the claimant meets the other criteria set forth herein.

(2) A copy of the petition shall be served upon the commission and an affidavit of such service shall be filed with the court.

(3) The court shall act upon such petition within thirty (30) days after such service and, upon the hearing thereof, the petitioner shall be required to show that:

(a) He is not the spouse of the debtor, or the personal representative of such spouse;

(b) He has complied with all the requirements of sections 54-2069 through 54-2078, Idaho Code;

(c) He has obtained a judgment of the kind described in subsection (1) of this section, stating the amount thereof and the amount owing thereon at the date of the petition;

(d) He has caused to be issued a writ of execution upon the judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;

(e) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and

(f) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount

thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(4) Whenever the aggrieved person satisfies the court that it is not practicable to comply with one (1) or more of the requirements enumerated in subsections (3)(d), (e) and (f) of this section, and that the aggrieved person has taken all reasonable steps to collect that amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may in its discretion dispense with the necessity for complying with such requirements.

54-2072. Commission May Answer Petition – Compromise of Claims.

(1) Whenever the court proceeds upon a petition as provided in section 54-2071, Idaho Code, the commission may answer and defend any such action against the recovery fund on behalf of the recovery fund and in the name of the defendant and may use any appropriate method of review on behalf of the recovery account.

(2) The judgment set forth in the petition shall be considered as prima facie evidence only, and the findings of fact therein shall not be conclusive for the purposes of sections 54-2069 through 54-2078, Idaho Code.

(3) The commission may, subject to court approval, compromise a claim based upon the application of a petitioner.

54-2073. Court Order Requiring Payment from Recovery Fund.

If the court finds, after hearing that the claim should be levied against the portion of the recovery fund allocated for the purpose of carrying out the provisions of sections 54-2069 through 54-2078, Idaho Code, the court shall enter an order directed to the commission requiring payment from the recovery fund of whatever sum it finds to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in section 54-2071, Idaho Code.

54-2074. Automatic Suspension of Broker's, Associate Broker's or Salesperson's License on Payment by Commission – Condition for License Reinstatement.

If, pursuant to court order, the commission pays from the recovery fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensed broker, associate broker or salesperson, the license of such broker, associate broker or salesperson shall be automatically suspended without further order of the commission upon the effective date of any order by the court as set forth herein authorizing payment from the recovery fund. No such broker, associate broker or salesperson shall be granted reinstatement until he has repaid in full, the amount so paid from the recovery fund plus interest at the legal rate of interest allowable by law for judgments.

54-2075. Order of Payment of Claims if Recovery Fund Balance Insufficient – Interest.

If, at any time, the money deposited in the recovery fund and allotted for satisfying claims against licensees is insufficient to satisfy any authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of eleven percent (11%) per annum.

54-2076. Commission's Right to Subrogation.

When the commission has paid from the recovery fund any sum to the judgment creditor, the commission has subrogated all other rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the

commission and any amount and interest so recovered by the commission on the judgment shall be deposited to the recovery fund.

54-2077. Waiver of Rights.

The failure of a person to comply with all of the provisions of sections 54-2069 through 54-2071, Idaho Code, shall constitute a waiver of any rights hereunder.

54-2078. Disciplinary Action Against Licensees Not Restricted for Violations of Law or Rules.

Nothing contained in sections 54-2069 through 54-2078, Idaho Code, limits the authority of the commission to take disciplinary action against a licensee for a violation of any of the provisions of the chapter, or of the rules of the commission, nor shall the repayment in full of all obligations to the recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter or the rules promulgated thereunder.

54-2079. Termination of Sales Associate for Violation of Disciplinary Provisions – Statement to be Filed with Commission.

Whenever a real estate broker terminates a sales associate for a violation of any of the provisions of sections 54-2060 through 54-2062, Idaho Code, the broker shall promptly file a written statement of the facts in reference thereto with the commission.

54-2080. Records – Disclosure to Public.

Records kept in the office of the commission under authority of this chapter and chapter 18, title 55, Idaho Code, shall be open to public inspection as provided in chapter 3, title 9, Idaho Code.

54-2081. (Reserved).

54-2082. Short Title.

Sections 54-2082 through 54-2097, Idaho Code, shall be known and may be cited as "The Idaho Real Estate Brokerage Representation Act."

54-2083. Definitions.

As used in sections 54-2082 through 54-2097, Idaho Code:

(1) "Adverse material fact" means a fact that would significantly affect the desirability or value of the property to a reasonable person or which establishes a reasonable belief that a party to the transaction is not able to or does not intend to complete that party's obligations under a real estate contract.

(2) "Agency representation" or "representation" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties defined in section 54-2087, Idaho Code, are applicable. See also "representation."

(3) "Assigned agent" means, where a brokerage is representing more than one (1) party to the transaction as a limited dual agent as provided in section 54-2088, Idaho Code, the sales associate assigned by the brokerage to act on behalf of one (1) client and to represent solely that client consistent with the applicable duties set forth in section 54-2087, Idaho Code. The designated broker shall not act as an assigned agent of the brokerage.

(4) "Brokerage" means a licensed designated broker, the licensed real estate business represented by that broker and its associated licensees.

(5) "Client" means a buyer or seller, or a prospective buyer or seller, or both who have entered into an express written contract or agreement with a brokerage for agency representation in a regulated real estate transaction.

(6) "Confidential client information" means information gained from or about a client that:

(a) Is not a matter of public record;

(b) The client has not disclosed or authorized to be disclosed to third parties;

(c) If disclosed, would be detrimental to the client; and

(d) The client would not be personally obligated to disclose to another party to the transaction. Information which is required to be disclosed by statute or rule or where the failure to disclose would constitute fraudulent misrepresentation is not confidential client information within the provisions of sections 54-2082 through 54-2097, Idaho Code. Information generally disseminated in the marketplace is not confidential client information within the provisions of such sections. A "sold" price of real property is also not confidential client information within the provisions of such sections.

(7) "Customer" means a buyer or seller, or prospective buyer or seller, who is not represented in an agency relationship in a regulated real estate transaction.

(8) "Customer services agreement" or "compensation agreement" means an agreement between a real estate brokerage and a customer for the provision of any real estate services for which the brokerage has the right to be compensated by the customer.

(9) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(10) "Idaho real estate license law and rules" means chapter 20, title 54, Idaho Code, and all administrative rules promulgated thereunder.

(11) "Limited dual agent" means a brokerage that is representing both a buyer and a seller as clients in a regulated real estate transaction, as provided in section 54-2088, Idaho Code.

(12) "Ministerial acts" means reasonably necessary and customary acts typically performed by real estate licensees in assisting a transaction to its closing or conclusion.

(13) "Nonagent" means a brokerage and its licensees working with or assisting a buyer or seller as a customer to which the duties provided in section 54-2086, Idaho Code, are applicable.

(14) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(15) "Representation" or "brokerage representation" or "represented" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties provided in section 54-2087, Idaho Code, are applicable.

(16) "Representation agreement" or "contract for representation" means a written agreement between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction. A representation agreement under this chapter can only be made in writing, and cannot be made orally or by assumption or implication.

(17) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

54-2084. Brokerage Agency Relationships – Creation.

(1) A buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in a separate written document, to such representation. No type of agency representation may be assumed by a brokerage, buyer or seller or created orally or by implication.

(2) Types of brokerage relationships. The following types of brokerage relationships are recognized:

(a) Nonagency;
(b) Agency representation;
(c) Limited dual agency representation;
(d) Limited dual agency with assigned agents.

54-2085. Disclosure and Writing Requirements – Agency Disclosure Brochure and Representation Confirmation.

(1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho real estate commission. The commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer or seller as an agent, nonagent, limited dual agent, or limited dual agent with assigned agents must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(4) In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved:

REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

A. ☐ The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
B. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
C. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
D. ☐ The brokerage working with the BUYER(S) is acting as a NON-AGENT for the BUYER(S).

Section 2:

A. ☐ The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
B. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
C. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
D. ☐ The brokerage working with the SELLER(S) is acting as a NON-AGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate

commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.

(6) Neither the commission brochure nor the representation confirmation shall create a brokerage relationship. A separate, signed, written agreement is required for that purpose.

54-2086. Duties to a Customer.

(1) If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations:

(a) To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate;

(b) To perform these acts with honesty, good faith, reasonable skill and care;

(c) To properly account for moneys or property placed in the care and responsibility of the brokerage;

(d) To disclose to the buyer/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(e) To disclose to the seller/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(2) If a customer has entered into a compensation agreement or customer services agreement with the brokerage, the brokerage shall have the obligation to be available to the customer to receive and timely present all written offers and counteroffers.

(3) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(4) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the customer in the transaction.

(5) A nonagent brokerage and its licensees owe no duty to a buyer/customer to conduct an independent inspection of the property for the benefit of that buyer/customer and owe no duty to independently verify the accuracy or completeness of any statement or representation made by the seller or any source reasonably believed by the licensee to be reliable.

(6) A nonagent brokerage and its licensees owe no duty to a seller/customer to conduct an independent investigation of the buyer's financial condition for the benefit of that seller/customer and owe no duty to independently verify the accuracy or completeness of statements made by the buyer or any source reasonably believed by the licensee to be reliable.

54-2087. Duties to a Client.

If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

(1) To perform the terms of the written agreement with the client;

(2) To exercise reasonable skill and care;

(3) To be available to the client to receive and timely present all written offers and counteroffers;

(4) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:

(a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;

(b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or

(c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;

(d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;

(e) For the benefit of a client/seller: upon written request by the client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.

(5) To properly account for moneys or property placed in the care and responsibility of the brokerage pursuant to section 54-2041, Idaho Code; and

(6) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:

(a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its associated licensees;

(b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(7) Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

(8) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(9) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the client in the transaction.

(10) Nothing in this section shall result in imputed knowledge between multiple licensees of the brokerage when neither has reason to have such knowledge.

(11) A brokerage and its licensees may represent two (2) or more buyers who wish to make an offer for the purchase of the same real property; provided, that the brokerage or its licensee has advised all such buyers in writing of the same.

54-2088. Limited Dual Agency and Assigned Agency Permitted.

(1) A brokerage may represent both the buyer and the seller in the same transaction only as a limited dual agent and only with the express written consent of all other clients involved in the transaction.

(2) A brokerage acting as a limited dual agent may, at the option of the brokerage and with the express written consent of the other clients involved in the transaction, assign separate sales associates to each client to act on behalf of and represent that client solely. The designated broker shall not act as an assigned agent of the brokerage.

(3) The express written consent to limited dual agency shall contain separate signatures of all clients involved in the transaction and shall contain the following language:

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY

The undersigned have received, read and understand the Agency Disclosure Brochure. The undersigned understand that the brokerage involved in this transaction may be providing agency representation to both the buyer and the seller. The undersigned each understands that, as an agent for both buyer/client and seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the buyer/client to buy or the seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by section 54-2085, Idaho Code. The undersigned each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(4) All duties and obligations owed to a buyer/client or a seller/client under section 54-2087, Idaho Code, apply to limited dual agency relationships to the extent they do not unreasonably conflict with duties and obligations owed to the other client, except that:

(a) A limited dual agent shall not disclose any of the following without express written consent of the client to whom the information pertains:

(i) That a buyer is willing to pay more than the listing price of the property;

(ii) That a seller is willing to accept less than the listing price for the property;

(iii) The factors motivating the buyer to buy or the seller to sell;

(iv) That a buyer or seller will agree to a price or financing terms other than those offered.

(b) A limited dual agent does not have a duty of undivided loyalty to either buyer/client or seller/client, and by consenting to limited dual agency, the buyer and seller agree to those limitations.

(5) The following apply whenever a brokerage acting as a limited dual agent assigns separate sales associates to act on behalf of the separate clients:

(a) Designated broker. The designated broker continues to act as limited dual agent of each client with the duty to:

(i) Supervise the assigned agents in the fulfillment of their duties to their respective clients;

(ii) Refrain from advocating on behalf of any one client over another; and

(iii) Refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(b) Imputed knowledge. Knowledge of any fact known to the brokerage, its designated broker, or any other licensee associated with the brokerage shall not be imputed to an assigned agent of the brokerage so as to create an impermissible confilict of interest. Nothing in this subsection shall diminish a licensee's duty with respect to facts actually known or that reasonably should have been known to the licensee.

(6) If a designated broker determines that confidential information of a client has been disclosed to another client in the transaction in violation of this section, the designated broker shall promptly provide written notice of the disclosure to the affected client.

(7) No cause of action for any buyer or seller shall arise against a limited dual agent for making any required or permitted disclosure under this act, nor does making such disclosure terminate the limited dual agency.

(8) Receipt of the agency disclosure brochure required by section 54-2085, Idaho Code, and the signed consent to dual representation by buyer and seller agreeing to limited dual agency representation shall be sufficient informed legal consent to dual representation under this act. A consent by the buyer and seller to possible dual representation in the future, such as may be contained in a written marketing or representation agreement between a brokerage and client, shall also be considered effective and informed legal consent to dual representation.

54-2089. Broker Compensation.

Payment of compensation or a written agreement only for payment of compensation to a brokerage shall not constitute an agreement for agency representation or otherwise create an agency relationship.

54-2090. Written Office Policy Required.

Each designated broker shall be responsible to adopt and maintain in each office, including branch offices, a written policy which identifies and describes the types of representation in which that brokerage and its associated licensees may engage with any buyer or seller, or both, as a part of that office's real estate brokerage services.

54-2091. Duration of Agency Relationship.

(1) A brokerage's agency relationship and corresponding representation duties under sections 54-2082 through 54-2097, Idaho Code, shall commence on the date indicated on the written agreement between the brokerage and a buyer/client or seller/client and shall end at the earliest of:

(a) Performance or completion of the representation;

(b) Agreement by the parties;

(c) Expiration of the agency relationship agreement.

(2) Nothing in sections 54-2082 through 54-2097, Idaho Code, shall prohibit the brokerage and the buyer or seller from changing the legal nature of their relationship or representation in accordance with such sections during the course of the real estate transaction. However, the brokerage is not relieved thereby from meeting the disclosure requirements and obtaining the written agreements, consents or confirmations required by sections 54-2082 through 54-2097, Idaho Code.

54-2092. Duties and Obligations Owed after Termination of Representation.

Except as otherwise agreed in writing, a brokerage owes no further duty or obligation to a client after termination of the agreed representation except:

(1) Accounting for all moneys and property received by the brokerage during the representation; and

(2) Maintaining the confidentiality of all information defined as confidential client information by this act.

54-2093. Vicarious Liability Abolished.

(1) A client, as defined in this chapter, whether buyer or seller, shall not be liable for a wrongful act, error, omission or misrepresentation of his broker or his broker's licensees unless the client had actual knowledge of or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(2) A licensee or brokerage engaged in representation of a client shall be entitled to rely upon representations made by a client and shall not be liable for a wrongful act, error, omission or misrepresentation made by the client unless the licensee or brokerage had actual knowledge or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(3) Nothing in this section shall be construed to diminish or limit any of the broker's or licensee's responsibilities under chapter 20, title 54, Idaho Code, or the rules promulgated thereunder.

54-2094. Representation Not Fiduciary in Nature.

While this act is intended to abrogate the common law of agency as it applies to regulated real estate transactions, nothing in this act shall prohibit a brokerage from entering into a written agreement with a buyer or seller which creates an agency relationship in which the duties and obligations are greater than those provided in this act. However, unless greater duties are specifically agreed to in writing between the brokerage and a represented client, the duties and obligations owed to a represented client in a regulated real estate transaction are not fiduciary in nature and are not subject to equitable remedies for breach of fiduciary duty.

54-2095. Conflicts with Other Law.

If the provisions of this act are found to be in conflict with any other provision of Idaho law, the provisions of this act shall control.

54-2096. Severability.

The provisions of this chapter are severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

54-2097. Rulemaking Authority of the Commission.

The Idaho real estate commission shall have authority to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

Chapter 41, Title 54: Unlawful Practice of Appraisal.

54-4103. Unlawful Practice of Appraisal.

[. . .] It shall be unlawful for any person to appraise, practice appraisal, assume to act as, or hold themselves out to the public as an appraiser, or carry on the calling of an appraiser within the state, or to perform an appraisal of real estate located in this state unless the person has first been licensed or certified by the board under the provisions of this chapter.

54-4104. Definitions. As used in this chapter.

(1) "Appraisal" or "real estate appraisal" means an ~~analysis,~~ opinion or conclusion ~~relating to the~~of value~~, nature, quality, or utility of specified interests in, or aspects~~ of~~,~~ identified real estate.

[. . .] (5) "Broker's price opinion" means a written price opinion of the estimated price for identified real property that is prepared by a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, pursuant to the requirements and content provisions for the broker's price opinions contained in this chapter.

(6) "Federally related transaction" means any real estate related financial transaction that a federally regulated institution, regulatory agency, or the resolution trust corporation engages in, funds, contracts for, or regulates.

[. . .] **(**11) "Real property" or "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 situated in this state or elsewhere.

54-4105. Exceptions.

[. . .] (2) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(3) The provisions of this chapter shall not prohibit a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

(a) The broker's price opinion shall be in writing and contain the following:

(i) A statement of the intended purpose of the price opinion;

(ii) A brief description of the subject property and property interested to be priced;

(iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(iv) Any assumptions or limiting conditions;

(v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;

(vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;

(vii) A disclaimer that, unless the broker is licensed under the Idaho Real Estate Appraisers Act, Chapter 41, Title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice;

(viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction.[. . .]

Chapter 5, Title 9, Section 9-508. Real Estate Commission Contracts to be in Writing.

No contract for the payment of any sum of money or thing of value, as and for a commission or reward for the finding or procuring by one person of a purchaser of real estate of another shall be valid unless the same shall be in writing, signed by the owner of such real estate, or his legal, appointed and duly qualified representative.

The Rules in this Booklet are current as of July 1, 2016. Rule changes may be adopted and become effective after that date. The current Rules of the Commission are published in the Idaho Administrative Code, which may be viewed online at: adminrules.idaho.gov/rules/current/33/0101.pdf

IDAPA 33, TITLE 01, CHAPTER 01
(Rules of the Idaho Real Estate Commission)

000. Legal Authority.

The Rules of the Idaho Real Estate Commission contained herein have been adopted pursuant to section 54-2007, Idaho Code. Any violation of these rules, or of any provision of Chapter 20, Title 54, shall be sufficient cause for disciplinary action as prescribed in sections 54-2059 and 54-2060, Idaho Code.

001. Title and Scope.

01. Title. These rules shall be cited as IDAPA 33.01.01, "Rules of the Idaho Real Estate Commission," IDAPA 33, Title 01, Chapter 01.

02. Scope. These rules contain the requirements for implementation and enforcement of the Idaho Real Estate Licensing Law and the Idaho Real Estate Brokerage Representation Act, contained in Chapter 20, Title 54, Idaho Code.

002. Written Interpretations.

In accordance with Section 67-5201(19)(b)(iv), this agency has written statements which pertain to the interpretation of the rules of this chapter, or to documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Suite 180, Boise, ID 83706.

003. Administrative Appeals.

All contested cases shall be governed by IDAPA 33.01.02.000 et seq., "Rules of Practice and Procedure of the Idaho Real Estate Commission."

004. Incorporation by Reference.

There are no materials incorporated by reference.

005. Office Hours, Mailing and Physical Address, Phone Numbers.

The office hours for Real Estate Commission are 8 a.m. to 5 p.m., Monday through Friday, excepting state holidays. The Commission's mailing address and office location is 575 E. Parkcenter Blvd., Suite 180, Boise, ID 83706. The telephone number is (208) 334-3285.

006. Electronic Signatures.

A person's entry of the identification number assigned by the Commission, or approved for the person's use by the Commission, shall constitute the person's signature when transmitted as part of or in connection with an electronic document or procedure in the course of business with the Commission. Any identification number assigned or approved by the Commission shall be unique to the person using it, capable of verification, and conform to all applicable rules, guidelines and policies established by the Commission.

007 — 099 (Reserved).

Rules 100 Through 199 - Application, Licensure and Termination of Licenses

100. Licensing Fees.

License fees are established as follows:

01. Fees for Licensed Individuals. The fees for an initial or renewing license for broker, associate broker or salesperson shall be one hundred sixty dollars ($160) per license period, which fees include the twenty dollar ($20) fee prescribed in section 54-2070, Idaho Code.

02. Fees for Licensed Legal Business Entities. The fee for an initial or renewing license for each legal business entity shall be fifty dollars ($50) per license period.

101. Late License Renewal Fees.

When a license renewal application is submitted after the license period has elapsed, there shall be, in addition to the fees for renewing the license, a late fee in the amount of twenty five dollars ($25).

102. Fee to Print License Certificate.

The fee for having the commission print a license certificate shall be fifteen dollars ($15) for each certificate.

103. Fee to Compile Education or License History.

The fee for having the Commission compile and certify a licensee's education history or license history shall be ten dollars ($10) for each compilation.

104. Fee for Branch Office License.

The fee for an initial or renewing license for each branch office shall be fifty dollars ($50) per license period.

105. Conditions to Renew Expired License.

The Commission may accept a licensee's application to renew an expired license upon the following conditions:

01. Payment of Late Fee. The applicant must pay the late license renewal fee established by this chapter;

02. Renewal After Expiration of Active License. If the license expired on active license status, the licensee must complete and submit with the application, on the form approved by the Commission, one (1) of the following:

a. A certificate attesting that during the period the license was expired, the licensee did not do or attempt to do any acts described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code; or

b. A certificate admitting that during the period the license was expired, the licensee did or attempted to do an act described in the defnitions of real estate broker or salesperson in Section 54-2004, Idaho Code, and either:

i. Agree to pay the proposed civil fine, which amount will be in accordance with the scheduled amount approved by the Commission by motion; or

ii. Request a hearing to determine any fine under the procedures set forth in the Idaho Administrative Procedures Act, Chapter 52, Title 67, and the Commission's rules under IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases."

03. Investigate or Discipline a Licensee. Nothing in this Section limits the ability of the Commission to investigate or discipline a licensee for violating Subsection 54-2018(3), Idaho Code, or for violating any other provision of the Real Estate License Law or the rules promulgated by the Commission.

106 — 116 (Reserved).

117. Certification of Mandatory Errors and Omissions Insurance.

Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho, shall have in effect and maintain a policy of errors and omissions insurance when required by section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules.

01. Certification of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in section 118 of these rules, shall be deemed to have satisfied the certification requirement of section 117. The effective date of coverage, however, shall be the day of final license approval.

02. Certification of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in section 119 of these rules, shall obtain a Certificate of Coverage, signed by an authorized agent or employee of the insurance carrier, which certificate shall be in a form approved by the Commission, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce for inspection the Certificate of Insurance.

118. Group Insurance Plan.

The Commission shall make available to all active licensees, subject to terms and availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan obtained by the Commission.

01. Qualified Insurance Carrier Defined. For the purposes of this section, a "qualified insurance carrier" shall mean an insurance carrier:

a. Which, for the entire term of its contract shall provide the Group Plan of Errors and Omissions insurance contemplated by these rules, maintains an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher;

b. Which is and will remain for the policy term duly authorized by the Idaho Department of Insurance to do business in the state of Idaho as an insurance carrier;

c. Which is and will remain for the policy term qualified and authorized by the Idaho Department of Insurance to write policies of Errors and Omissions insurance in Idaho of the type contemplated by these rules;

d. Which, after competitive bidding, has been notified by the Commission that it is the successful bidder for the Group Plan to provide the Errors and Omissions insurance contemplated by these rules; and

e. Which has entered into a contract to provide said group Errors and Omissions plan in conformity with said contract, these rules and the Idaho Real Estate License Law.

02. Right To Cancel. The group policy obtained by the Commission under these rules shall be available to all active licensees with no right on the part of the carrier to cancel any licensee.

03. Approved Policy. The group policy obtained by the Commission shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, shall be subject to such terms and conditions as are customary in the insurance industry for policies of Errors and Omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Insurance Department, and which are contained in a policy of insurance which has been approved by the Department of Insurance; provided, however, that said Group Plan shall provide, at a minimum, the following terms and conditions:

a. Not less than one hundred thousand dollars ($100,000) limit liability coverage for each occurrence, not including costs of investigation and defense;

b. An annual aggregate limit of not less than three hundred thousand dollars ($300,000), not including costs of investigation and defense.

c. The minimum coverage requirements of this Subsection shall apply to each individual licensee;

d. A deductible amount of not greater than three thousand five hundred dollars ($3,500), which shall include costs of investigation and defense;

e. A reasonable premium not to exceed the maximum premium set forth in section 54-2013, Idaho Code;

f. A policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent, or, if an annually renewable policy, a statement of the policy period, and in either case, the policy shall provide for continuous coverage during the policy period;

g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; and

h. Prior acts coverage shall be offered to licensees with continuous past coverage.

04. Standard Of Group Policy Determined. For the purposes of these rules and the fulfillment of the Commission's obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of any group policy of Errors and Omissions insurance to be issued to the state of Idaho pursuant to these rules shall be conclusive proof that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Idaho law and the rules of the Idaho Insurance Department with respect to such policies of insurance.

119. Independently Obtained Errors and Omissions Insurance.

Licensees may obtain Errors and Omissions insurance independently of the Group Policy available through the Commission, subject, however, to the terms and conditions set forth in these rules.

01. "Independently Obtained" Insurance Defined. The term "independently obtained" insurance shall mean a policy of Errors and Omissions insurance issued to each individual licensee or issued to the firm with which the licensee is affiliated and which shall provide, at a minimum, all of the following terms and conditions:

a. Covers all activities contemplated under Chapter 20, Title 54, Idaho Code, under such terms and conditions as are customary in the insurance industry for policies of Errors and Omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Department of Insurance, and which are contained in a policy of Errors and Omissions insurance which has been approved by the Idaho Department of Insurance;

b. If an "individual" policy specifies not less than one hundred thousand dollars ($100,000) limit liability coverage for each occurrence, not including costs of investigation and defense;

c. If a "firm" policy specifies not less than five hundred thousand dollars ($500,000) limit liability coverage for each occurrence, not including costs of investigation and defense;

d. If an "individual" policy, an annual aggregate limit of not less than three hundred thousand dollars ($300,000), not including costs of investigation and defense;

e. If a "firm" policy, an annual aggregate limit of not less than one million dollars ($1,000,000), not including costs of investigation and defense;

f. If an "individual" policy, the minimum coverage limits specified in Subsection 119.01 shall be available to each licensee;

g. If a "firm" policy, the minimum coverage limits specified in Subsection 119.01 shall apply to the firm;

h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period;

i. No policy of Errors and Omissions insurance shall be deemed "independently obtained" for purposes of this rule unless the insurance company specifically agrees in writing that it will not terminate, cancel, lapse, fail or refuse to renew or modify such policy without the company first providing the Commission and the licensee with thirty (30) days' written notice;

j. Contains a policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent and which provided for continuous coverage during said policy period, or, if an annually renewable policy, a statement of the policy period and, in either case, the agreement of the insurance carrier that it will not modify, terminate, cancel, lapse or not renew the policy without first providing the Commission and licensee thirty (30) days written notice; and

k. Prior acts coverage shall be offered to licensees with continuous past coverage.

02. Approval By Department of Insurance. For the purposes of these rules and the fulfillment of the licensees' obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of a policy of independently obtained Errors and Omissions insurance covering the licensee shall create a presumption that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of the law and rules of the Idaho Department of Insurance with respect to such policies of insurance. Approval by the Department of Insurance, however, does not create any presumption of equivalency in coverage as required by Idaho Real Estate License Law and these rules.

03. Carrier Issuing Independent Policy. A carrier issuing an independent policy shall meet all of the requirements of a qualified carrier set forth in Subsections 118.01.a. through 118.01.c. and shall maintain an A.M. Best Company rating of B+ or better and an A.M. Best Financial Size Category of Class VI or higher.

120. Certification a Prerequisite for License Issuance or Renewal.

No applicant for an original active license or for renewal of an active license shall be issued such active license unless the applicant has certified to the Commission, in the form and manner approved by the Commission, that he is in compliance with the insurance requirements of this chapter. This certification of compliance by the applicant shall satisfy the filing requirement of section 54-2013, Idaho Code.

121. Failure to Maintain Insurance.

Failure of a licensee to obtain and maintain insurance required by Section 117 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under section 67-5254, Idaho Code.

01. Notice of Noncompliance. Within five (5) business days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by first class mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) business days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) business days shall result in the license being automatically inactivated.

02. Failure To Maintain Insurance. Any failure of a licensee to maintain errors and omissions insurance while on active license status, regardless whether coverage is later obtained and made retroactive by the carrier, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in sections 54-2059 and

54-2060, Idaho Code, including but not limited to the assessment of civil fines. A late renewal is considered failure to maintain insurance and constitutes a violation of the law.

122. Falsification of Certificates.
Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a certificate of coverage to be filed with, or produced to, the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic inactivation of license provided-for in Subsection 121.01.

123 — 199 (Reserved).

Rules 200 Through 299 – Office Operations

200 — 299 (Reserved).

Rules 300 Through 399 – Business Conduct

300. Disputes Concerning Commissions and Fees.
The Idaho Real Estate Commission shall not be involved in the resolution of disputes between licensees or between licensees and buyers and sellers concerning matters of commissions or fees.

301. Price Fixing.
The Idaho Real Estate Commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction by licensed real estate brokers.

302. Title Opinions.
No real estate broker or sales associate shall pass judgment upon or give an opinion with respect to the merchantability of the title to property in any transaction.

303. Legal Opinions.
A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney.

304. (Reserved).

305. Designated Broker Permitted to Access Education Records of the Broker's Licensed Sales Associates.
As provided for in Section 9-340C, Idaho Code, the Commission may establish a mechanism to enable a designated broker to access and review the electronically-kept continuing education record of any licensee currently licensed with the broker. Such records are otherwise exempt from the disclosure requirements of the Public Records Act, Chapter 3, Title 9, Idaho Code. Access to records shall be through the means made available by the Commission by motion.

306 — 399 (Reserved).

Rules 400 Through 499 – Continuing Education

400 — 401 (Reserved).

402. Approved Topics for Continuing Education.

The primary purpose of continuing education is to help assure that licensees possess the knowledge, skills, and competency necessary to function in the real estate business in a manner that protects and serves the public interest, or that promotes the professionalism and business proficiency of the licensee. The knowledge or skills taught in an elective course must enable licensees to better serve real estate consumers.

01. Topics Approved By The Commission. Approved topic areas for continuing education, as provided for in Sections 54-2023 and 54-2036, Idaho Code, include the following as they pertain to real estate brokerage practice and actual real estate knowledge:

a. Real estate ethics;

b. Legislative issues that influence real estate practice;

c. Real estate law; contract law; agency; real estate licensing law and administrative rules;

d. Fair housing; affirmative marketing; Americans with Disabilities Act;

e. Real estate financing, including mortgages and other financing techniques;

f. Real estate market measurement and evaluation;

g. Land use planning and zoning; land development; construction; energy conservation in building;

h. Real estate investment;

i. Accounting and taxation as applied to real property;

j. Real estate appraising;

k. Real estate marketing procedures;

l. Real estate inspections;

m. Property management;

n. Timeshares, condominiums and cooperatives;

o. Real estate environmental issues and hazards, including lead-based paint, underground storage tanks, radon, etc.;

p. Water rights;

q. Brokerage office management and supervision;

r. Use of technology;

s. Licensee safety;

t. Negotiation skills;

u. Business success.

02. Other Topics. Upon written request, the Commission may also approve any other topic that directly relates to real estate brokerage practice and that directly contributes to the accomplishment of the primary purpose of continuing education.

03. Topics Not Eligible For Continuing Education Credits. The following activities shall not be eligible for approval for compliance with the continuing education requirement:

a. Those which are specifically exam preparation in nature;

b. Real estate topics not directly related to real estate brokerage practice.

403 – 499 (Reserved).

Rules 500 Through 599 – Education Teaching Standards

500. Minimum Teaching Standards of The Commission.

All courses offered for credit by a certified provider shall be taught in accordance with the following standards of the Real Estate Commission:

01. Certification requirement. A course required to be taught by a Commission-certified or Commission-approved instructor shall be taught only by an instructor that

is currently approved or certified for that course;

02. Outlines and curriculum. A course must be taught in accordance with the course outline or curriculum approved by the Commission;

03. Attendance requirement. The course instructor shall adhere to the Commission's written attendance policy and shall submit credit hours only for students who have successfully met the attendance requirements for which the course was approved.

04. Product promotion and recruitment. The course instructor shall adhere to the Commission's written policies restricting product promotion and recruitment activities in the classroom;

05. Professional mannerism. The course instructor shall conduct himself or herself in a professional manner when performing instructional duties, and shall not engage in any form of harassment based on the gender, national origin, race, religion, age or physical or mental disability of any student, and shall not engage in conduct that degrades or disparages any student or other instructor.

06. Subject matter knowledge. The instructor shall conduct the class in a manner that demonstrates knowledge of the subject matter being taught;

07. Competent teaching skills. The instructor shall conduct the class in a manner that demonstrates competency in the following basic teaching skills:

a. The ability to effectively communicate through speech;

b. The ability to present instruction in an accurate, logical, orderly and understandable manner and to respond appropriately to questions from students;

c. The ability to utilize varied instructional techniques in addition to lecture, such as class discussion, role playing or other techniques in a manner that enhances learning;

d. The ability to utilize instructional aids and modern technology in a manner that enhances learning;

e. The ability to maintain an appropriate learning environment and effective control of a class;

f. The ability to interact with adult students in a manner that encourages students to learn, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, including fellow peer instructors, any agency or any organization.

08. Maintaining exam security. The instructor shall take reasonable steps to protect the security of course examinations and shall not allow students to retain copies of final course examinations or the exam answer key.

09. Use of exam questions prohibited. The instructor shall not obtain or use, or attempt to obtain or use, in any manner or form, Idaho real estate licensing examination questions.

10. Instructor evaluations. The instructor must maintain, for the course, an annual average of 4.0 (based on 1-5 scale) on the standard Commission evaluations for the instructor's overall average category.

501 – 999 (Reserved).

IDAPA 33 TITLE 01, CHAPTER 02
(Rules of Practice and Procedure for Contested Cases)

Title 01, Chapter 02, Rules of Practice and Procedure of the Idaho Real Estate Commission govern formal actions and contested case proceedings before the Commission, as authorized by Title 67, Chapter 52, Idaho Code. The current Rules may also be viewed online at adminrules.idaho.gov/rules/current/33/0102.pdf.

IDAHO REAL ESTATE COMMISSION GUIDELINES

The Guidelines in this Booklet are current as of July 1, 2016. The Commissioners may revise Guidelines at any time during the year. View the most recent version of the Guidelines at irec.idaho.gov/guidelines.html.

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GUIDELINE #1
Revised March 2008

Cancellation or Withdrawal of Listings

The rights of an owner to withdraw a listing or of either party to cancel a listing agreement are determined by contract law and court decisions, and the facts in each case bear heavily on the result. As used in this guideline there are two specific terms:

- Withdrawal of the Listing: when an owner instructs a brokerage not to promote the property for sale, and not to deliver any additional offers. The contract remains in full force and effect.

- Cancellation of the Listing Agreement: when the broker, the owner or both fully terminate their listing agreement. Cancellation may be by either party, or by the mutual consent of both.

An owner may, at any time, "withdraw" from the broker the authority to sell the property. Some listing agreements specify a penalty for early withdrawal of the property from sale by the owner. Even if no penalty is specified in the contract, the court might award damages to a broker if the seller has acted unreasonably and the broker has acted in good faith.

When an owner "cancels" a listing agreement, (i.e., fires the broker), he or she is essentially "breaking" the contract. Unless the owner has sufficient legal justification to break the contract, he or she may be required to pay the losses, or damages, incurred by the broker. Such damages can include the out-of-pocket costs incurred by the broker, or the full commission the broker would have earned had the owner not cancelled the contract.

An owner who cancels a listing agreement might – or might not – have sufficient legal justification. In some cases, the owner may cancel because the broker is not adequately marketing the property or is not otherwise performing his obligations under the contract. In other cases, the owner may cancel in an attempt to avoid having to pay the broker's commission.

Likewise, a broker who cancels a listing agreement could be held liable for breaking the contract. Unless the broker has sufficient legal justification to break the contract, the broker could be ordered by a court to pay losses that the owner proves resulted from the cancellation.

Owners and brokers may agree between themselves as to how to resolve their listing agreement disputes. If such disputes are not resolved between the parties, however, either party may bring a civil lawsuit and have a court determine whether breaking the contract was legally justified, or whether to order one party to pay money damages to the other. The Idaho Real Estate Commission does not have authority to decide listing cancellation disputes.

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GUIDELINE #2
(Revised March 2011)

Brokering Idaho Property Requires an Idaho Real Estate License

This Guideline is designed to advise all brokers and salespersons, whether licensed in Idaho or in another state, that, in order to engage in any real estate brokering activities relating to Idaho real property, a broker or salesperson must hold an active Idaho real estate license. This is true even if the broker, salesperson, or their clients do not reside in or personally enter this state. A broker or salesperson who is not licensed in Idaho is not precluded from all participation in the Idaho transaction; however, he may not engage in any act of "real estate broker" without an Idaho license.

1. An Idaho license is required to engage in any brokering activities relating to Idaho real property.

Idaho law flatly prohibits any person from engaging in any act of a "real estate broker" "in this state" without an active Idaho real estate license. Idaho Code 54-2002.

"Real estate broker" is defined in the license law to include "any person who, directly or indirectly, while acting for another for compensation or promise or expectation thereof, sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate", and also includes "any person who represents to the public" that he is engaging in any of these acts. Idaho Code 54-2004(36).

A person is "acting in this state" if he is "dealing with any interest in real property . . . that is situated in this state. . ." Idaho Code 54-2004(2).

Under Idaho Code, then, any person who "sells, lists, buys or negotiates" the purchase or sale of real property "situated in this state" is, by definition, engaging in acts requiring an Idaho real estate license.

2. A person who does not hold an Idaho license may not "co-broker" Idaho property with an Idaho-licensed broker.

Idaho Code provides no mechanism to allow a person who does not hold an Idaho license to "co-broker" Idaho property with an Idaho-licensed broker. To the contrary, the law states that each person who performs any defined brokering act – whether as salesperson or broker – must hold an active Idaho license. Idaho Code 54-2002. There is no exception for persons who are licensed in another state and/or who privately contract with an Idaho designated broker to "supervise" or "be responsible for" him. A person who engages in any defined act of "real estate broker" – including selling, listing, buying, or negotiating the purchase or sale of Idaho real property – but who does not hold an active Idaho license is guilty of unlicensed practice, regardless of any contractual arrangement with an Idaho-licensed brokerage.

3. An Idaho designated broker may not "co-broker" Idaho property with a person who does not hold an Idaho license.

Similarly, an Idaho designated broker violates the license law if he "co-brokers" Idaho property with a person who does not hold an active Idaho license. The license law specifically prohibits a designated broker from allowing any person not licensed by the Commission to represent him, as a salesperson, associate broker, or otherwise, in any real estate business activities requiring a real estate license. Idaho Code 54-2038(4). In order for a salesperson or associate broker to perform broker activities in Idaho, the salesperson or associate broker must hold an active Idaho license and be

licensed by the Commission with that broker (as an associate broker or salesperson). Idaho Code 54-2004(36), (37) and Idaho Code 54-2018(4). This state licensing requirement cannot be circumvented by private contract.

Idaho designated brokers should also be aware of the license law's prohibition against "lending" or "permitting" a license to be used to carry on a business for which an Idaho broker's license is required. Under the license law, the Idaho designated broker must "actively manage and have full control" of the transaction. Idaho Code 54-2040(5). Thus, an Idaho designated broker may not contract away his statutory management responsibilities; the Idaho designated broker, and not any other person, must be the active manager in control of the Idaho transactions.

4. Communication and cooperation that do not involve specific acts of brokering are not prohibited.

There are situations in which a broker or salesperson licensed in another state but not in Idaho ("non-Idaho licensee") has an existing client who wishes to buy or sell Idaho property. Although the non-Idaho licensee is prohibited from engaging in any act specified as "brokering," he is not barred from all participation in the transaction.

a. Communication with the client.

A non-Idaho licensee may communicate with, consult, or advise his or her client about the Idaho transaction. Advising or consulting with the client – even after the client has hired an Idaho broker – do not constitute acts of brokering and do not require a real estate license.

b. Cooperation with the Idaho broker.

Although a non-Idaho licensee may not "co-broker" Idaho property with an Idaho broker, such person is not prohibited from cooperating with an Idaho broker. For example, he may consult and advise the Idaho broker concerning the objectives and concerns of the client. Or, he may coordinate information between the Idaho transaction and other non-Idaho transactions.

c. Non-Idaho licensee participating in an Idaho transaction may NOT engage in brokering.

Although a non-Idaho licensee may advise his client and may collaborate with the Idaho broker with respect to Idaho property, he is prohibited from engaging in any act constituting "brokering." For example, a salesperson or broker who is not licensed in Idaho may not:

- Transmit offers or counter offers to sell the client's property directly to potential buyers;
- Receive offers to buy the property directly from potential sellers; or
- Engage in any communication, written or oral, that may be construed as "negotiation."

5. Advertising Idaho property.

Advertising and marketing Idaho property are not acts specifically defined as "brokering," and do not, in themselves*, require an Idaho real estate license. However, Idaho Code does impose certain requirements relating to the advertisement of Idaho property. Idaho Code 54-2053. A person, including an individual or entity that is not licensed in Idaho, may market and advertise Idaho real property, provided the statute's advertising requirements are met, including:

- Every broker or salesperson named in the advertising holds an Idaho license;
- The licensed business name of the Idaho broker is included in the advertisment; and
- The advertisment is not otherwise misleading.

* (Only persons licensed in Idaho or another state may seek any type of referral fee or finder's fee. Idaho Code 54-2054(3)).

6. Fee-sharing arrangements between licensed brokers.
The license law prohibits Idaho brokers from "fee-splitting," i.e., sharing brokerage fees with, or paying any portion to, any person except persons who are licensed "in Idaho or another state or jurisdiction." Idaho Code 54-2054(2).

This "fee-splitting prohibition" does not apply to fee arrangements made between Idaho-licensed brokers and brokerages licensed in other states. The fee sharing arrangements made between an Idaho-licensed broker and a broker or salesperson not licensed in Idaho are beyond the regulatory interest of the Commission. A broker not licensed in Idaho may, consistent with the Idaho license law, earn, in addition to a referral fee, a fee for performing other, non-broker services related to an Idaho property transaction.

7. Sanctions for unlicensed activity.
Unlicensed brokering activity is a misdemeanor crime in Idaho punishable by imprisonment and a fine of $5,000 for individuals, and $10,000 for a business entity. In addition, the Idaho Real Estate Commission is authorized to take administrative action against anyone engaged in unlicensed brokering activity, and to assess a civil penalty up to $5,000, plus costs and attorney fees.

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GUIDELINE #3
(Revised July 2014)

Regular Employee Status Determination

The License Law recognizes an exception to the licensure requirement when the acquisition, exchange, or disposition of real property is by the property owner "or a ***regular employee*** of the owner" acting within the scope of his or her employment." Idaho Code § 54-2003(1)(b).

In 2014, the legislature adopted a bright-line test for distinguishing a "regular employee" from an independent contractor. For purposes of the licensure exemption:

> "Regular employee" means an individual who performs a service for wages or other compensation and whose employer withholds ***federal employment taxes*** under a ***contract of hire***, written or oral, express or implied. -- Idaho Code § 54-2004(39) (emphasis added).

The "federal employment taxes" an employer is required to withhold generally consist of federal income taxes, social security taxes and Medicare taxes. *See* IRS Pub. 15 (Circular E), Employer's Tax Guide, http://www.irs.gov/publications/irs-pdf/p15.pdf.

A "contract of hire" means an agreement by which the individual provides labor or services to the owner/employer for wages or remuneration or other thing of value supplied by the owner/employer. The agreement need not be in writing. As stated in the statute, the contract of hire may be written or oral, express or implied. *See also Daleiden v. Jefferson County Joint School Dist*. No. 251, 80 P.3d 1067, 139 Idaho 466 (Idaho 2003).

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GUIDELINE #4
(November 2008)

Agency Disclosure Brochure ("The Blue Brochure") Record Keeping Requirements

The Agency Disclosure Brochure, or "Blue Brochure," is the statutorily-required disclosure form that licensees must give prospective buyers & sellers of real estate.

To ensure that this disclosure is made, the law requires that brokerages keep a record of the buyer or seller's receipt.

Specifically, section 54-2085, Idaho Code, provides, in relevant part:

(1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho Real Estate Commission. The Commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure. (Emphasis added.)

This Guideline attempts to address questions that frequently arise concerning the "record" that is required to be kept under the statute.

Question - *Must licensees use the "receipt" printed in the Blue Brochure as the buyer or seller "record of receipt"?*
Answer - No. The law requires "a signed and dated record" of receipt – it does not specify the form of that receipt. The Commission has long recognized that acknowledgments included in a signed and dated Purchase & Sale Agreement, or in another document prepared in connection with a real estate transaction, can provide the record of receipt required by statute.

As a matter of good practice, however, many brokerages maintain an office policy requiring licensees to use the Blue Brochure's receipt. The reason is that a contemporaneous receipt provides the brokerage with the best possible documentation of when the licensee gave the Brochure to the consumer, and thereby helps protect the brokerage against any future claim by a disgruntled consumer that the licensee failed to timely give him the Brochure.

Question - *What if the buyer or seller refuses to accept the Blue Brochure or refuses to sign any receipt? Can a brokerage still comply with the statute?*
Answer - Buyers and sellers can refuse to accept, or refuse to acknowledge receipt of, the Blue Brochure. This most often occurs when the transaction documents are drafted by a bank, attorney, or someone other than a licensee over whom the Commission has no authority. Where such refusal occurs, the Commission advises that licensees document their attempts to give the brochure and to obtain a receipt, and also document the

buyer or seller's response. Such documentation kept within the transaction file will be deemed by the Commission to comply with the statute.

A similar predicament occurs where a bank or attorney that drafts the transaction documents declines to include the "Representation Confirmation and Acknowledgement of Disclosure" verbiage required by the License Law under section 54-2085(4), Idaho Code. Again, the Commission recognizes the licensee's limited control over the parties and advises that licensees provide the documentation that is within their control, even if the other party or parties refuse to sign.

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GUIDELINE #5
(May 2003)

Disclosure of Transaction Fees - When Required

The Commission has received questions concerning the circumstances under which a brokerage is required to disclose, to all parties, the fact that it is charging or receiving a transaction fee. The inquiries pertain to the application of Section 54-2054, Idaho Code.

This provision requires that, whenever the brokerage is receiving "compensation" "from more than one party" (e.g., when the brokerage is receiving compensation from both the buyer and the seller), the brokerage must make a "full disclosure in writing" "to all parties."

When Disclosure Is Required.
The statute's disclosure requirement is triggered only when the brokerage is going to receive compensation from the buyer and the seller. If the broker is being paid by only one of the parties, then disclosure is not required.

The brokerage's agency (and non-agency) relationships have no direct bearing on the application of the statute. If the broker is receiving compensation from both the buyer and the seller, the broker is required to make the disclosure, regardless of whether the broker is representing both parties (e.g., in-house transaction), or whether the broker is representing only one party (e.g., the other party is working with or being represented by a different broker). The following scenarios demonstrate how the statute is applied:

A. The listing broker is getting a portion of the brokerage fee from the seller and a transaction fee, also from the seller. Because the listing broker is receiving compensation from only one party to the transaction, the disclosure requirement does NOT apply.

B. The listing brokerage is getting a transaction fee from the buyer (even though the buyer is represented by another office), and the listing brokerage is also getting a portion of the brokerage fee from the seller. Because the listing brokerage will be receiving compensation from each party, the listing brokerage IS required to make the written disclosure to all parties.

C. The listing broker is not the buyer's broker. The listing broker receives only a portion of the brokerage fee from the seller (as provided in the MLS agreement), and charges no fee to the buyer. However, the buyer's broker receives a portion of the brokerage fee from the seller, and also receives a transaction fee from the buyer. Because

the buyer's broker is receiving compensation from the buyer (transaction fee) and the seller (portion of the brokerage fee), the buyer's broker must make the disclosure to all parties. However, because the listing broker is receiving compensation from the seller only, the listing broker is NOT required to make the disclosure.

D. The buyer's broker receives a portion of the brokerage fee from the seller (as provided in the MLS agreement), and charges no other transaction fee or commission to the buyer. The same broker enters a separate agreement with the buyer to provide additional services outside of the purchase and sale transaction, e.g., as a professional consultant/representative for the buyer in the planning a zoning permitting process, or as a property manager. The statute would NOT be triggered, and the broker would NOT have to disclose that he is receiving compensation from outside consulting services or property management services. Although the broker clearly is charging/accepting "compensation" from someone who is a party in the transaction, that compensation is not being charged/accepted "in the one (1) transaction," but for services performed outside of the transaction.

Form and Content of the Disclosure.

When disclosure is required, it must be made "in writing." There is no requirement that it be made in any particular form, or contained in any particular document. Whatever form is used, the Commission strongly advises the broker to obtain the parties' initials or signatures and dates to document that the required disclosure was in fact made.

The statute does not dictate the contents of the disclosure and the Commission prescribes none. However, for audit purposes, the Commission will deem the requirement satisfied by a written statement, provided to and acknowledged by both parties, containing the following:

"In this transaction, this brokerage will be receiving compensation in the form of a commission and/or transaction fee from both the Buyer and the Seller."

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GUIDELINE #6
(Revised June 2013)

Offering Guarantees

Some licensees offer guarantees to consumers. They do so for various reasons, from creating a perception in the marketplace to simply trying to attract more customers and clients.

Guarantees are not prohibited. They can be somewhat risky, however, and this Guideline is presented to help licensees understand how the Commission enforces the license law as it pertains to guarantees.

There are a variety of guarantees being offered by licensees. The Commission has seen complex arrangements where the licensee lists a property for sale and guarantees to personally buy the property if it doesn't sell within a certain period of time. The Commission has also seen guaranteed buyback programs for dissatisfied purchasers and even guarantees for finite sums of money.

No matter what type of guarantee is being offered, the licensee offering it must have cash or immediately-available funds, in an amount sufficient to honor the guar-

antee, at the time the agreement is entered and throughout the entire contract period. Merely knowing someone who may want to invest in the project, or planning to have the money in hand when the time comes, is not sufficient.

Improper use of a guarantee offer has been interpreted by the Commission to constitute misleading advertising and, under certain circumstances, can even rise to the level of reckless conduct, agency violations, or dishonest and dishonorable dealing.

Further, certain types of advertising are considered misleading under Idaho's Consumer Protection Act, under the jurisdiction of the Attorney General's Office.[1] For example, advertising a guarantee with the intent not to sell a guarantee but to lure consumers to contact the licensee, and then switch the consumer to other products or services, could be considered illegal "bait and switch" advertising prohibited under the Idaho Consumer Protection Act. A licensee who violates the Consumer Protection Act could be subject to prosecution by the Attorney General in addition to any discipline imposed by the Commission.

Licensees who enter into guarantee transactions are subject to the disclosure requirements applicable to licensees dealing with their own property (see Idaho Code 54-2055).

Here are some additional points to remember about offering guarantees:

1. No licensee should offer or enter into any guarantee unless the licensee has adequate financial resources to meet the commitment. A licensee offering a guarantee should, if requested, provide the consumer proof the licensee has sufficient financial resources to satisfy[1] his/her commitment.

2. Every guarantee must be in writing and contain all conditions and other terms under which the guarantee can be used, including all fees for the service or plan. When the property will be purchased as part of the guarantee, the price for which the property will be sold or purchased and the approximate net proceeds the consumer will receive must be included.

3. A guarantee must include a provision clearly stating the licensee's obligation to purchase property is enforceable ONLY at the option of the consumer.

4. A licensee offering or entering into guarantees must comply with the license law's disclosure requirements and run the transaction through his or her brokerage. Licensees must therefore advise their brokers that they are offering guarantees and determine whether such practice complies with the policies of the brokerage.

5. A licensee offering a guarantee should give good market exposure to each property covered by any such plan, and shall present to the consumer all offers received for each property, up to and until the time of closing of the guaranteed transaction.

6. Advertising. A licensee offering a guarantee is free to advertise and promote the plan as a service of the licensee available to those who qualify. However, a licensee may NOT advertise the plan in a manner likely to mislead consumers to believe the plan is available without restriction or costs, unless the plan is indeed available without restriction or costs. Any advertisement of a guarantee should include a conspicu-

[1] Licensees considering the use of guarantees are advised to review the Consumer Protection Act and Rules of Consumer Protection at www.ag.idaho.gov/consumerProtection/generalTopics/statutesRules.html

ous statement advising eligible consumers, costs and restrictions will apply (unless none do), and advising the consumer to inquire of the licensee as to the terms of the guarantee.

7. Disclosures. Prior to issuing a guarantee, a licensee should provide in writing to the consumer all details of the plan. These details should include the precise terms required to use the guarantee. When a property is being purchased, the exact price the licensee will pay for the property, or the precise formula used to determine the price, including an itemization of any and all costs taken into account in determining that price must be included. These details should also include the reason(s) for any difference between the listing or closing price and the price which the licensee agrees to pay.

8. The licensee who advertises a guarantee should, prior to working with a customer or client, advise the consumer whether he/she qualifies for the plan, and if so, explain any restrictions, conditions and costs that apply. The licensee is advised to obtain a signed written confirmation from the consumer that the terms of the guarantee have been explained, and the acknowledgment whether he/she does, or does not, qualify for the plan.

9. Licensees may NOT use a guarantee as a misleading advertisement or a false inducement to obtain a customers or clients. A licensee advertising a guarantee, or any other product or service, should be familiar with the state laws protecting consumers from unfair and misleading advertising, namely, section 54-2053(4) of the Idaho Real Estate License Law, and the Attorney General's Rules of Consumer Protection.

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GUIDELINE #7
(Revised May 2013)

Guidelines for "Suspended" Licensees

Idaho's license laws impose certain duties and consequences upon the salesperson or broker whose license is "suspended" as part of a disciplinary action taken pursuant to the Commission's "Disciplinary Powers" or "suspended" under the statute's "Automatic Suspension" provisions. This Guideline is intended to outline those duties and consequences. (This Guideline is not intended to address a situation in which the license has "expired" after the license period has elapsed and the license is not renewed.)

1. A person whose license is suspended is in the same position as an unlicensed person. Such person may not engage in any real estate activity that requires a real estate license, e.g., he or she may not list, sell, buy, or negotiate, or offer to list, sell or buy or negotiate the purchase, sale, option or exchange of real estate.

2. The person whose license is suspended may receive compensation during the suspended period only for acts performed during the period in which the person was properly licensed. For example, if the person negotiated a sale during the licensed period, the person may receive payment for performance of those acts even though the sale closes during the suspended period.

3. If the suspended person is a designated broker, any transaction that is closed during the period of suspension must be finalized by either another broker, an attorney, a title company, or a financial institution.

4. All advertising naming the suspended licensee, including but not limited to signs on office buildings and on "for sale" properties, must be removed. All evidence of the person's licensure must be removed from public view.

5. If the suspended person is the designated broker, and if no other broker is designated to act for the brokerage company, the office must be closed during the period of suspension, and the licenses of all associated licensees will be made inactive by the Commission. Telephone service should be canceled, or the telephone must be answered by indicating to all callers that the office is closed due to the suspension of the broker's real estate license.

6. If the suspended person is the designated broker for a licensed business entity, the law grants the entity ten (10) business days to designate a new broker. If no new broker is designated within the statutory period, the license of the entity is terminated, and the licenses of all associated licensees are inactivated by the Commission.

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GUIDELINE #8
(Adopted May 2016)

"Coming Soon" Listings

The Idaho Real Estate Commission receives many calls about property being advertised as "Coming Soon." There are legitimate reasons to promote a property this way, and there are some nefarious reasons as well. As with most things, this issue is fact specific.

A seller may want to advertise a property as "Coming Soon" if there are repairs underway, packing that hasn't concluded, or even yardwork that should be addressed. Idaho Code 54-2050 provides that all representation agreements must be in writing. In order to advertise a property at all, including "Coming Soon," the brokerage must possess a written listing agreement signed by the property owners before placing the sign and beginning any marketing activities. This agreement must include all of the required elements detailed under Idaho Code 54-2050.

Too many times, however, the property is advertised as "Coming Soon" for the purpose of excluding the open market from selling the property. The listing agent, or agency, believes they can produce a buyer without any additional assistance from competing licensees. Selling his or her own listing allows the licensee to potentially pocket more of the sales commission than cooperating with another licensee or brokerage.

Some licensees work with investor buyers who are looking for exceptional prices on property to flip. When a licensee promotes a property as "Coming Soon," but is actually marketing the property to a select group of buyers, it is a misleading advertisement. The property was not "Coming Soon," it was only available to a select group.

This type of action harms sellers, and the market at large, because the property was not correctly exposed to fair competition. Many of these properties sell for less than they might if offered across a broader spectrum.

Idaho Code 54-2086(1)(a) and (b) requires a licensee to perform ministerial acts on behalf of a customer, and to perform these acts with honesty, good faith, and reasonable skill and care.

When an agency relationship is created, Idaho Code 54-2087(4) requires the licensee to promote the best interest of the client, and to seek a buyer to purchase the property at a price and under terms and conditions acceptable to the seller.

Claiming that a seller accepted an offer and, therefore, they must be content with their transaction, is not a safe haven. It is no guarantee that the licensee acted with honesty, good faith, and reasonable skill and care.

If the licensee is marketing property only to a limited pool of potential buyers, either to benefit investor clients, or to double-end the sales commission, he or she is not acting with honesty or good faith. He or she is not promoting the best interest of the seller client.

Further, misrepresenting property as "Coming Soon" in order to dissuade competition could also be considered an unconscionable method, act, or practice under Idaho's Consumer Protection Act. The Act, enforced by the Idaho Attorney General, provides for penalties and/or sanctions beyond the scope of the Idaho Real Estate Commission.

Along with the duties imposed on licensees by the license law and the Consumer Protection Act, some Multiple Listing Services have rules pertaining to "Coming Soon" listings which must be followed in order to maintain MLS participation. MLS rules are outside the Commission's jurisdiction.

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GUIDELINE #9
(Revised July 2005)

Terms Under Which Rental or Lease Fees May Be Split With Non-licensed Persons

Compensation (commissions) received by a licensed real estate broker or a salesperson for leasing or renting real property may be split or shared with non-licensed persons.

However, if the lease or rental agreement includes any provision which requires the licensee to act in the capacity of a real estate licensee, then the compensation may not be split with any non-licensed person, with the exception of the buyer or seller in the transaction, as provided in section 54-2054. Some examples of lease provisions which require a real estate license are as follows:

1. An option to purchase;

2. A definite purchase agreement at the end of the lease term (a lease/purchase agreement); or

3. A first right of refusal.

For any other questionable practice, the Idaho Real Estate Commission should be contacted for clarification.

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GUIDELINE #10
(Revised June 2010)

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.

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GUIDELINE #11 (Reserved)

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GUIDELINE #12
(Adopted June 2013)

Internet and Social Media Advertising

Licensees can use the Internet in multiple ways to contact consumers about real estate services and to advertise properties or their services. Licensees should be aware that all statutes and rules respecting advertising apply equally to the Internet. This includes websites, e-mail, and any other potential "on-line" identification, representation, promotion, or solicitation to the public that is related to licensed real estate activity.

This guideline discusses required information that **must** be included by licensees in all advertising and provides a few examples of advertising that the Commission considers misleading. More ways to use the Internet are likely to be invented, and this guideline is subject to change at any time as practice on the Internet evolves. Further, it is impossible to illustrate every possible advertisement that could be considered misleading.

Required Inclusion of Broker's Licensed Business Name. Section 54-2053(2) of the License Law requires all advertising of listed property to include the broker's licensed business name. A brokerage that registers a "DBA" ("doing business as" or fictitious trade name) with the Secretary of State may be licensed in that name; in that case, the DBA name must be used. The broker's licensed business name must be advertised exactly as it appears on the license.

Proper disclosure of licensed business names will help ensure that online consumers know when they are dealing with a real estate licensee and identify the brokerage where the licensee can be found.

Misleading Advertising. Section 54-2053(4) of the License Law prohibits a licensee from providing "misleading" information to the public or prospective customers or clients. Information is defined as misleading "if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence." **The Commission interprets this section to require any licensee who is advertising real estate brokerage services to include the broker's licensed business name so as not to mislead or deceive the public** about the advertiser's status as a licensee or the brokerage where the advertiser is licensed.

All Internet-related advertising of listed property or brokerage services that consumers can view or experience as a separate unit (for example, e-mail messages or web pages) must include the broker's licensed business name. The burden of the requirement falls on the licensee and the designated broker. However, in the case of e-mails or other electronic messages, the broker's licensed business name is not required once an agency relationship has been established with a buyer or seller.

It is recommended that each brokerage develop and maintain a written policy regarding use of Internet and social media advertising by its sales associates and employees.

- **The Web**
  Whenever a licensee owns a website or controls its content, every viewable page should include the broker's licensed business name. (A "viewable" page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.) If a licensee gives permission for a third party to advertise listings, the licensee should maintain regular and thorough oversight to ensure the information is correct. It is also important to adhere to copyright laws.

- **E-mail Farming, News Groups, Discussion Lists, Bulletin Boards, Blogs, Video Blogs, Facebook, MySpace, LoopNet and Similar Media**
  Such formats should include the broker's licensed business name at the beginning or end of each message. This would not apply to subsequent communications between a licensee and a member of the public where the licensee's intial communciation contained the broker's licensed business name.

- **Instant or Text Messages**
  The broker's licensed business name is not necessary in this format if the licensee provided the information via another format or medium (e.g., email or letter) prior to providing, or offering to provide, brokerage services requiring a license.

- **Chat**
  Disclosure of the broker's licensed business name prior to providing or offering to provide brokerage services must be made during the chat session or in text visible on the same web page that contains the chat session.

- **Social Media**
  The broker's licensed business name should be prominently displayed and be no more than one click away from the viewable page.

- **Multimedia Advertising (e.g., web based, executable e-mail attachments, etc.)**
  The broker's licensed business name should be visible as part of the advertising message.

- **Banner Ads**
  Banner ads must link to a web page, no more thatn one click away from the viewable page, that includes the broker's licensed business name, unless the banner ad itself contains the broker's licensed business name.

Procuring Prospects "On-Line." The Internet poses additional problem areas for licensees:

- Licensees who maintain individual websites should ensure that when listings have expired or are no longer available, they are removed from the websites in a timely manner.

- Similarly, sites maintained by the multiple listing service(s) of which the licensee is a member and other third party sites which display MLS data should be monitored to ensure they are updated in a timely manner and in compliance with Idaho License Law & Rules.

- Licensees who submit information to third party sites should provide written communication of any change of listing status to the publisher in a timely manner.

- Licensees should refrain from giving the impression they are licensed or providing services in jurisdictions where they are not licensed.

- **Misleading Images.** Licensees should not use images that have been edited to give an inaccurate representation of the property or images that misrepresent or conceal the current condition of the property. Licensees may not use images to mislead consumers concerning the identity of the individuals actually providing the brokerage services. Licensees are cautioned that photographs taken by others are considered copyrighted. This includes photos taken by other brokerages.

- **Metatags** are descriptive words hidden in a website's HTML code that search engines use to index the website. Most sites use common words such as "real estate," "Idaho," city names, "homes," "houses," etc., which is acceptable. However, some licensees have also inserted a competitor's names (or the names of other businesses) into their website metatags, so when a potential customer searches for the competitor's (or other business's) site, the licensee's site will also come up as a match. This should not be done; courts have ruled that this constitutes trademark infringement.

- **Domain names.** A brokerage should maintain a written policy on ownership and use of domain names by its licensees, including continued use of the domain name when an associate separates from the brokerage. An e-mail address containing a brokerage domain name should not be used by a licensee who is licensed at a different brokerage.

- All licensees should periodically review the advertising and marketing information on their websites and social media pages and update as necessary to assure the information is current and not misleading.

Licensees advertising on the Internet should seek legal advice regarding compliance with local, state, and national regulations. Compliance with Idaho real estate license law does not ensure compliance with other jurisdiction guidelines, laws, or regulations, or the REALTOR® Code of Ethics.

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GUIDELINE #13
(Revised May 2013)

Advertising

The Idaho Real Estate Commission receives many advertising complaints every month. Most of these complaints come from within the industry, from competitors that know the laws and expect everyone to follow them.

The Commission is more interested in obtaining compliance with the advertising laws than initiating discipline for violations. This Guideline discusses the advertising requirements applicable to licensees under the Idaho Real Estate License Law and enforced by the Commission.

This Guideline will not delve into trade association codes, franchise requirements, Federal regulations, or the Idaho Consumer Protection Act provisions governing advertising. It is limited in scope to the Idaho Real Estate License Law. Readers should look elsewhere for assistance and enforcement of these other regulations.

The License Law's advertising requirements are simple and are presented here in their entirety:

54-2053. Advertising.

(1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

The first three subsections, or points, are clear and easy to apply. The restriction contained in point (1) means that, when it comes to property located in Idaho, only the names of Idaho licensees may appear in an ad or sign, and unlicensed staff may not be named in advertising.

Point (2) applies to advertising of listed property, and requires that the licensed name of the brokerage be in the advertisement, including MLS; a team name is not sufficient. It also requires that a new brokerage, or an existing brokerage wishing to change its name, wait until the application for licensure or name change is made effective (i.e., processed and approved) by the Commission before beginning to advertise.

Point (3) applies to licensed branch offices, and requires that the broker's licensed business name appear in any advertising; the name of the managing broker or team name is not sufficient.

Point (4) the prohibition against advertising that is "misleading to the public" is not as black-and-white in its application and requires some interpretation. Below is a list of situations the Commission considers misleading. This list is not intended to be all inclusive, but notes the most common violations seen:

- The actual licensed name of the brokerage is missing. While point (2) already requires the licensed name in ads for listed property, point (4) applies to all advertising and includes: cards, automobiles, billboards, radio, MLS data and flyers, television, websites, printed ads, online ads, ads that direct consumers to a website, and every other form of advertising in existence. If the licensed name of the brokerage is not in the ad, then the ad is misleading.

- Advertising a subdivision as having homes starting at a low price, when in fact no homes ever were, or no longer are, available at that price.

- A franchise name alone is advertised. The franchise name is only a part of the licensed brokerage name. The name "Franchise Brokerage" is not the same name as "Franchise Brokerage of Greater Atomic City, Idaho." Advertisements must contain the complete licensed name.

- An abbreviation is used in place of the licensed brokerage name.

- A company logo is used in place of the licensed brokerage name.

- Although the law requires licensees to conduct their personal transactions through the brokerage they are licensed with, it does not require that they employ the services of that brokerage. Licensees are allowed to offer personally-held real property "by owner." However, such an ad is misleading unless it includes the term "Owner/Agent" or some other disclosure that the seller holds an active Idaho real estate license.

- Placing ads as an individual licensee or brokerage before actual issuance of the license(s) (gambling that the license(s) will be issued before the ads are published).

- Placing the name of the brokerage in an advertisement, but doing so in a way that is not obvious to a consumer. Some examples are in order here:

  1. Brokerage name in a brochure or newspaper ad is so small a magnifying glass is required to read it.

  2. Brokerage name on a sign cannot be easily read at the posted speed limit.

  3. Posting a "team" name prominently, while concealing the actual name of the brokerage (perhaps using grey lettering on a grey background that requires a search to reveal the brokerage).

Designated brokers have additional responsibilities as far as advertising is concerned. Idaho Code 54-2038(4) prohibits brokers from allowing "any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license." This means that a broker may not advertise licensees until they are officially licensed at the brokerage. If placing "franchise" advertising, designated brokers should carefully check not to mingle their licensees and properties with those of another broker who is under the same franchise.

Idaho Code 54-2040(4) states that a broker shall not conduct business under any name other than the one in which the license is issued. In other words, once a broker has committed to a brokerage name, they must operate under that business name or change it.

Likewise, an individual licensee must also conduct business in the name on the license, a licensee must be licensed in his/her legal name and can also include a nickname on the license, such as "Butch" for the legal name Clement Leroy, or "Kathy" for the legal name Kathleen.

Licensees should familiarize themselves with the advertising laws. Colleagues and consumers are watching. The Commission does not want to initiate disciplinary proceedings for these violations, we prefer compliance.

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GUIDELINE #14
(Revised May 2013)

Disputed Earnest Money

One of the most common types of complaints brought to the attention of the Commission concerns disputed earnest money.

When a situation involving disputed earnest money occurs, the broker should first try to obtain a written agreement signed by the buyer and the seller releasing the broker from the custody of such money and instructing the broker as to the proper disbursement of same.

The Commission is aware of the fact that, in most cases involving disputed earnest money, the buyer and seller are not getting along and, in such cases, it is impossible for the broker to obtain a statement signed by both parties as contemplated above which forces the broker to use the next alternative of relying on the provisions of the purchase and sale agreement (forfeiture clauses and/or contingency clauses).

The broker may rely on the wording of a properly executed purchase and sale agreement under which said money was originally taken and which describes the manner in which division of funds shall occur in the event one of the parties fails to fulfill the terms of the contract.

In the event a broker disburses the earnest money in accordance with the terms of the purchase and sale agreement, the broker should, of course, keep accurate documentation in his/her files as to why the money was disbursed. Also, prior to such disbursal, the broker should notify both parties in writing as to the broker's intentions.

If the broker has made his or her best effort to accomplish all of the above, but still cannot determine how the earnest money should be disbursed, the parties involved should be notified that the money is being held in the trust account until the broker is ordered to disburse such funds by a court of competent jurisdiction (as required by section 54-2047, Idaho Code).

It should be kept in mind that the broker may be found civilly liable to the party not receiving the funds if the broker disburses the funds in a manner found to be inconsistent with the terms of the purchase and sale agreement.

Unless the broker has acted in a reckless manner by improperly holding or disbursing the earnest money, the Commission will not get involved in this type of problem. It is up to the buyer and seller to reach agreement concerning the problem or to get the matter resolved in civil court. If the dispute involves $5,000.00 or less, then, in many cases, it may be handled in Small Claims Court. It is the broker's responsibility to use his or her best efforts to get the dispute resolved between the buyer and the seller.

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GUIDELINE #15
(Revised July 2009)

Establishing Real Estate Trust Accounts

This guideline has been prepared in response to concerns arising from routine audits, inspections, and office visits in the field that continue to indicate confusion concerning the requirements of establishing and managing a real estate trust account. It also instructs on the law's requirement that "entrusted funds" be deposited into a real estate trust account.

Establishing and Managing a Real Estate Trust Account.

In order to establish a real estate trust account, the account must be in the licensed business name of the broker; it must be identified as a "real estate trust account"; and the FUNDS MUST BE SUBJECT TO WITHDRAWAL ON DEMAND BY THE BROKER. The broker may authorize others to sign trust account checks and withdraw funds, but the broker is held strictly responsible and accountable for the funds on deposit. Each real estate trust account must have a separate and complete set of records consisting of monthly accounting, deposits, and charges. (See Section 54-2042, Idaho Code.)

If a broker establishes a real estate trust account with a title company, attorney, or other third party that is an approved depository, the same principles apply. The trust account must be established in the licensed business name of the broker and funds must be subject to withdrawal on demand by the broker, without restriction or condi-

tion of the title company or other third party. The broker is responsible to see that the title company or other approved depository provides the required account records.

Regardless of where the broker establishes a real estate trust account, the broker is required to notify the Commission on a form entitled "Trust Account Notification" and includes the "Agreement & Authorization to Inspect." This form must be signed by the broker and by an officer of the trust account depository.

In the event of a cooperative transaction, the funds may be placed in the listing or selling broker's trust account if the purchase and sale agreement specifies that the listing or selling broker is to be responsible for holding the funds. (See Section 54-2048, Idaho Code.)

Broker's Duty to Deposit "Entrusted" Funds into a Real Estate Trust Account.
A broker is required to deposit any and all "entrusted" funds it receives into a real estate trust account maintained by the broker, and the broker is responsible for those funds. **Any and all funds received by the broker are considered "entrusted" UNLESS:**

(1) the parties have directed the broker in writing, to transfer those funds to a third party, such as a title, escrow or trust company; and

(2) neither the broker nor his licensees have any right to exercise control over the safekeeping or disposition of the funds.

Broker's Duty Regarding Funds that are NOT "Entrusted."
Whenever a broker receives funds with the parties' written direction to transfer them to a third party, the broker's duty is to transfer the funds as directed and maintain a ledger record of the time and date of the transfer; he must also obtain a receipt. Because such funds are not considered "entrusted," the broker has no duty to deposit them into a real estate trust account.

The pertinent sections of the Idaho Real Estate License Law are the following:

(1) 54-2041. Trust Account and Entrusted Property.

(2) 54-2042. Creation of Noninterest-Bearing Trust Accounts - Requirements.

(3) 54-2043. Interest-Bearing Trust Accounts.

(4) 54-2045. Trust Account Deposits and Receipt of Consideration.

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GUIDELINE #16
(Revised June 2013)

Presentation of Multiple Offers By The Listing Agent

Section 54-2051(1), Idaho Code provides:

A broker or sales associate shall, as promptly as practicable, tender to the seller every written offer to purchase obtained on the real estate involved, up until time of closing. A purchase and sale agreement signed by the prospective buyer shall be deemed in all respects an offer to purchase.

Whenever more than one written offer is received in connection with the same property, special care must be taken to ensure that the duties owed to the parties, whether as clients or customers, are carried out by the licensees involved. The following is a list of some of the more common issues to be considered when multiple offers are received:

Working With The Seller

1. General Duty to Present Offers. All licensees, whether acting as an agent or non-agent of the seller, have the duty to promptly present to the seller EVERY WRITTEN OFFER up to and until closing of the property.

2. Duty to Promote Client/Seller's Interest. When acting on behalf of a Seller pursuant to an Agency Representation Agreement, licensees owe the seller/client the further, heightened duty "to promote the best interests of the client in good faith, honesty and fair dealing." This includes "seeking a buyer to purchase the seller's property at a price and under terms and conditions acceptable to seller and assisting in the negotiation thereof." As an agent for the seller/client, the licensee should be diligent in informing the seller about any offers or possible offers on the property that might materially affect the seller/client's decisions about the sale of the property.

3. Making Known the Terms of the Offer to Other Buyers. At the time of the listing, it is advisable that the licensee discusses with the seller/client the issue of disclosing the terms of any offer. Generally, the seller should decide whether to make known to other buyers the terms of the offers he or she might receive. However, if the licensee also represents the buyer – as a limited dual agent - the licensee's ability to disclose the terms of the offer to other buyers may be restricted. For this reason, it is critical that the licensee be aware of whom he or she represents, and that the licensee disclose to the client(s) any limitations upon his or her representation. However, unless the licensee also represents the buyer, the licensee owes no duty to the buyer to withhold terms of the offer from other buyers.

However, while the idea of disclosing offers from one buyer to another may seem appealing at first to a seller hoping to get a higher price, it can also work to the seller's detriment. For example – a property is listed for $200,000 and seller has offer in hand for $180,000. The seller instructs the agent to reveal this offer to another interested buyer, who then offers $181,000 and buys the house. Actually, the second buyer had intended to offer $195,000. The seller is out $14,000. For this reason, it is important to discuss with the seller, preferably beforehand, the handling of multiple offers.

4. Advising the Seller on Multiple Offers. The licensee should also inform the client/seller that the listing for sale is not an offer, but an invitation for offers from others. As such, the seller is not obligated to deal with multiple offers in any particular order, and, in fact, is not obligated to accept, or counter, or formally reject any of them. However, the seller should be advised that he or she may become contractually liable to the broker for a commission if the seller fails to accept the offer of buyer who is "ready, willing and able" to purchase the property on the listing terms.

5. Advising the Seller after an Offer has been Accepted. On occasion, a seller who has accepted an offer (i.e., entered into a contract) is presented with a better offer from a different buyer, and the seller wants out of the existing contract. In such cases, the licensee should advise the seller to seek legal advice before attempting to terminate the existing contract, and before becoming obligated under a second contract (e.g., contracting to sell the same property to two different buyers). A licensee may not give

the seller legal advice; but the licensee can state that failing to perform the terms of a contract, or obligating oneself under two contracts, can have serious legal consequences for a seller. If the seller does accept a second buyer's offer (other than as a backup offer), it is advisable that the licensee maintain documentation showing that the licensee advised the seller to seek legal advice prior to seller's agreeing to sell the same property to two different buyers.

Working With The Buyer

Licensees working with or representing buyers have some additional issues to watch when dealing with multiple offers.

1. Offer Conditioned on Nondisclosure. A buyer may desire, as a condition of his offer, that the price and terms of the offer not be disclosed to any other party (e.g., other potential buyers). However, because a seller is not bound by this condition unless or until he agrees to it, the licensee working with the buyer should obtain the seller's agreement to non-disclosure prior to presenting the buyer's offer.

2. Multiple Offers By the Same Buyer on Different Properties. On occasion, a buyer who has accepted an offer (e.g., entered a binding contract) on one property, subsequently wants to make an offer on a different property instead, and, if the second is accepted, terminate the existing contract. When faced with a buyer's request to write up an offer on a second property, the licensee should proceed with caution. The licensee should advise the buyer to seek legal advice before becoming obligated under two contracts (e.g., by buying two properties), and before attempting to terminate the existing contract. Although the licensee may not give legal advice, the licensee can state that failing to perform the terms of a contract, or obligating oneself under two contracts, can have serious legal consequences for a buyer. If the buyer insists on making an offer on the second property, the licensee should maintain documentation showing the licensee advised the buyer to seek legal advice prior to making the offer on the second property.

3. Multiple Offers Presented by a Licensee Representing Different Buyers for the Same Property. A brokerage and its licensees may represent two or more buyers interested in the same property provided the brokerage or its licensee has notified all such buyers in writing. When this situation arises, the licensee should ensure that the buyer/clients have been notified that the licensee may be presenting competing offers of other buyer clients, and that the licensee is not permitted to promote the interests of one buyer/client over the interests of any other.

On occasion, a seller wishing to avoid the delays of negotiations may make the initial "offer," or a counter-offer, to all prospective buyers, by presenting terms of a sale which, upon acceptance by the first buyer, will be binding on the parties. Licensees working with interested buyers should advise their customers/clients that it is the first buyer to deliver written acceptance of the seller's terms that gets the contract, and therefore time is of the essence.

General:

1. If questions arise on any area of contract law, such as if and when effective acceptance or revocation of an offer or counteroffer will take place, it is in the agent's best interest to advise the seller or buyer to seek legal counsel.

2. Remember that many issues in multiple offers are determined by the agency status of a real estate licensee. Be certain to follow scrupulously sections 54-2086, 54-2087,

and 54-2088, Idaho Code, and to act in a manner consistent with the agency relationship you undertake.

This Guideline is general in nature and is not intended to address each and every circumstance or issue that may arise in a multiple offer situation. As with any area where a question of contract law arises, it is best to urge the seller to seek competent legal counsel before difficulties develop, and, as is always prudent, licensees would be well advised to document in writing that they have advised the client or customer to see an attorney.

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GUIDELINE #17
(Revised January 2002)

Use of Unlicensed Assistants and Office Staff

The Commission often receives questions from brokers and salespersons on the use of unlicensed personal assistants, secretaries and office staff. The use of personal assistants has grown considerably in recent years. Personal assistants are generally thought of as unlicensed persons performing various functions as employees (including clerical support) or independent contractors of a real estate broker within the framework of a real estate transaction. The Commission recognizes the growth in the utilization of such assistants. Inquiries generally fit into two categories: (1) whether the activity performed is one which requires a license, and (2) what are the supervisory responsibilities of an employing broker?

Personal assistants who hold active real estate licenses and the brokers in whose offices they work should be aware that the brokers are fully responsible for all licensees, whether they are called personal assistants or not, and all licensed "assistants" are fully subject to Idaho License Law and Rules.

The license law prohibits unlicensed persons from negotiating, listing or selling real property. Therefore, foremost to the use of personal assistants is careful restriction of their activities so as to avoid illegal brokerage practice. Personal assistants may complete forms prepared and as directed by licensees but should never independently draft legal documents such as listing and sales contracts, nor should they offer opinions, advice or interpretations. In addition, they should not distribute information on listed properties other than that prepared by the employing broker or broker associate.

On the other hand, they may:

1. Perform clerical duties for an employing broker or broker associate which may include the gathering of information for a listing;

2. Provide access to a property other than showings to potential buyers and hand out preprinted, objective information, so long as no negotiating, offering, selling or contracting is involved;

3. Distribute preprinted, objective information at an open house, so long as no negotiating, offering, selling or contracting is involved;

4. Distribute information on listed properties when such information is prepared by the broker or broker associate;

5. Deliver paperwork to other brokers;

6. Deliver paperwork to sellers or purchasers, if such paperwork has already been reviewed by a broker;

7. Deliver paperwork requiring signatures in regard to financing documents that are prepared by lending institutions; and

8. Prepare market analyses for sellers or buyers on behalf of a broker, but disclosure of the name of the preparer must be given, and it must be submitted by the broker.

Employing brokers need to be especially aware of their supervisory duties under the license law. Brokers have always been and continue to be responsible for the actions of their licensed and unlicensed staff. Part of that responsibility has been supervising unlicensed staff and seeing that the unlicensed personnel does not engage in any prohibited activity -- that is, activity requiring a real estate license.

An employing broker should have a written office policy explaining the duties, responsibilities and limitations on the use of personal assistants. This policy should be reviewed by and explained to all employees.

Licensees should not directly share commissions with unlicensed assistants. Although this may not technically be a violation of the licensing act if the activity is not one which requires a license, the temptation to "cross over" into the area of negotiating and other prohibited practices is greatly increased where compensation is based on the success of the transaction.

If brokers develop adequate policies for the use of assistants and routine procedures for monitoring their activities, the assistant can serve as a valuable tool in the success of the transaction. As with any other activity involving the delegation of an act to another, the freedom and convenience afforded the broker in allowing the use of assistants carries with it certain responsibilities for that person's actions.

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GUIDELINE #18
(Revised May 2013)

Dealer in Options

The Idaho Real Estate License Law requires that a person acting as a "dealer in options" must hold an active Idaho real estate license. A "dealer in options" is defined by statute to include any person who obtains or uses options to purchase real property "for another or others," whether or not the options are in his name or title passes through him.

This Guideline addresses the License Law's distinction between being a "dealer in options," which is defined as brokering activity and requires a license; and using an option to purchase property for a person's own account, which does not require licensure. The Guideline also addresses the implications of having a licensed person involved in the option holder's activities.

Purpose and Scope of the License Law

The License Law does not attempt to regulate the real estate market itself. Instead, it defines and regulates the activities of persons who "broker" real estate deals "for

another or others." However, the Law recognizes and exempts from regulation the option, purchase or sale of real estate "for a person's own account," and similarly exempts the sale of an interest in real property "by its owner."

An Option Holder is Not an Owner of the Property, and Must be Licensed to Broker that Property

It is important to note that an Option to purchase does not give the option holder equitable title to the property. A person who obtains an option to purchase property has not obtained any ownership interest in that property, and accordingly, the License Law's "owner exemption" does not apply. Because an option holder is not an owner of the property, he may not list, sell, negotiate, procure buyers for, or otherwise broker that property unless he has a license.

The Commission often sees documents called "option agreements" or "reservation agreements" which are not legally-enforceable options to purchase. To have an enforceable right, or option, to purchase real property, the option contract must contain all terms material to the contract, including price, expiration date and an exact description of the property. An option contract is binding upon the seller and entitles the option holder/buyer the right - but not the obligation - to purchase the property on the terms and conditions set forth in the option agreement. An "agreement" granting the holder merely the ability to make an offer which the seller is not bound to accept is not a binding option agreement.

Dealer in Options vs. Option for Person's Own Account

As noted earlier, if a person uses an option to purchase property for his own account or use, no license is required. However, a person is acting as a Dealer in Options and must be licensed if the person uses options to purchase property "for another or others."

Example #1 - Use of Option to Purchase Property "for Person's Own Account."

Developer locates an agricultural property and obtains from Seller an Option to purchase the property for a sales price of $500,000. Developer then exercises his Option and purchases the property from Seller for $500,000. Subsequently, Developer decides he does not want to develop the property, and he then offers and sells the property to another person and earns a profit.

Because Developer exercised his Option and purchased the property before it offered the property for sale to any other buyer, it would appear that Developer used the Option to purchase the property "for his own account or use." As such, Developer's transactions are exempt from the licensing requirement.

However, if Developer had an agreement to sell the property to another at the time he exercised the Option to purchase the property, he did not purchase the property "for his own account or use," but instead used the Option to purchase the property for another. His transactions therefore would not be exempt from licensure.

Example #2 - Use of Options "to Purchase Property for Another or Others."

Speculator identifies agricultural properties in an area where significant growth is occurring. Speculator obtains Options to purchase on various properties in that area. Before exercising the Options, Speculator approaches a Developer and offers to sell Developer the properties for a higher price.

Speculator's option rights do not give him equitable title in the properties, and he is not the owner. By offering to sell the properties to Developer in anticipation of

compensation, he is engaging in the activities of real estate broker, and he must be licensed.

Example #3 - Using Reservation Agreements to Sell Subdivision Lots.

Developer submits an application to the county for a preliminary subdivision plat. Developer begins taking "reservations" for the lots he hopes will be approved (and decides to call his contracts "lot options"). Speculator fills out multiple lot reservation agreements and then markets the lots for sale at a higher price, in order to make a profit on the lots in a competitive market.

Speculator is engaging in the practice of real estate brokerage and must be licensed and comply with the Real Estate License Law. In this example, Speculator owns nothing and may never own anything, and he cannot even force the Developer to sell the parcels to him. Regardless of whether the reservation agreements are valid and enforceable contracts, however, they do not convey any ownership interest in or equitable title to a property.

While an Option to purchase grants the right to purchase the property, reservations are usually not true option contracts (even if that is the name of the document), and they typically provide buyers with few rights. The final plat may never be approved, or it may be approved with fewer lots than originally contemplated, and Developer may never be able to sell the parcels on which he took reservations.

Other Brokering Activities for Which Investor Must be Licensed.

Whether an Investor has an option to purchase or not, he may be engaged in Unlicensed Practice if he lists, sells, or negotiates the sale of property he does not own, or if he procures buyers for property that he does not own. For example, where an Investor locates a distressed property and obtains Seller's agreement to allow Investor to procure an ultimate Buyer for that property, the Investor is engaging in brokering and must have a license.

Question - *If an Investor is acting as a Dealer in Options, or is otherwise procuring buyers for properties that he does not own, is the Investor engaged in Unlicensed Practice if he hires a licensee to list and otherwise broker the transactions?*
Answer -Yes. If an Investor is using Options to put together sales between property owners and Other Buyers, he is acting as a dealer in options (brokering) and must be licensed, even if he hires a licensee to assist him by listing the property. NOTE: In these schemes, the listing typically names the Investor, not the Owner, as seller.

Question - *Does a Licensee Violate the License Law by participating in an Investor's Dealer in Options scheme?*
Answer - Potentially, yes. A licensee who knows, or reasonably should know, that the Investor is not the property owner may be in violation of the License Law for misrepresenting the identity of the Seller, and also for assisting the Investor in the Unlicensed Practice of Real Estate.

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GUIDELINE #19 (Reserved)

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GUIDELINE #20
(Adopted July 2011)

Joint Guideline on Broker Price Opinions (BPOs)

The Idaho Real Estate Appraisers Act (Appraiser Act) prohibits all persons who are not licensed or certified by the Idaho Real Estate Appraiser Board (Appraiser Board) from doing any type of real estate appraisal, including an analysis, opinion or conclusion relating to the value of real estate. The Appraiser Act does grant exceptions for licensed real estate salespersons and brokers. This Guideline addresses the scope and application of those exceptions.

1. Comparative Market Analysis Exception. The first exception relates to price opinions for a prospective listing or a prospective sale:

[A] licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser (Idaho Code 54-4105(2)).

This exception allows any real estate licensee – salesperson or broker – to prepare and present a price opinion for the purpose of a prospective listing or a prospective sale, also known as a Comparative Market Analysis (CMA). Licensees may not represent or mislead someone into thinking they are licensed or certified real estate appraisers, unless they are.

2. Brokers Price Opinion Exception. The second exception relates to broker price opinions (BPOs):

[A] real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

(a) The broker's price opinion shall be in writing and contain the following:

(i) A statement of the intended purpose of the price opinion;

(ii) A brief description of the subject property and property interest to be priced;

(iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(iv) Any assumptions or limiting conditions;

(v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;

(vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;

(vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal prac tice;

(viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction. (Idaho Code 54-4105(3).)

Under this exception, a real estate broker may prepare and render a BPO for purposes other than procuring listings and sales. This exception is strictly limited to those holding an active associate or designated broker license. BPOs prepared by a broker must include all of the content requirements noted in the Appraiser Act.

A BPO may not be used in place of an appraisal for a ***federally related transaction,*** which is defined in the Appraiser Act as ***"any real estate related financial transaction that a federally regulated institution, regulatory agency, or the resolution trust corporation engages in, funds, contracts for, or regulates"*** (Idaho Code 54-4104(6)).

Enforcement. The licensing requirements and exceptions contained in the Appraiser Act are regulated by the Appraiser Board. Real estate licensees who violate the Appraiser Act may find themselves before the Appraiser Board facing allegations of unlicensed practice of appraisal. The Real Estate Commission takes the position that if a licensee violates the Appraiser Act in preparing or rendering a BPO or other unlawful activity, that licensee may also be subject to discipline under the Real Estate License Law for dishonest and dishonorable dealings (Idaho Code 54-2060). This means that a finding of unlicensed practice by the Appraiser Board may lead to additional discipline imposed by the Real Estate Commission.

NOTE: The Idaho Real Estate Appraiser Board and the Idaho Real Estate Commission are more interested in obtaining compliance with the laws pertaining to BPOs than initiating discipline for violations.

Payment of Fees. The Real Estate License Law provisions pertaining to broker supervision and fee splitting apply to BPOs. The Real Estate Commission requires an associate broker who prepares a BPO to notify his/her designated broker (Idaho Code 54-2038(3)). In addition, the associate broker may not accept any fee except through the designated broker (Idaho Code 54-2038(3)).

FREQUENTLY ASKED QUESTIONS

Question - *A lender calls a real estate broker and requests a BPO and the lender would or could not disclose the intended purpose of the BPO. May the broker render a BPO that complies with Idaho law?*
Answer - No. The statute plainly states that a BPO must contain a statement of its intended purpose, and it must be included in the BPO. The Uniform Standards of Professional Practice (USPAP) and the Appraiser Board interpret "purpose" to mean how the BPO is going to be used. Examples may include for estate planning purposes, dissolution of a partnership, refinance of a mortgage, short sale negotiations or determination,

loan modification, loan origination, insurance purposes, etc. Any purpose that is for a federally related transaction would be unlawful in Idaho (see previous definitions).

Question - *A lender calls a real estate salesperson and requests a BPO. May a salesperson render the BPO?*
Answer - No. Some states allow salespersons to render BPOs, but Idaho law is very clear that only actively-licensed **brokers** may render BPOs. Unfortunately, many lenders have contacted Idaho salespersons (or inactive brokers) and requested BPOs. In some cases, the lenders have assured the salespersons it is perfectly fine for these licensees to render the BPOs, and many licensees have relied on these statements. If the salesperson renders a BPO, the salesperson would be violating Idaho law and may be subject to discipline by the Appraiser Board, the Real Estate Commission, or civil action under Idaho law. Salespersons who receive requests to render BPOs should decline the requests and/or forward those requests to their designated brokers.

Question - *What if the lender discloses that it wants to use the BPO in its consideration of a short sale? Or a foreclosure? Or a modification of an existing loan? Is a broker restricted from rendering a BPO for these intended purposes?*
Answer - Not necessarily. The purpose of the "statement of intended purposes" is to define the context of the price opinion. It is the lender's responsibility – not the broker's – to comply with any requirement that the written valuation be performed by a state certified or licensed appraiser. Of course, and unless the broker is in fact licensed under the Real Estate Appraiser Act, the broker must include the required disclaimer that the BPO "is not intended to meet the uniform standards of professional appraisal practice." Brokers must also include a disclaimer, in the language of the statute, that the BPO "may not be used as an appraisal, or in lieu of an appraisal, in a federally-related transaction."

Question - *May a salesperson assist a broker in preparing a BPO?*
Answer - Yes, but only if the broker rendering the BPO is the designated broker for the assisting salesperson and the assisting salesperson is acting on behalf of, and under the control and supervision of, the designated broker as required by the License Law. A salesperson who assists his or her designated broker will not be deemed to be engaging in the unlicensed practice of appraisal. Likewise, a salesperson may assist an associate broker in preparing a BPO, if both the salesperson and the associate broker are licensed at the same brokerage, the designated broker has knowledge of and consents to the assistance, and both the salesperson and associate broker are acting under the control and supervision of their designated broker.

Question - *Who oversees the quality of a BPO? In other words, what happens to a licensee who renders an inaccurate BPO?*
Answer - As long as a broker meets the BPO requirements of Idaho Code 54-4105(3), the Appraiser Board has no jurisdiction. A BPO is merely one broker's opinion of price, not value, and as such, the Real Estate Commission will not get involved in complaints regarding the quality or accuracy of a BPO. However, a broker may be subject to civil liability by an injured party. A real estate licensee who performs BPOs should review his Errors & Omissions insurance policy to confirm coverage.

Question - *Is there a difference in an estimate or opinion of "price" and "value"?*
Answer - Yes. ***"Price"*** is considered to be a ***fact and may change based upon factors unrelated to value*** such as the seller being relocated to another city, experiencing financial difficulties and needing to sell the property in a shorter period of time, or other personal circumstances unrelated to value such as a divorce or loss of a job. It is

defined in USPAP as "the price paid for a property [which] may or may not have any relation to the value".

An opinion of ***"value"*** is ***never a fact*** since it is an economic concept and always an opinion of the worth of a property at a given time related to a specific definition of value.

Types of value may include market value, salvage value, liquidation value, distressed value, etc. Any statement of value must also include its relationship to time. For example, if the market value of a property is estimated to be $150,000 and the typical marketing time is 12-15 months, and a client then requests a value estimate based upon a 3-6 months time frame, it is likely that the value would be adjusted downward for the shorter marketing period.

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GUIDELINE #21 (Reserved)

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GUIDELINE #22
(Revised May 2015)

Auctioneers of Real Estate

When persons who provide auction services become involved in real estate sales, questions arise as to whether or not that auctioneer needs to be licensed as a real estate broker or salesperson.

An auctioneer's particular services and business activities in the sale of real estate may well require real estate licensure. The basic test is: Are the activities being performed by the auction company or auctioneer identified in Section 54-2004, Idaho Code, as activities requiring a real estate license? While the specific answer to this question can only be determined on a case by case basis, here are some common questions and answers:

1. Is the taking of a "consignment" to sell real property at auction a licensed brokerage activity?
   Most likely, yes. Procuring of prospects to list or sell real property for compensation ***is*** *an activity requiring licensure.*

2. Is the act **alone** of calling the sale at auction one requiring a real estate license?
   No.

3. Is a onetime sale by auction, i.e., the sale of one property in a single transaction, alright without having a real estate license?
   Only if conducted ***exactly*** *according to the statutory exemption in Section 54-2003, Idaho Code, which is the exception for the sale of a single property in a single transaction pursuant to a power of attorney. This* ***exception,*** *while valid, is* <u>*very limited*</u> *and may not be relied on in conducting any other regular or frequent or even occasional auction business.*

4. Do floor "spotters" at the real estate auction need to be licensed?
   If the activity of the person is limited to pointing out bidders to the auctioneer, no.

5. Can the unlicensed auctioneer advertise upcoming real estate auctions alone, without associating with and naming a licensed broker?
See answers #2 and #3 above. While possible, the more activities and services performed by an auctioneer in assisting with and facilitating the sale of real property, the more likely that auctioneer is moving into licensed brokerage activity. An auctioneer must not be holding out to the public that he or she is in any way providing any licensed real estate services.

6. Can a licensed real estate broker split the brokerage commission with an unlicensed auctioneer upon sale at auction?
No. An unlicensed auctioneer can be paid only for specific real estate services rendered, such as calling the auction. The fee just cannot be a split of the brokerage commission or paid from the broker to the unlicensed auctioneer. For example, a broker or seller may purchase advertising on radio or television to market a property. The payment is only for the actual advertising service rendered. While the amount of payment given to an auctioneer can be a percentage of the sales price, it is critical that the seller enter separate contractual obligations - one with the auctioneer and one with the licensed broker, delineating their separate services provided and the compensation therefore. Also see Section 54-2054(2), Idaho Code, Fee splitting with unlicensed persons prohibited.

7. If an auctioneer has a license as a real estate salesperson, can he or she act as an auctioneer and receive commissions without the involvement of his or her broker?
Generally, no. Any licensed activities conducted by a salesperson are legally possible only through the license of that person's broker. Technically, a licensee who wishes to merely provide "talent" and call an auction, if not holding himself or herself out as a licensee in any way, may engage in this activity. However, the permission and consent of all brokers should be obtained!! This type of practice is one fraught with hazards and conflicts and is NOT recommended or advised.

8. Is the recruitment of potential buyers of real property to attend an auction considered brokerage activity?
"Recruiting" prospects or "assist(ing) in the procuring of..." prospects, for compensation, is brokerage activity requiring a real estate license. Of course, mere execution of clerical tasks or running advertisements alone is not licensed activity. Refer to Guideline #17 on the Use of Unlicensed Assistants and Office Staff for additional guidance.

9. If an auction company is a licensed real estate brokerage, must all advertising follow license law and rules?
If the auction company is engaged in licensed activity involving the sale or auction of real property, yes. If the public believes the licensee is acting in a licensed capacity, and/or the licensee is holding himself or herself out as acting in a capacity of a licensee, then, yes, all law and rules of the Idaho Real Estate Commission will apply to that licensed activity, whether or not an auction.

10. What about agency? Whom does the auctioneer or auction company represent and how must this issue be disclosed before, during and after the sale?
All fees except for non-licensed auction services (calling the action, advertising, set-up, etc.) should be directed to real estate agent not auctioneer. If the auctioneer is also a real estate licensee, he or she is bound by all license law including disclosures required by the Brokerage Representation Act. It is the

responsibility of the licensee to hand out a blue brochure at first substantial business contact. Any real estate licensee associating with an auctioneer to sell a property should explain his or her own agency or nonagency position prior to beginning the auction, and the fact that the auctioneer is not a real estate licensee.

11. What is a "buyer's premium" and who receives it?
    A buyer's premium is a fee, usually a percentage of the bid price, which is paid with and added onto the successful bid amount. Who receives this fee? This depends on the written contractual arrangement between the licensees and/or auctioneer, and the buyer. Refer to question #6 for caveats.

12. Who is the responsible broker in an auction sale?
    Either broker, listing or selling, can be the responsible broker. However, one must be identified in a licensed transaction.

13. Can a licensee auction properties listed by another real estate company?
    Yes, in theory. However, it must be pursuant to agreement between the brokers in writing, and the responsibilities of each brokerage and the licensee should be carefully spelled out, including identification of responsible broker.

14. Must potential buyers give any consideration up front in order to attend an auction of real property? If so, what is the responsibility of any affiliated licensee or broker?
    Auctioneers structure real estate auctions differently. However, if any type of consideration is "held" by or on behalf of the parties conducting the auction of real property involving licensed activity, the licensee will be expected to fully account for the consideration received, according to license law and rules.

15. What are some of the other issues to consider in auction of real estate?
    Be aware of the fact that bidders coming to an auction without a real estate licensee, or those who pre-register through a licensee, may already have some kind of buyer broker contract and some type of commission or fee obligation to a licensee.

In conclusion, the final determination on the necessity of licensure must be made on the basis of section 54-2004, Idaho Code, defining a real estate broker:

If any person is engaged, whether or not through an auction mechanism, in licensed real estate activity in the state of Idaho, a real estate broker's license is required.

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GUIDELINE # 23
(Revised May 2013)

Mandatory Duty of The Brokerage "To Be Available" To Receive and Present All Written Offers and Counteroffers

The Real Estate License Law requires that any real estate brokerage that has entered a representation agreement, compensation agreement, or customer services agreement owes its customer or client a statutory duty to provide specific brokerage services, namely, "to be available" to its customer or client "to receive and timely present all written offers and counteroffers." <u>This duty is mandatory and cannot be waived unilaterally or by agreement.</u>

Questions have arisen as the meaning and scope of the mandatory duty requiring the brokerage "to be available." The purpose of this Guideline is to provide the Commission's interpretation of what is - and what is not - required by this brokerage duty.

The Listing Brokerage. As applied to a listing brokerage, the statute requires the brokerage to be available to its customer/client to: (1) receive written offers from buyers; (2) present those offers to its customer/client; and (3) present any written counteroffer of its seller to the buyer.

It is the Commission's view that, in order "to be available" to provide these services, the listing brokerage must, at minimum:

- include in any listing or advertisement of the property sufficient information to allow buyers to submit, and the listing brokerage to receive, written offers from buyers; and
- have in place an adequate means of communication to allow (1) the brokerage to timely present the offers to its seller; and (2) its seller to submit back to the brokerage any written counteroffer for presentation to the buyer.

The Buyer Brokerage. As applied to the buyer brokerage, the statute requires that the brokerage be available to: (1) present its buyer's written offers to the seller; (2) receive written counteroffers from the seller; and (3) present the written counteroffer of the seller to its buyer.

It is the Commission's view, in order "to be available" to provide these services, the buyer brokerage should, at a minimum:

- include with any written offer submitted to the seller sufficient information to allow buyer to submit, and the listing brokerage to receive, written counteroffers from buyer; and
- have in place an adequate means of communication to allow (1) the brokerage to timely present the counter offers to its buyer; and (2) its buyer to submit back to the brokerage any further written counteroffer for presentation to the seller.

"Sufficient information" may include, but is not limited to, the brokerage's fax number, or e-mail address, physical (delivery) address, or a telephone number. If the contact information does not provide for direct submission of written offers, (e.g., telephone number), the brokerage must respond to inquiries with information that will allow buyers to submit written offers to the brokerage.

"Adequate means of communication" may include any means agreed upon between the brokerage and its client/customer to permit the broker to present written offers and counteroffers to its customer/client, and for the brokerage to present any counteroffers from its customer/client to the other party. The means of communication may include fax, e-mail, telephone, or face-to-face meeting.

Frequently Asked Questions

Question - *Once the brokerage receives the written offer, does it have a duty to review that offer? Or is it permissible for the brokerage to simply relay the written offer to the seller?*

Answer - The brokerage must review the offer. Although the level of required services will depend on whether the seller is a customer or a client of the brokerage, a brokerage is obligated to take certain actions regarding any written offer it receives. These obligations, set forth at section 54-2051, Idaho Code, include: the prompt tender of the offer to the seller; ensuring that the offer recites the actual form and amount of earnest money received; a provision for the division of earnest money; the representation confirmation statement required by statute; appropriate signatures; and a legal description of the property. Fulfilling these statutory obligations necessarily requires that the brokerage review every offer it receives.

Question - *Must a brokerage be available to provide advice to its customers or negotiate on their behalf?*
Answer - No. The minimum services required by law do not include these services. Unless the brokerage has contracted to provide agency representation, or to provide other heightened customer services, a customer is not entitled to these services.

Question - *If the seller requests, can the listing brokerage agree that offers are to be presented directly to that seller, instead of the listing brokerage?*
Answer - No. The law flatly states that the duty is "mandatory and may not be waived or abrogated, either unilaterally or by agreement." Therefore, the seller may not elect to waive this service, even if the seller requests; the brokerage must remain available to receive written offers.

Question - *Does the law prohibit buyers from presenting offers directly to the seller?*
Answer - No. The law requires that a brokerage provide certain services to the customer/client with whom it contracted. The law* does not bar a buyer from presenting offers directly to, or inquiring directly of, the seller; provided a buyer may not "interfere with the contractual relationship between a brokerage and its client. (See section 54-2054(4), Idaho Code.)

*(REALTOR® Code of Ethics may be implicated here, however.)

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GUIDELINE #24
(Revised May 2013)

Licensee's Personal Transactions To Be Conducted Through The Broker With Whom He is Licensed

Under Idaho law, all active licensees are required to conduct their personal real estate transactions through the broker with whom they are licensed, regardless whether the property is listed. Idaho Code 54-2055 states:

54-2055. LICENSEES DEALING WITH THEIR OWN PROPERTY.

(1) Any actively licensed Idaho broker, sales associate, or legal business entity shall comply with this entire chapter when that licensee is buying, selling or otherwise acquiring or disposing of the licensee's own interest in real property in a regulated real estate transaction.
(2) A licensee shall disclose in writing to any buyer or seller that the licensee holds an active Idaho real estate license, if the licensee directly, indirectly, or through a third party, sells or purchases an interest in real property for personal use or any other purpose; or acquires or intends to acquire any interest in real property or any option to purchase real property.

(3) Each actively licensed person buying or selling real property or any interest therein, in a regulated real estate transaction, must conduct the transaction through the broker with whom he is licensed, whether or not the property is listed. [Emphasis added].

This Guideline attempts to answer several questions that have arisen as to the requirements of the licensee who conducts his personal transactions through his brokerage.

Question - *Must the licensee's broker always be the "responsible broker" for the transaction? If not, how can the transaction "be conducted through" the licensee's broker?*
Answer - The Commission recognizes there are transactions for which it is impractical to have the licensee's broker act as the "responsible broker." The purpose and intent of subsection (3) is to ensure that the licensee's broker is made aware of and able to supervise transactions for which he might be held liable. The Commission finds that this purpose is satisfied if the licensee timely provides a copy of each transaction document to his broker, even if the original document is provided to a different broker who is the "responsible broker for the transaction."

Question - *Must the licensee enter an Agency Representation Agreement with his Brokerage?*
Answer - No. Although the licensee is required to conduct his personal transactions through his brokerage, he and the brokerage are NOT required to enter a written agreement for agency representation. An individual licensee buying or selling property is necessarily acting on his own behalf. However, whether the brokerage agrees to represent the licensee and act as his agent is a decision left to the brokerage and its licensee, and is not required by the law.

The law permits the brokerage and the licensee to enter into a written agreement for agency representation, in which case the brokerage will owe its licensee, for that transaction, those duties owed a client under section 54-2087, Idaho Code. Absent a written agreement for agency representation, the relationship of the brokerage to the licensee in the transaction is that of a "non-agent" to a "customer." Whatever brokerage relationship is chosen, it must be indicated accurately in the Representation Confirmation (check the box) section of the Purchase and Sale Agreement. And, of course, the licensee always is required to make written disclosure of the fact that he is actively licensed.

Question - *Must the licensee give himself the Agency Disclosure Brochure?*
Answer - No. Complying with the License Law does NOT require that the licensee give himself a copy of the Agency Disclosure Brochure. This requirement, contained in section 54-2085, Idaho Code, does not apply where the "prospective buyer or seller" is an active Idaho licensee.

Question - *Will my errors and omissions insurance policy provide coverage for my personal transactions?*
Answer: Not likely. Insurance contracts vary. However, errors and omissions policies typically exclude from coverage the licensee's personal transactions. Coverage may exist for the brokerage under the brokerage's separate policy. All licensees should pay careful attention to the exclusion and exemption provisions of any policy of insurance he or she maintains.

Question - *Which transactions have to be conducted through the licensee's broker?*
Answer - Questions have also arisen as to which transactions fall within the scope of subsection (3), requiring that the transaction be run through the broker with whom the licensee is licensed. The answers will depend on the identity of the "person" buying or selling the property, and whether that person is "actively licensed". A "person" is either an individual or a legal business entity. Unless the "person" buying or selling is actively licensed, the requirement does not apply.

Example #1: Mary Smith is an active licensee. She is married to John, who is not licensed. John and Mary are the sole shareholders in ABC, Inc., an unlicensed business that owns real property and constructs new homes.

Question - *Does the law require that ABC, Inc.'s sales of its new homes by ABC, Inc. be conducted through a responsible broker?*
Answer - No. In this case, ABC, Inc. is the "person" selling property. Because ABC, Inc. is not an "actively licensed person", the requirement of subsection (3) does not apply. However, under the broad language of subsection (2), 54-2055, Idaho Code, Mary Smith is required to disclose, in writing, that she is an active licensee.

Example #2: Same facts as in #1. Mary and John have agreed to buy their neighbor's ranch, and to make the purchase in their own names, "Mary and John Smith". The ranch property is not on the market.

Question - *Must the transaction be conducted through Mary's broker?*
Answer - Yes. Because Mary is one of the persons buying the property, and because she is "actively licensed", the transaction must be conducted through Mary's broker, "whether or not the property is listed". Mary will also have to make written disclosure of her status as an active licensee.

Example #3: Same facts as in #1. John wants to buy a small lot and building for use in connection with his own personal hobbies. John will handle the transaction and Mary will not be involved at all. (The funds used are not John's sole and separate property.)

Question: *Must the transaction be conducted through Mary's broker?*
Answer: Yes. Even if the property is purchased for exclusive use by John, the property will still belong to the marital community, and Mary will acquire a community "interest therein." Therefore, the transaction must be conducted through Mary's broker. Again, Mary is also required to disclose her status as an active licensee.

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GUIDELINE #25
(Adopted March 2010)

Short Sale Guidance

A "short sale" is a term used to describe a transaction where the sale price of the property would not generate sufficient proceeds to pay off the existing mortgage or mortgages, and the lender(s) offers or agrees to accept less than full payoff.

There are two components to a short sale: (1) the negotiation of the reduced loan payoff amount (between the seller and his lender); and (2) the real property conveyance transaction (between the seller and a buyer). The Department of Finance regulates loan modification activities, including negotiation of reduced loan payoffs. The real property transaction falls under the jurisdiction of the Real Estate Commission.

The Department of Finance and Real Estate Commission recognize that to be successful, a short sale transaction may be a complex and lengthy process involving specialized knowledge and expertise. The purpose of this document is to aid persons in understanding when a license to conduct certain activities is required under either the Residential Mortgage Practices Act or the Real Estate License Law, and to provide additional information to mortgage broker and real estate licensees who participate in short sale activity.

If you have additional questions, please feel free to submit them to:

Department of Finance	Real Estate Commission
finance@finance.idaho.gov	info@irec.idaho.gov
Subject Line: Loan Modification FAQ's	Subject Line: Short Sale FAQ's

GUIDANCE FROM THE IDAHO DEPARTMENT OF FINANCE
Third-Party Mortgage Loan Modification Providers, Including Short Sale Negotiators

The Department of Finance has seen growth in the number of persons in Idaho offering to assist homeowners with modifications of their mortgage loans, either by obtaining a lender's agreement to modify the terms of a loan for the purpose of achieving affordable payments, enabling a homeowner to remain in his or her home, or by obtaining an adjustment of an existing residential mortgage loan in a settlement transaction, such as a deed in lieu of foreclosure or a short sale.

Pursuant to the Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101, *et seq.,* (Act), a loan modification, is defined as, *"...an adjustment or compromise of an existing residential mortgage loan. The term „loan modification" does not include a refinancing transaction"* (Idaho Code §26-31-201(2)). One particular activity that falls within the definition of a loan modification is the practice of representing a homeowner in obtaining an adjustment or compromise of his or her residential mortgage loan for compensation or gain, or in the expectation of such, pursuant to a short sale or pre-foreclosure sale negotiation.

Entities that engage in, or offer to engage in, affecting loan modifications in Idaho for compensation or gain, or in the expectation of such, must obtain a mortgage broker's license under the Act, and the individuals who conduct loan modification activity on behalf of such entities must obtain a mortgage loan originator's license. Many short sale transactions do not implicate these licensing requirements because the negotiation for the compromise or adjustment of the residential mortgage loan is conducted as part of the negotiation of a real estate transaction by an Idaho licensed real estate agent. When conducting this activity, individuals licensed by the Real Estate Commission are excluded from the licensing requirements of the Act, unless the real estate agent is paid by the lender, or the lender's agent, for the loan negotiation services (as opposed to getting paid a commission on the real estate transaction).

That means a real estate licensee can help her customers or clients negotiate a loan modification as long as the licensee is performing activities that require a real estate license (see Idaho Code 54-2004(36) and (37) for a list of those activities). However, this does not extend to unlicensed assistants.

Any purchase or sale of real property for an active real estate licensee's own benefit becomes a regulated real estate transaction pursuant to Idaho Code 54-2003(2) and Idaho Code 54-2055: (please note the requirement to disclose licensed status in Idaho

Code 54-2055(2)). In addition, a real estate licensee who is buying or selling property on his own behalf can have himself as a client or customer. Therefore, the SAFE Act exclusion for real estate licensees also applies for a real estate licensee's personal transactions, and a real estate licensee can negotiate with a lender to purchase a short sale property for his own use.

Remember, the SAFE Act exclusion for real estate licensees does not apply to real estate agents who act solely as third-party short sale negotiators. Negotiating short sales for a fee is not an activity that requires a real estate license; therefore, a loan originator license from the Department of Finance is required if that is the only service the real estate agent provides. A licensed real estate agent assisting another licensed real estate agent with a short sale transaction at the same real estate brokerage is permissible.

There is a simple test to determine whether the SAFE Act exclusion for real estate licensees applies to short sale negotiations conducted by real estate licensees: If the fee or compensation for negotiating or assisting with a short sale is paid through the real estate brokerage by the licensee's designated broker, then the activity is excluded from loan originator licensing requirements. If the fee or compensation for negotiation activity is paid by a lender, or the lender's agent, then the exclusion does not apply, and a loan originator license is required.

GUIDANCE FROM THE IDAHO REAL ESTATE COMMISSION
Real Estate Brokers and Salespersons

A. The Real Estate Commission is charged with administering Title 54, Chapter 20 of the Idaho Code (the "license law"), pertaining to real estate brokerage. A real estate license may be required to participate in a short sale purchase, if the buyer or investor is:

- Brokering real estate deals for others, but using property deeds, powers of attorney, and trusts to evade the requirement of licensure; or
- Acting as a "Dealer in options."

The license law requires anyone performing real estate brokerage activities to hold an active real estate license. Under Idaho Code 54-2004(36) and 54-2004(37), a real estate license is required for:

(a) …[A]ny person . . . 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:

(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.

(For more information on "dealer in options", see Idaho Code 54-2004(19) and Idaho Real Estate Commission Guideline 18.)

Idaho Code 54-2003(4) states, "Exceptions to licensure shall not be used in any way to evade the purposes of this chapter. Any such attempt to evade this chapter shall be considered the unlicensed and unlawful practice of real estate."

Taking title to property through deeds, powers of attorney, and trusts. There are several exceptions to licensure (Idaho Code 54-2003) that allow persons to conduct real property transactions without the need for a real estate license, including:

- For sale by owner, or buying property for one's own account or use (including regular employees of the owner or purchaser when the employee is acting within the scope of his employment)
- An attorney in fact acting under a Power of Attorney when it is granted to consummate a single conveyance transaction
- A trustee in bankruptcy, personal representative of an estate, legal guardian or conservator, or anyone selling pursuant to the default provisions of a deed of trust
- An attorney, in connection with client representation, if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson

These exceptions to the license law occur legitimately in Idaho every day. However, the Commission sees many cases where these exceptions are being used as a "business model" in order to evade the requirements of the license law.

For Sale By Owner. Under the statute's exceptions, a person who owns real property may market it for sale to buyers without having to hold a real estate license. However, if a person obtains a deed from the property owner with the intent of finding another buyer before completing the transaction with the original property owner, i.e., before paying off the owner's mortgage, the person is really putting deals together for others, with the expectation of a profit for himself. This activity amounts to "brokering", and the person must be licensed.

Often, an unlicensed person obtains a deed or power of attorney for a distressed property (or has the homeowner convey it into a trust) under the guise of "saving" the property from foreclosure. The documents accompanying the conveyance state that the unlicensed person will market the property and use the sale proceeds to pay off the mortgage. Sometimes the conveyance instruments are recorded, and sometimes not. In almost every case, the mortgage remains in the distressed homeowner's name. Occasionally, the lender has already determined a short sale payoff price it would accept. More often, the person who obtained the deed or power of attorney attempts to negotiate a short sale payoff with the lender, while at the same time marketing the property for sale at a higher price. The Commission has observed this type of activity and has taken action against the perpetrators for unlicensed practice. Although the unlicensed person may purport to fit within an exception to the licensing requirement, the Commission considers the misuse of the exemption as an attempt to evade the license law.

Dealing in Options. The Commission has seen many instances where an unlicensed person obtains "options" to buy property from sellers and then markets those proper-

ties for resale. However, an option does not convey any kind of ownership interest in or title to a property. Therefore, it is usually impossible for an option holder to qualify for the "for sale by owner" exception to licensure. Typically, the "option agreement" is the functional equivalent of a listing agreement, and the unlicensed person's expected compensation is the profit made upon the sale.

Similarly, the license law specifically defines dealing in options as brokering activity for which a license is required. The option holder may not list, sell, negotiate, procure buyers for, or otherwise broker that property unless he has a license. The Commission has jurisdiction and considers an unlicensed "dealer in options" to be engaging in unlicensed practice.

NOTE: A real estate licensee should use caution and consult his designated broker (if applicable) when asked to take a listing for an "option" property.

B. An active Idaho real estate licensee must comply with the license law in all of his personal real estate transactions.

Licensees are required to conduct their personal real estate transactions through their brokerage pursuant to Idaho Code 54-2055(3). This does not mean a licensee is required to "list" his property or sign a representation agreement with the brokerage. It does mean the licensee must provide copies of the transaction documents to his broker so the broker can review the contracts and ensure the correctness of the closing statements. Failure to disclose personal transactions and conduct them through the brokerage will subject a licensee to disciplinary action.

Real estate licensees owe certain duties to their clients and customers. A "client" is a buyer or seller with whom the licensee has a written representation agreement. Licensees who have client relationships with buyers and sellers have enhanced duties that are specified in Idaho Code 54-2087. A "customer" is any buyer or seller to the transaction who is not represented by the licensee's brokerage. That means a licensee buying an unlisted property on his own behalf owes the seller all the "customer" duties identified in Idaho Code 54-2086 for that transaction.

Usually, a seller who is upside down on his mortgage or who can't make the payments just wants to get out from under his mortgage. Unfortunately, the seller may not have all the information he needs to make a good decision about selling his property. There are some client and customer obligations that should be considered when working short sales. For example:

- Forgiven debt is considered income in the eyes of the IRS; some sellers may be liable for income taxes on the difference between what is owed and what a lender will accept as a short payoff.

- A seller may be required to sign a promissory note with the lender for the amount of a deficiency, i.e., the lender releases the lien, but not the debt. In this case, the seller still owes the money, but the security interest is simply released so the property can be sold.

- A transfer made to keep property out of a creditor's hands could be considered a "Fraudulent Conveyance".

- Some mortgage contracts contain "Due on Sale" clauses.

It is important for a licensee to make sure he is fulfilling his duties to a seller under the license law, whether the seller is a client or a customer. In the case of a client, that means promoting the best interests of the client in good faith, honesty, and fair dealing, and disclosing adverse material facts. It also means a licensee must, when appropriate, advise a client to seek appropriate tax, legal and other professional advice or counsel. Licensees are also required to disclose adverse material facts to customers and to perform ministerial acts with honesty, good faith, and reasonable skill and care.

It is a violation of the license law for a licensee to engage in dishonest or dishonorable dealings (including double contracts), make fraudulent misrepresentations, or act in a grossly negligent or reckless manner. There have been cases where distressed sellers were misled or subjected to predatory practices by erstwhile "buyers". Unfortunately, some of those "buyers" were licensees.

The Commission has seen cases where licensees had sellers sign blank deeds, powers of attorney, purchase and sale agreements, and other contracts. Licensees have also encouraged sellers to execute conveyance documents to the property (often conveying legal title to the licensees), while promising to "prevent" or "rescue" the sellers from foreclosure. These arrangements do not stop a foreclosure! In fact, such activity usually makes it more difficult for the seller to close a sale to a legitimate buyer.

Unfortunately, there have been instances where a licensee prepared and presented a "phantom offer" to a lender to start the short sale process, when in fact there was no legitimate offer to purchase the property. Typically, the offer price was quite low, and other legitimate (higher) offers were withheld from the lender. This is dishonest and dishonorable activity at the very least – and the Commission has had some success proving fraud in these situations.

When a lender agrees to a short payoff, that agreement often comes with certain conditions or requirements. A real estate licensee who fails to make required disclosures or purposely hides information from a lender may be disciplined. Sellers may be required to sign affidavits or other disclosures verifying these requirements were fulfilled. Some commonly-seen criteria include:

1.) The seller cannot receive any proceeds from the transaction.

2.) The mortgage holder may not approve a short sale if it involves a "flip" transaction.

3.) When a lender approves a short sale, the lender expects the property to have been marketed at a fair price.

4.) The mortgage holder wants to see all the offers to make an informed decision on what is best for its mortgage investors.

1. The seller cannot receive any proceeds from the transaction.

This includes a sales commission, a negotiator's fee, or any sum that is not disclosed to the lender. We have seen cases where the seller is paid a minimal amount for a deed to the property to "prevent" a foreclosure. This is a sale, and the seller got something! A real estate licensee who acquires title to a property in this manner must conduct the transaction through his/her brokerage, and all license laws must be followed (including the customer or client duties owed to the seller).

In some cases, the real estate licensee is the distressed seller. There have been situations where a seller/licensee arranged for another licensee in the same office to "list" the property. The agent named on the listing received a small portion of the total commission, and the seller/licensee obtained the bulk of the commission for himself. The seller received money from the transaction!

In one case the seller/licensee filed an entity with the Secretary of State that was a short sale negotiation company. The company was paid a "loss mitigation fee" for the transaction, and the seller/licensee pocketed the money. It was the only transaction this "company" ever negotiated. Again, the seller received money from the transaction.

Sellers have liability under their mortgage contracts. A mortgage holder has the right to sue if it feels it was ripped off. In the case above, the lender actually sued the seller/licensee to recover over $20,000.00.

2. The mortgage holders may not approve a short sale if it involves a "flip" transaction.

A lender is entitled to every cent of the lien it holds. If a property can be flipped for a profit, it might be to the mortgage holder's advantage wait for a better offer, or even take the property back, sell it, and make that profit for itself. In order for a mortgage holder to make an informed decision, it is important that all terms of the transaction are disclosed.

Many lenders have established "seasoning" requirements for deeds, requiring the property to have been titled to the seller for a certain length of time, typically 90 days. A legitimate buyer trying to purchase a short sale property may not be able to obtain a new mortgage if the deed is not "seasoned", which harms both the buyer and the distressed seller. The "seasoning" requirement is not absolute and can be waived, and there are legitimate reasons for doing simultaneous closings, but many lenders have chosen to enforce this requirement.

One case involved a real estate licensee whose business model was to make an offer on a distressed property (in the name of a company he owned) and then negotiate a short sale payoff with the seller's mortgage holder. Once the licensee knew what the lender would accept as a short payoff, he began marketing the property as the seller at a higher price. If he could find a buyer who would pay more than the short sale payoff, he arranged a simultaneous closing. If he could not find a new buyer, the licensee walked away from the transaction and let the property go into foreclosure. The licensee said he never intended to close on the original purchase transaction unless he could make money on the "flip". The planned "flip" was never disclosed to either the short sale mortgage holder or the lender for a subsequent buyer.

Commission staff has interviewed many mortgage holders about this very idea during the course of investigations. In every single case, mortgage holders said they would cancel a transaction if they knew it was part of a "flip".

In the cases investigated, great effort was expended to keep the mortgage holders from finding out about subsequent flip transactions. This is the kind of effort that can lead to a fraud charge.

Likewise, a real estate licensee who has a property flipper for a client is not required to participate in a violation of the license law at the client's request. On the contrary,

the licensee should consider advising the flipper of potential violations and even terminating the relationship if the flipper continues to pursue illegal behavior.

3. When a lender approves a short sale, the lender expects the property to have been marketed at a fair price.

Sometimes short sale properties are listed for double and even triple the fair market value to discourage buyers from presenting an offer. The representation is made to the mortgage holder that after 3 months of hard marketing, there was not a single offer. Then, at the last minute, a real estate licensee or a favored client makes the only offer, based on the payoff data, which is public information.

Often, the opposite occurs, and the properties are listed for far less than fair market value or the amount owed on the mortgage to encourage "lowball" offers, and a representation is made to the mortgage holder that the property won't sell for more. We have heard of still other situations where a representation was made to the mortgage holder that a property was on the market, but the property was never entered into the MLS, no ads were placed, and no signage was put up.

Many times, the "buyers" in these transactions are either actively seeking or already have subsequent buyers lined up for undisclosed "flips". In all these situations, the mortgage holder is misled about the status of the market and may accept an offer in reliance on these misrepresentations.

4. The mortgage holder wants to see all the offers to make an informed decision on what is best for its mortgage investors.

The mortgage holder agrees to consider a short sale in exchange for the right to consider all offers on the property, not just the offer that is the most favorable to the licensee or flipper. The seller is asking for a favor, and the mortgage holder must be satisfied before granting that favor.

At closing, the seller may be required to sign an affidavit or other disclosure stating all offers were presented to the mortgage holder. The seller would have liability if the lender learned there were other undisclosed offers on the property. If the property could have sold for more money, the mortgage holder and its investors may have a claim for money damages and/or fraud.

A real estate licensee could be subject to disciplinary action for suggesting that his customer or client withhold offers from the lender. If the seller is licensee's client, the licensee has a duty to represent the seller's best interests. Subjecting the seller to a lawsuit, allowing him to commit perjury, or implicating him in a fraudulent transaction is not in the seller's best interest.

Keep in mind that when the ultimate buyer comes along, he will likely want to finance the purchase. A new mortgage lender may not finance a property that is part of a flip. Failure to disclose this information to a new lender could result in a double contract. Full disclosure is the best safety measure a licensee can take. Don't put yourself into the position of determining what an underwriter doesn't need or want to know.

C. There are legitimate ways to profit from short sales.

Unfortunately, many questionable practices have been reported in the short sale realm, involving both real estate licensees and unlicensed participants. It is impor-

tant for Idaho real estate licensees to keep their designated brokers in the loop on all transactions and report questionable activity. The Real Estate Commission is also available as a resource, although the Commission does not approve or recommend business models.

1.) Buy a short sale property on the competitive market. Allow the mortgage holder to consider all offers.

2.) Close the transaction. Record the deed and take possession of your property.

3.) What you do from here is your business. You may want to spruce the place up a bit, allow six months for deed seasoning, and resell it. The point is: **don't market it until you actually own it.**

4.) Disclose, disclose, disclose. Tell all parties, especially the mortgage holder, exactly what is being done and what the intentions are. Put all disclosures in writing in the Purchase and Sale Agreement, so the mortgage holder is sure to see them. It's also a good idea to keep proof that you made these disclosures. If the mortgage holder wants to go through with the deal, at least they made an informed decision. A licensee is only responsible for fair dealings.

Frequently Asked Questions

For Individuals Purchasing or Selling Properties Subject to a Short Sale Approval

Question – *What triggers a licensing requirement under the Idaho Residential Mortgage Practices Act for an individual or company when dealing with a residential real property that may be subject to a short sale approval from a lender?*
Answer – A license from the Idaho Department of Finance is required when, in a third-party capacity for compensation or gain or in expectation of such, a person offers or undertakes to affect a compromise or an adjustment of a homeowner's residential mortgage loan. The following are examples of activities that require a license:

1. A person who is not an Idaho real estate licensee communicates with the homeowner's lender, in a representative capacity for the homeowner, for the purpose of affecting a compromise or adjustment of the homeowner's residential mortgage loan.

2. A person who is not an Idaho real estate licensee obtains personal financial information from a homeowner and, in a representative capacity for the homeowner, communicates that information to the homeowner's lender for the purpose of obtaining a compromise or adjustment of the homeowner's residential mortgage loan.

3. A person who is not an Idaho real estate licensee obtains authorization from a homeowner for the release of personal, private, financial information and uses such authorization and information in a representative capacity for the homeowner to negotiate, (i) a release of the lender's lien on property in consideration of the payment of less than the amount owed by the homeowner pursuant to a residential mortgage loan; (ii) a waiver by the lender of any amounts to be paid pursuant to a residential mortgage loan; or, (iii) the settlement of an existing residential mortgage loan on terms which differ from the original terms of the loan.

Question – *Does a person need to obtain a license from the Department of Finance solely for the act of purchasing or selling a residential property that is subject to a short sale approval?*
Answer – No. When not acting as a representative of a homeowner/seller to affect an adjustment or compromise of the homeowner's/seller's mortgage loan, an individual or company that purchases a residential real property subject to a short sale approval by a lender, does not need a license from the Department to make such a purchase or to resell the property.

Question – *I read the default notices in the paper or search through courthouse records to identify distressed properties. I have a homeowner deed his home to me (or place the property in a trust, or give me a power of attorney) to stop the foreclosure. Then I attempt to sell the home for a profit. The mortgage is still in place against the property, however, and the distressed homeowner is still liable on the mortgage. Do I need a real estate license?*
Answer – Yes. Although every situation is fact specific, this appears to be a business model where you are engaging in unlicensed real estate brokerage because you are attempting to procure buyers and sellers for compensation. It is also likely the Commission would consider you to be in violation of the license law for using an exception to licensure to circumvent the requirement that you be licensed to conduct brokerage activities.

Question – I *have an Option to purchase a specific property, and I want to market it for sale. When I find a buyer, I will exercise my Option rights and do a simultaneous closing with the second buyer. Do I need a real estate license?*
Answer – Yes. Your rights as an Option holder do not give you an ownership interest in the property. Dealers in options are required to hold an active Idaho real estate license. You should also note that, to be enforceable, an option to purchase must meet the statute of frauds requirements.

Question – *I make offers to buy distressed properties. Then I go to the seller's mortgage holder and negotiate a short payoff of the loan. Once I get a payoff number, I market the property to a new buyer. This helps the seller avoid foreclosure. I keep the money I make on the sale to the new buyer. Since I'm buying these properties for myself, I don't need a real estate license, right?*
Answer – Wrong! If you do not intend to close on the purchases unless you procure new buyers for resale, you are likely engaging in real estate brokerage activity and using the offers to purchase as a way to circumvent the real estate license law.

For Real Estate Agents

Question – *Is a real estate licensee required to obtain a license from the Idaho Department of Finance if he negotiates with a lender to obtain a short sale approval on behalf of his client or customer?*
Answer – No, unless the real estate licensee is paid by the lender or his agent for such negotiation services (as opposed to receiving a commission on the real estate transaction). Otherwise, a real estate licensee, whether directly representing a homeowner in a real estate transaction or representing other parties in a real estate transaction, is excluded from licensure for the activities of negotiating a short sale approval with a lender or the lender's agent on behalf of a homeowner.

Question – *If a real estate licensee forms a company that conducts the activities subject to licensure by the Department of Finance, is the company also excluded from licensing by the Department based on the real estate agent's exclusion?*

Answer – No. If a real estate licensee forms a company whose business activities include offering or undertaking, in a third-party representative capacity, to affect compromises or adjustments of homeowners' residential mortgage loans for compensation or gain, or in expectation of such, the company is subject to licensure as a mortgage broker under the Idaho Residential Mortgage Practices Act.

Question – *I'm a licensed real estate agent who buys properties subject to a short sale. If I also negotiate the short sale approval with the lender or the lender's agent on behalf of the homeowner/seller, is a license required from the Idaho Department of Finance?*
Answer – No. The Idaho Department of Finance recognizes that when a licensed real estate agent is a party to a purchase or sales transaction, his or her act of negotiating an adjustment or compromise to the homeowner's residential mortgage loan is authorized under his or her real estate license and excluded from the licensing requirements of the Idaho Residential Mortgage Practices Act.

Question – *I am an Idaho real estate licensee who negotiates short sale approvals with lenders or their agents on behalf of my clients. My assistant does much of my clerical work, faxing documents or making document submissions on my behalf. Does he or she need any special license?*

Answer – No. As long as an assistant performs only clerical or administrative functions, and does not engage directly or indirectly in negotiations with a lender, or lender's agent, no license is required from the Department of Finance.

Question – *I am a real estate licensee who negotiates short sale approvals with lenders or their agents on behalf of my clients. I also want to offer assistance to consumers in obtaining modifications to the repayment terms of their existing loans without the modification resulting in a real estate transaction, such as a short sale. Do I need a license from the Department of Finance?*
Answer – Yes, if such modification activity is conducted for compensation or gain or in the expectation of compensation or gain, and is not an activity for which a real estate license is required. However, an Idaho licensed real estate agent, or anyone else, may offer mortgage loan modification services without the need for licensure so long as such services are provided for no direct or indirect compensation or gain.

Question – *What if a homeowner utilizes a licensed real estate agent to negotiate a compromise of the terms of the homeowner's mortgage loan in a short-sale transaction after the homeowner has failed to qualify for a mortgage loan modification? Does the real estate agent need a license from the Department of Finance where the real estate agent receives no compensation from the lender or the lender's agent?*
Answer – No. A real estate agent may engage in negotiating a short sale approval as a real estate agent representing a buyer or a seller under the scope of the agent's real estate license without the requirement of a license from the Department of Finance, so long as the real estate agent is not compensated by the lender, or lender's agent, for the agent's negotiation activities.

Question – *I obtained a Warranty Deed to a property where the seller is behind on his mortgage payments to stop his foreclosure. Next, I immediately made an offer and forwarded it to the seller's mortgage holder to start the short sale process while I try to find a buyer for the property. I told my broker what I'm doing. He told me to ask if it is OK for me to put this property on the MLS?*
Answer – Hmmm….. Why would you need to make an offer on a property that you already hold a deed to? In addition, most lenders do not appreciate having property in

which they hold a security interest conveyed to someone else without their consent or knowledge. If you do not intend to go through with the purchase unless you find a new buyer, and you don't make full disclosure to the mortgage holder regarding your plans, you may be subject to disciplinary action by the Real Estate Commission.

Question – *Can I have sellers sign blank Purchase and Sales Agreements that I will fill out once I know what the mortgage holder will accept?*
Answer – No. Under Idaho's Consumer Protection Act, having consumers sign blank documents is illegal. The Attorney General's office is charged with enforcing the Consumer Protection Act, and they could get involved. The Real Estate Commission will pursue a violation of Dishonest and Dishonorable Dealing for any licensee involved with this activity. If it is illegal, it is certainly dishonest.

Question – *A client of mine just bought and closed on a property where the seller had to have the mortgage holder take a short payoff. He wants me to list it for him and wants to make a $20,000 profit. Is this legal?*
Answer – Yes. Once a person has actually paid money for and closed on a property (including recording of the deed), what he does with the property is his own business. You may have some problems reselling quickly, however, because a new lender may want more "seasoning" on the deed. You should research several lenders to see if this is a road block to selling the property. It should not be a concern after six months in any case.

Question – *I have been approached by a short sale investor to list several properties he is in the process of purchasing. I need the business, but I want to make sure I operate within the law. The investor assured me the Idaho Real Estate Commission has reviewed and approved his program, so I don't need to worry about jeopardizing my license, right?*
Answer – Wrong. The Idaho Real Estate Commission does not approve business plans or investment models. When in doubt, check it out. Call the Enforcement Department of the Real Estate Commission.

Question – *I am a Designated Broker. I know one of my licensees just went through a messy divorce, and she is trying to sell the house as part of the divorce process. She needs to get her mortgage holder to agree to a short sale. She referred herself to another agent in the office who is now her listing agent. The listing agent asked me to pay a referral fee to the seller. Is this OK?*
Answer – Mortgage holders typically include a restriction in the short sale payoff letter that precludes a seller, no matter the personal problems, from receiving anything from a short sale transaction.

For Mortgage Brokers/Lenders and Loan Originators

Question – *Does my existing license allow me to conduct loan modification activities, including short sale negotiations in a third party representative capacity with a homeowner's lender or the lender's agent?*
Answer – Yes. Third-party loan modification activities, including short sale negotiations, are mortgage brokering activities for purposes of the Idaho Residential Mortgage Practices Act. A company that has obtained a license as a mortgage broker has the necessary licensure to engage in these activities and its licensed loan originators may conduct the activities on the company's behalf. A mortgage broker/lender licensee must submit to the Department of Finance an amendment to its license application filing to show that it will be engaging in such activities along with the forms it will

use to conduct the activities, and a description of its business activities along with a description of upfront fees, if any, it intends to charge.

Question – *If I have a loan originator license, may I conduct short sale negotiations with a lender or the lender's agent on behalf of a homeowner/seller even though I am not employed by a mortgage broker?*
Answer – No. A mortgage loan originator licensee who conducts short sale negotiations with a lender or the lender's agent on behalf of a homeowner/seller may only do so on behalf of either a licensed mortgage broker/lender or an exempt entity. Under the provisions of the Idaho Residential Mortgage Practices Act, individuals who wish to conduct these activities as a sole-proprietor must obtain a license as a mortgage broker for their sole-proprietorship and an individual license as a loan originator.

Question – *I have applied for a loan originator license, and I want to negotiate with a lender or the lender's agent on behalf of a homeowner/seller for the purpose of affecting a compromise or an adjustment of the homeowner's/seller's residential mortgage loan. Do I need to be supervised by someone with experience doing mortgage modifications, including short sales?*
Answer – In order to conduct business as a loan originator, an individual must obtain a license and work for a licensed mortgage broker/lender or an exempt entity. A mortgage broker/lender must demonstrate that it has a qualified person in charge of its operations who has at least three years experience in residential mortgage lending or brokering. This experience does not have to be specific solely to activities leading to compromises or adjustments of homeowner's/seller's residential mortgage loans.

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