

IDAHO REAL ESTATE COMMISSION

Guideline #6

Rev. 1/04

**GUARANTEED SALES PLANS (GSPs)**

A “guaranteed sales plan” (GSP) is defined as a written agreement between a broker and a seller whereby the broker agrees to purchase the seller’s property within a specified period of time and at a specified price if the property is not sold in accordance with the terms of the listing or on other terms acceptable to the seller.

This Guideline is intended to advise licensees how to advertise GSP’s without being misleading or creating misunderstanding.

1. No broker should offer any GSP or enter into any GSP unless the broker has adequate financial resources to meet the commitment. A broker offering a GSP should, if requested, provide to the seller proof that the broker has sufficient financial resources to satisfy his/her commitment.
2. Every Guaranty Sales agreement should be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.
3. A GSP should include a provision clearly stating that the broker’s obligation to purchase property is enforceable only at the option of the seller.
4. A broker offering a GSP should give good market exposure to each property covered by any such plan, and shall present to the seller all offers received for each property, up to and until the time of closing of the guaranteed sale.
5. Advertising. A broker offering a GSP is free to advertise and promote the plan as a service of the broker available to sellers who qualify. However, a broker may NOT advertise the plan in a manner that is likely to mislead the seller to believe that the plan is available without restriction or costs, unless the plan is indeed available without restriction or costs. Any advertisement of a GSP should include a conspicuous statement advising prospective sellers that if the seller is eligible, costs and restrictions will apply (unless none do), and advising the seller to inquire of the licensee as to the terms of the GSP.
6. Disclosures. Prior to taking any listing a broker offering a GSP should provide in writing to the prospective seller all of the details of such plan. These details should include the exact price that the broker will actually pay to purchase the property, or else the precise formula that will be used to determine that price, including an itemization of any and all costs taken into account in determining that price. These details should also include the exact circumstances under which the commitment to purchase will be honored, and the reason(s) for any difference between the listing price and the price which the broker agrees to pay.

7. The broker who advertises a GSP should, prior to taking any listing, advise the seller whether the seller qualifies for the plan, and if so, explain any restrictions, conditions and costs that apply to the seller. The broker is advised to obtain a signed written confirmation from the seller that the terms of the GSP have been explained, and that the seller understands that he does/does not qualify for the plan.
8. Brokers may NOT use a GSP as a misleading advertisement or as a false inducement to obtain a listing. A broker advertising a GSP, 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*. Excerpts from these advertising laws are set forth below.

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### **Idaho Real Estate License Law.**

Section 54-2053(4) of the *Real Estate License Law* provides:

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.

### **Idaho Rules of Consumer Protection:**

The Attorney General's Office has promulgated comprehensive *Rules of Consumer Protection*. Although many of the Rules deal with specific products (e.g., automobiles), there are some general rules defining and prohibiting unfair and deceptive practices, including "bait and switch" practices.

Violations of the *Rules of Consumer Protection* are pursued by the Office of Attorney General; however, those Rules may provide useful guidance to the Commission in determining whether a particular advertising practice is "misleading" within the meaning of the License Law.

Subchapter E, Rule 50, of the Consumer Protection Rules states that, "It is an unfair and deceptive act or practice for a seller to engage in bait-and-switch sales tactics." "Bait and switch" is defined to mean:

Advertising goods or services with the intent not to sell them but to lure the consumer to the seller's place of business and then switch the consumer from buying the advertised goods or services to other or different goods or services on a basis more advantageous to the seller.

The Rules regarding "bait and switch" further provide:

**051. INITIAL OFFER (Rule 51).**

It is an unfair and deceptive act or practice for a seller to create a false impression of the grade, quality, quantity, make, value, age, size, color, usability, availability, or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the consumer may be switched from the advertised goods or services to other goods or services. Even though the true facts are subsequently made known to the consumer, Subchapter E is violated if the first contact or interview is secured by a bait-and-switch offer.

**052. DISCOURAGEMENT OF PURCHASE OF ADVERTISED MERCHANDISE (Rule 52).**

It is an unfair and deceptive act or practice for a seller to discourage the purchase of the advertised goods or services as part of a bait-and-switch scheme to sell other goods or services. For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

**01. Refusal To Show.** The refusal to reasonably show, demonstrate, or sell the goods or services advertised or otherwise offered in accordance with the terms of the initial offer.

**02. Disparagement.** The disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or parts, or in any other respect, in connection with the advertised goods or services.

**03. Availability.** The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services to meet reasonably expected public demand, as defined in CPR 103, unless the advertisement clearly and conspicuously discloses that the supply of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. Issuing of “rain checks” of goods or offering comparable or better goods at the sale price will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory or the inadequate inventory was intentional.

**04. Refusal To Take Orders.** The refusal to take orders for the advertised goods or services to be delivered within a reasonable period of time.

**05. Showing Impractical Goods Or Services.** The showing or demonstrating of goods or services which are defective, unusable, or impractical for the purpose represented or implied in the advertisement.

**06. Compensation Plans.** The use of a sales plan or method of compensation for salesmen which is designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salesmen by use of a commission.

**053. SWITCH AFTER SALE (Rule 53).**

In the event of a sale of the advertised goods or services, it is an unfair and deceptive act or practice for a seller to attempt to “unsell” the advertised goods or services with the intent and purpose of

selling other goods or services in their stead, except when the parties are bargaining for a bona fide trade-in.

**054. PATTERN OF CONDUCT (Rule 54).**

The fact that a seller occasionally sells the advertised goods or services at the advertised price shall not constitute a defense to a charge that the seller has engaged in bait-and-switch tactics.

**055. LEADER ITEMS (Rule 55).**

Nothing in Subchapter E shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised.