

Leasing and Property Management

DRAFT – 8/12/13

AN ACT

RELATING TO THE REAL ESTATE COMMISSION LICENSE LAW; AMENDING TITLE 54, CHAPTER 20, IDAHO CODE, TO ADD A NEW SUBCHAPTER

Be It Enacted by the Legislature of this State of Idaho:

54-2098A. Short title. THIS SUBCHAPTER, Sections 54-2098A through 54-2099, Idaho Code, shall be known and may be cited as “Idaho Property Management License Law.”

54-2098B. Licensure required. No person shall engage in property management activities in this state without an active Idaho license therefor. An individual engaged in property management activities shall hold an active license as a principal property manager or as a property manager associated with a principal property manager. A business engaged in property management activities, whether a sole proprietorship or legal business entity, shall be licensed as a property management company and shall appoint an actively-licensed principal property manager to be responsible for the company as provided in this sub-chapter. Unless exempted from this chapter, any single act described within the definition of “property management activities” shall be sufficient to constitute “engaging in property management activities” within the meaning of this chapter. Any person who engages in property management activities in this state, with or without an Idaho property manager 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 in sections 54-2058 and 54-2059, Idaho Code. *[NOTE: This section allows the Commission to discipline people for unlicensed practice.]*

Comment [J1]: This section relies on the definition of “property management activities”, which is a defined term in the section below. We can easily tweak the definition if necessary. I’m just not sure what it would look like so I would need some help.

54-2098C. Exceptions to licensure -- Active licensees -- Transactions involving personal property.

(1) Exceptions to licensure. Except as otherwise stated below, an Idaho property manager license is not required for the following property management activities:

(a) Any act performed by a person (including a corporation, partnership, or limited liability company acting through its officers, partners, managers, or regular employees) for the person’s own account or use.

(b) The rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds,

1 or similar public accommodations for a period of less than thirty (30) consecutive days,
2 and the management activities associated therewith;

3 (c) The leasing or management of surface or subsurface minerals or oil and gas
4 interests, if the leasing or management is separate from a sale or lease of the surface
5 estate, or the management of agricultural property;

6 (d) Acts performed by officers or employees of any federal or state agency, of
7 political subdivision thereof, performed within the scope and course of authority or
8 employment;

9 (e) Acts performed by an actively licensed Idaho real estate broker or salesperson
10 incidental to the licensee's listing or sale of a property;

11 (f) Acts performed by a duly authorized attorney in fact whose power of attorney
12 is granted for the purpose of conducting the management of a single transaction involving
13 a single or undivided interest in real property;

14 (g) Acts performed by the following parties only if such acquisition or
15 disposition is undertaken in the performance of their duties as:

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

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

18 (iii) Any person managing property being sold pursuant to the default
19 provisions of a deed of trust, or any duly authorized agent thereof. [NOTE: I
20 guess this refers to lenders renting out REOs, but I am not sure this is worded
21 correctly. It might be a pretty broad exception.]

22 (h) Acts performed by an attorney at law in connection with client representation,
23 and if the attorney is not regularly engaged in property management activities.

24 (2) An actively licensed principal property manager or property manager must comply
25 with this chapter, regardless of whether the licensee otherwise qualifies for any of the exceptions
26 of subsection (1) of this section.

27 (3) Transactions involving personal property. An actively licensed property manager or
28 principal property manager who, while acting on behalf of another, for compensation or for a
29 promise or expectation of compensation, engages in any of the acts enumerated in section 54-
30 XXXX with respect to a mobile home, manufactured home or floating home as defined by Idaho
31 law, shall comply with sections 54-XXXX through 54-XXXX, Idaho Code, regardless of
32 whether such activity would otherwise require an Idaho property manager license.

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

36 54-2098D. Definitions.

37 As used in sections 54-2098A through 54-2099, Idaho Code:

38 (1) "Account" shall mean an account opened and maintained at an approved financial
39 institution.
40

Comment [s2]: In an effort to be more specific, how about language that "Any person, who is an employee or designated agent of a beneficiary of a deed of trust, who is managing property either during the period prior to the issuance of a trustee's deed or who is managing property currently owned by the beneficiary of a foreclosed deed of trust. So if an unlicensed PM said he was the duly authorized agent of the bank, would that relieve him of the duty to be licensed? How would we determine whether someone was using this as an exception in order to evade licensure?"

Comment [j3]: (from Steve) Maybe language like "full time employee of the financial institution, court appointed receiver or licensed under other provisions of the real estate license law"

Comment [j4]: (from Steve) Agreed, having a "common" carrier probably makes it easier for current licensees to "add" coverage for property management.

1 (2) “ACH” as used in this chapter shall mean an electronic transfer of funds into or out of
2 an “account.”

3 (3) “Check register” or “journal” shall mean the physical or electronic record where all
4 receipts into and disbursements from a principal property manager’s trust account are recorded.

5 (4) “Ledger card” shall mean the physical or electronic record where all receipts and
6 disbursements for the benefit of an individual property owner are recorded.

7 (5) “Principal property manager” means an individual who, while acting for another, for
8 compensation or a promise or an expectation thereof, engages in property management activities
9 and who is qualified and appointed by the property management company to be responsible for
10 the activities of the property management company, including its accounts and record keeping in
11 accordance with this chapter.

12 (6) “Principal property manager course” means the course that is required in order to
13 obtain a principal property manager license which teaches business practices and office
14 operations of the property management company, including recordkeeping and trust account
15 procedures and the laws governing those practices. A principal property manager course must
16 contain no more than eight (8) hours of instruction.

17 (7) “Property management activities” means and includes the following:

18 (i) collecting or agreeing, offering, or attempting to collect rent for rental real
19 estate and accounting for and disbursing the money collected; or

20 (ii) authorizing expenditures for repairs or improvements, including capital
21 improvements, to rental real estate; or

22 (iii) if performed incidental to either of the above:

23 (a) advertising for, arranging, negotiating, offering, or otherwise
24 attempting or participating in a transaction calculated to secure the rental or
25 leasing of real estate; or

26 (b) accessing or entering otherwise secure properties, or exercising control
27 over keys or security, for performing maintenance on or showing properties for
28 rent to prospective tenants.

29 (8) “Property management company” means a business, whether a sole proprietorship, a
30 legal business entity, or any other licensed person engaged in acts requiring an Idaho property
31 manager license, and which is conducting or holding itself out as conducting the business of
32 property management through its principal property manager.

33 (9) “Property manager” means any person who, while acting for another, for
34 compensation or a promise or an expectation thereof, engages in property management activities
35 and is licensed under, associated with, and represents a principal property manager.

36 **54-2098E. Types of property manager licenses – active and inactive license status.**

37 ***[NOTE: This is the same set of requirements as for real estate licensees.]***

38 (1) The commission may issue an Idaho property manager license or principal property
39 manager license to any individual and may issue a property management company license to any
40

1 sole proprietorship or legal business entity in accordance with the requirements of sections 54-
2 XXXX through 54-XXXX, Idaho Code.

3 (2) A licensee who is a principal property manager or associated with a principal property
4 manager shall hold an active license. A licensee who has paid all applicable fees, who is not
5 associated with a principal property manager, and who holds a current license that is not
6 revoked, suspended or terminated shall hold his license on active status. During the period that
7 the license is inactive, a licensee shall not engage in property management activities.

8 (3) A licensee seeking to change from active license status to inactive license status shall
9 have the principal property manager submit a change of status application to the commission in
10 the form and manner approved by the commission.

11
12 **54-2098F. [Errors and omissions/liability??] insurance. [NOTE: We have not yet figured out**
13 **this section, but we have it here as a placeholder.]**

14 (1) A licensee who is actively licensed under this chapter as a property manager,
15 principal property manager or property management company shall, as a condition to licensing,
16 carry and maintain errors and omissions insurance to cover all licensed activities under the
17 provisions of this chapter.

18 (2) A licensee seeking to obtain or renew an active license or reactivate an inactive status
19 license shall certify to the commission that he is in compliance with the insurance requirements
20 of this section. Upon request by the commission the licensee shall produce for inspection a
21 certificate of coverage, signed by an authorized agent or employee of the insurance carrier,
22 reflecting proof of insurance meeting the requirements established by the commission. Requests
23 for certificates shall be sent by first class mail to the licensee's business or residence address as
24 reflected by the commission's records and a copy of the request shall be sent to the licensee's
25 principal property manager, if any. A licensee failing to produce a certificate of coverage within
26 thirty (30) days of a request to do so may have his license inactivated by the commission and
27 shall not be entitled to reactivate the license unless and until he provides to the commission a
28 certificate of coverage reflecting proof of insurance. [NOTE: If there is an insurance
29 requirement established, there probably needs to be some minimum coverages established in
30 rule, similar to the real estate licensees.]

31 (3) The errors and omissions insurance policy obtained by the commission pursuant to
32 section 54-2013, Idaho Code, shall be deemed to meet the insurance requirements of this section.

33
34 **54-2098G. Minimum requirements for an individual property manager license. [NOTE:**
35 **This is the same set of requirements as for real estate licensees.]**

36 (1) Requirements for all individual property manager licenses. Unless a qualification is
37 waived or modified by the commission for good cause and upon special consideration, an
38 individual seeking an Idaho property manager license or principal property manager license shall
39 meet the minimum qualifications established in section 54-2012, Idaho Code.

Comment [s5]: I believe the currently approved provider has a rider for property management and requiring insurance is a good thing.

Comment [j6]: I recall there was discussion about what kind of insurance was the "right" kind for the PMs to have, and I just wanted to make sure this was correct. If it's the same type of E&O we already have for real estate licensees, we are all set because we already have the coverage requirements in rule. This language is identical to what we have in our real estate license law for brokers and salespersons.

1 (2) Licensing on active status. If licensing on active status as a property manager,
2 provide the name and physical address of the main business location of the licensed principal
3 property manager with whom the applicant will be associated, and the signature of that principal
4 property manager. If licensing on active status as a principal property manager, provide the
5 name and physical address of the property management company. No Idaho property manager
6 may be licensed under or associated as a property manager with more than one (1) Idaho
7 property management company at a time.

8 (3) [E&O requirement] If licensing on active status, provide satisfactory proof of
9 meeting the mandatory errors and omissions insurance requirement for property manager
10 licensees as stated in section 54-XXXX, Idaho Code.

11 (4) Additional requirements for principal property manager license. Applicants seeking
12 an Idaho license as a principal property manager shall meet the additional following
13 qualifications:

14 (a) Identify a business name for the property management company and a
15 physical location where the business records are maintained.

16 (b) Complete the commission-approved principal property manager course within
17 three (3) years immediately prior to the date the application for license is submitted to the
18 commission.

19 (c) Submit a new fingerprint card for processing and pay associated fees, even if
20 currently licensed in Idaho as a property manager.

21
22 **54-2098H. Idaho licenses for legal business entities and sole proprietorships operating a**
23 **property management company -- Additional requirements. [NOTE: This is the same set of**
24 **requirements as for real estate licensees.]**

25 (1) Legal business entities. Each legal business entity engaging in property management
26 activities in this state shall be licensed by the Idaho real estate commission and shall make proper
27 application, pay all required fees and meet all requirements listed below.

28 (a) A legal business entity conducting business as a property management
29 company shall appoint a properly licensed principal property manager who shall be held
30 responsible for the activities of the licensed entity.

31 (b) The individual appointed as principal property manager for the property
32 management company shall, within three (3) years immediately prior to the designation,
33 satisfactorily complete a commission-approved principal property manager course.

34 (c) The principal property manager shall also hold the following legal position
35 within the licensed entity:

36 (i) Corporation -- an officer;

37 (ii) Partnership or limited partnership -- a general partner;

38 (iii) Limited liability company -- a member or manager.

39 The principal property manager for any business entity shall have full authority to act on
40 behalf of the licensed business entity and shall submit sufficient and satisfactory proof

1 thereof with the application for license. Such proof shall include a list of the entity's
2 officers, directors, members or managers, as reflected in the minutes, resolutions or other
3 similar business documents of the entity. All acts of the individual as principal property
4 manager shall be considered acts of the licensed business entity. Nothing in this section
5 is intended to create liability to a legal business entity for illegal or fraudulent acts by the
6 principal property manager performed solely on his own account.

7 (d) A license issued to a legal business entity, as defined in this chapter, is
8 effective only as long as the license of the individual appointed as principal property
9 manager remains on active status and in effect. If the individual so appointed has his or
10 her property manager license refused, revoked, suspended or otherwise made inactive by
11 the commission, or if the principal property manager voluntarily surrenders the individual
12 license or ceases to be connected with the entity in the manner required above, the
13 business entity shall have ten (10) business days in which to appoint another qualified
14 individual as principal property manager before the entity's license is terminated, and the
15 licenses of all associated licensees are made inactive.

16 (e) One (1) individual may act as principal property manager for more than one
17 (1) licensed business entity; however, all entities shall have their main offices in the same
18 physical location.

19 (f) Satisfactory proof of mandatory errors and omissions insurance shall be
20 provided for both the principal property manager and the licensed business entity.

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

24 (2) Sole proprietorships. A property management company that is not a legal business
25 entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietorship.
26 Each sole proprietorship seeking a property management license shall meet all of the following
27 requirements:

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

31 (b) Satisfactory proof of mandatory errors and omissions insurance shall be
32 provided for the principal property manager of a sole proprietorship;

33 (c) A principal property manager shall have satisfactorily completed the
34 commission-approved principal property manager course within three (3) years
35 immediately prior to the application for license.

36 (3) Dual licensure permitted.

37 (a) A legal business entity or sole proprietorship licensed as a real estate
38 brokerage company may also be licensed as a property management company, provided
39 that only individuals who hold an active property manager or principal property manager
40 license may engage in property management activities.

1 (b) Individuals. An individual licensed as a broker or salesperson may also be
2 licensed as a property manager or principal property manager.

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

5
6 **54-2098I. License Period and License Fee – Effective Dates – License Renewals – Fees**
7 **Nonrefundable** [NOTE: This is essentially the same set of requirements as for real estate
8 licensees but there is an opportunity to discuss how this would work if it could/should be
9 different.]

10 (1) License period and license fee.

11 (a) [annual or two-year renewal on the same date every year like December 31?
12 Or the same as real estate licensee where it's staggered by birthday month?
13 [Also provision for business entities.]

14 (b) The license fee for each year or portion thereof for which an active or inactive
15 license is issued or renewed shall be an amount not to exceed fifty dollars (\$50), the exact
16 fee to be established by administrative rule of the commission. [Kim's NOTE: the bi-
17 annual license fees will be added to IDAPA Rule 100 as follows: \$50 for principal
18 property manager; \$50 for property manager; and \$50 for property management
19 company]

20 (2) Issuance of the license and effective dates. A property manager license, including a
21 license renewal, shall be deemed issued, and any requested license changes shall become
22 effective, when the completed application, attachments and any required fee are received at and
23 approved by the commission. An application that is incomplete or lacking the required fees shall
24 be returned to the applicant and no license shall be issued or renewed until a completed
25 application and all required fees are received at and actually approved by the commission. A
26 property management company is not required to obtain, display or possess a physical license
27 certificate as evidence of active licensure; however, the commission may make license
28 certificates available for a fee as authorized by this chapter. A property management company
29 shall not display or otherwise make available to the public a license certificate for any individual
30 who does not hold an active license with the property management company.

31 (3) License renewal. Each license shall be renewable for a period of two (2) years by
32 timely submitting a completed application. Applications for license renewal must be received at
33 the commission office on or before 5 p.m. M.T. of the expiration date. A completed application
34 must include:

35 (a) payment of all renewal fees established by this chapter or by the commission;
36 and

37 (b) if renewing an active license, certification that the applicant has met the
38 mandatory errors and omissions insurance requirement for property manager licensees as
39 set forth in section 54-XXXX, Idaho Code.

1 (4) Late renewal. If the licensee fails to submit a completed application for renewal or
2 pay the renewal fee on or before the expiration date, the commission may accept a later
3 application or payment of the fee, subject to such conditions as the commission may require
4 including, but not limited to, the assessment of a late fee; provided that between license
5 expiration date and the date of renewal of the license, the rights of the licensee under such
6 license shall be expired, and during such period of expiration it shall be unlawful for any licensee
7 to do or attempt to offer to do any of the acts of the kind and nature described in the definition of
8 property manager or principal property manager in **section 54-2098D**, Idaho Code, in
9 consideration of compensation of any kind or expectation thereof. An expired license that is not
10 renewed within one (1) year of the expiration date shall be automatically terminated by the
11 commission and may not be renewed.

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

14
15 **54-2098J. Property management companies - principal property manager.** *[NOTE: This is*
16 *almost the same set of requirements as for real estate designated brokers.]*

17 Each property management company shall appoint a licensed principal property manager who
18 shall be responsible for the company's compliance with the Idaho real estate license law. The
19 principal property manager is responsible for the actions of its licensees and associated
20 unlicensed persons performed within the course and scope of their employment **or agency**,
21 regardless of the location of the company's business or **where representation is conducted**.

22 *[NOTE: not sure what this means – a question for the lawyers who wrote it...]*

23 (1) A principal property manager is required to:

24 (a) Supervise and control, in the manner required by law and rule, all office
25 locations, and the activities of all licensees and unlicensed persons associated with that
26 property management company or for whom that principal property manager is
27 responsible;

28 (b) Review and approve all property management agreements and other
29 agreements relating to the management of the property;

30 (c) Be reasonably available to manage and supervise the property management
31 company during regular business hours. When a principal property manager is a regular
32 full-time employee or is engaged in a full-time activity at a location other than where the
33 property manager is licensed to do business, a presumption will be made that the
34 principal property manager is unable to manage and supervise the property management
35 company in accordance with these requirements, and no associated property manager
36 shall be licensed under the principal property manager until such presumption is
37 overcome by evidence to the contrary, satisfactory to the commission.

38 (2) A principal property manager shall not allow any person who is not properly licensed
39 as a property manager to act as a property manager on his behalf.

40

1 **54-2099A. Property management agreement required.** A property manager shall not engage
2 in property management activities without a written property management agreement between
3 the principal property manager and the property owner. A property management agreement
4 required by this section shall contain:

5 (1) The licensed business name, license number and address of the property management
6 company managing the property;

7 (2) The name and address of the property owner;

8 (3) The address or legal description of the property being managed and the number of
9 units;

10 (4) Instructions for depositing rents and other consideration received, including
11 instructions for establishing new or separate accounts for the managed property;

12 (5) The duties and responsibilities of the property manager and the property owner;

13 (6) The authorities and powers given by the property owner to the principal property
14 manager;

15 (7) The date when the property management agreement begins and ends, including the
16 terms for automatic renewal, if any, and the method for early termination of the agreement;

17 (8) The amount of the management fees to be paid to the principal property manager, or
18 a description of how management fees will be calculated;

19 (9) The method for allocating, between the property owner and the principal property
20 manager, any application fees, screening fees, or other fees to be collected or received by the
21 principal property manager;

22 (10) The amount of or the method for determining the minimum security deposit to be
23 collected from tenants for each unit managed;

24 (11) The name and address of the depository where the principal property manager's
25 trust account is maintained, and the name and address of the depository for any separate account
26 for the managed property;

27 (12) A description of the monthly statements of accounting to be provided to the property
28 owner or, in the alternative, exemplars of the financial reports and statements typically employed
29 by the property manager in managing similar type and size properties;

30 (13) The signature and date of signature of the property owner and the principal property
31 manager; and

32 (14) A unique property number assigned to the managed property.

33
34 **54-2099B. Entrusted property – when funds to be deposited.**

35 (1) A principal property manager shall be responsible for all moneys or property
36 entrusted to that property manager or to anyone representing the principal property manager. For
37 purposes of this section, moneys or property shall not be considered "entrusted" when the
38 property owner has instructed the principal property manager, in writing, to transfer such moneys
39 or property to the property owner or to a third party, or if the principal property manager or his

Comment [J7]: Steve wants to discuss further to avoid a "shopping list" of duties and responsibilities.

Comment [J8]: Steve suggests changing this to language for who holds the security deposits and who is entitled to the interest, etc.

Comment [J9]: Steve wrote this part, and he says: Typically, these are provided to a an owner before the property manager is hired and are used by the owner to evaluate the sufficiency of the information.

Comment [J10]: This entire section ONLY applies if money or other property is placed in the care and custody of the property manager. If an owner has specified in the PM agreement that the money goes to him directly, then this section would not apply. Anything placed in the care or custody of a tenant would not be entrusted property.

1 licensees have no right to exercise control over the safekeeping or disposition of said moneys or
2 property.

3 (2) Unless otherwise instructed by the parties in writing to deposit entrusted moneys on a
4 later day, the principal property manager shall deposit entrusted moneys as soon as practicable,
5 but in no event later than 72 hours after receipt, into a neutral, qualified trust account and shall
6 properly care for any entrusted property.

7 (3) The principal property manager shall remain fully responsible and accountable for all
8 entrusted moneys and property until a full accounting has been given to the appropriate parties,
9 whether the property owner or the tenant.

10
11 **54-2099C. Property management trust accounts.** A principal property manager may
12 establish one (1) or more property management trust accounts which must meet all requirements
13 of this chapter, including the following:

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

19 (2) Each trust account must be identified on checks, deposit slips, and at the depository
20 by the name of the principal property manager or other designation that makes clear the funds are
21 trust funds.

22 (3) Each trust account must be established and maintained under the licensed business
23 name of the principal property manager and shall be under the full control of the principal
24 property manager.

25 (4) Each trust account must have a separate and complete set of records, including a
26 monthly accounting of deposits, bank charges, and withdrawals or checks. The principal
27 property manager is responsible for ensuring that these separate account records can be provided
28 by the depository.

29 (5) Funds deposited in a trust account must be subject to withdrawal on demand at the
30 order or direction of the principal property manager at all times.

31 (6) Unless the trust account is for a licensee's own use to manage property owned by
32 him, a commission-approved form giving notice of opening a property management trust account
33 and giving authorization for the commission to inspect the account must be completed for each
34 trust account, signed by the principal property manager and an officer of the bank or depository
35 and returned to the commission.

36 (7) No deposits to the property management trust account shall be made of funds that
37 belong to the principal property manager or the property management company, except that the
38 principal property manager may deposit his own or company funds for the purpose of opening
39 and maintaining the account and for the payment of anticipated bank service charges for the trust
40 account. In no event shall the balance of principal property manager or firm funds in the account

Comment [j11]: We need to have a definition of "entrusted property" and this is the same verbiage used in the broker/salesperson section of the license law.

Comment [j12]: Steve says: This is going to be tough because of the difference between residential and commercial spaces. I guess I would say if the parties think the property significant enough to inventory and track, this applies otherwise it doesn't i.e. if there are golf carts on the property for maint. Tracked. If there are bug killing, consumable supplies, not tracked.

Comment [j13]: If a PM sets up one or more of his own trust accounts, then this section applies. Otherwise, it does not.

Comment [j14]: Steve says: IN my situation, there is a "master account" and all of the sub-accounts for each property/ownership group. Technically, it is my account. Maybe a consent form that is one form for all accounts held at a particular financial institution and disclosure of all financial institutions where accounts are maintained

1 exceed three hundred dollars (\$300). Maintenance funds shall not be disbursed for any purpose
2 other than to cover bank charges charged directly to the trust account by the bank.

3
4 **54-2099D. Trust account checks, check registers, and deposit records.** For each property
5 management trust account held, owned, controlled or managed by the principal property manager
6 for the benefit of any property owner, the principal property manager shall maintain:

7 (1) Consecutively numbered checks for each account which shall include the managed
8 property account number on the face of the check and be imprinted in such a manner as to make
9 clear that the account is a trust account. Checks must include either:

10 (a) The principal property manager's licensed business name and address and the
11 words "property management trust account;" or

12 (b) The name of the property owner "in care of" the principal property manager's
13 licensed business name and address, where the principal property manager maintains
14 separate accounts for each managed property.

15 (2) A check register or journal, which must be maintained and kept current by the
16 property manager at all times **even if funds are held at another approved depository.** [NOTE:
17 *Don't know what this means – a question for the person who drafted it.*] The register or journal
18 may be physically or electronically maintained and must itemize deposits and disbursements in
19 consecutive order, including:

20 (a) The date of the deposit or disbursement;

21 (b) For deposits, a unique transaction or "batch" number;

22 (c) The payee or payor;

23 (d) The amount and purpose of the deposit or disbursement;

24 (e) For checks, the check number;

25 (f) The property management account number; and

26 (g) The current cash balance remaining in the property account.

27 (3) A hard copy duplicate bank deposit record. If separate accounts are not maintained
28 for each managed property, the deposit record shall be imprinted with the principal property
29 manager's licensed business name and the words "property management trust account." Each
30 deposit record shall state:

31 (a) The name of the person or firm placing the money with the property
32 management company;

33 (b) The date of the deposit;

34 (c) The managed property account number; and

35 (d) Whether any portion of the funds are cash, and if so, proof that a receipt was
36 provided to the cash payor.

37 The duplicate deposit record shall be retained in the bank deposit records in chronological
38 sequence and shall be date stamped by the bank, or the bank deposit receipt shall be attached to
39 the duplicate deposit record in the deposit records.

Comment [J15]: Again, this applies only to PM trust accounts... Section 2099E(10) below provides a "safe harbor" for those who are set up to do electronic banking. I think this section is workable for those who buy blank check stock and print checks as they go. I'm not sure about the deposit records, though.

1 **54-2099E. Property management trust account recordkeeping and reconciliation**
2 **requirements – safe harbor provisions.** Each principal property manager engaging in property
3 management activities shall create and maintain records for each property management trust
4 account as follows:

5 (1) A separate ledger card for each demisable space within a managed property, upon
6 which shall be recorded all funds received on behalf of the building owner, including but not
7 limited to rents, security deposits, interest, and any other funds received on behalf of the property
8 owner, and all disbursements from said account, with sufficient information to identify the
9 identity of the payee, the purpose of the payment, and the amount of the payment. Deposits and
10 disbursements shall be recorded on ledger cards no later than 72 hours after the receipt or
11 disbursement. Each ledger card shall include the following information:

- 12 (a) The name or names of the owner of the managed property;
- 13 (b) The address or legal description of the property;
- 14 (c) Identification of tenant currently occupying the demised space;
- 15 (d) The date of each deposit;
- 16 (e) The amount and nature of each deposit, including a transaction or “batch”
17 number;
- 18 (f) The managed property account number; and
- 19 (g) The name of every payor or payee for monies collected or disbursed on behalf
20 of this property, including the monthly management fees and property owner proceeds.

21 (2) A separate ledger card for each account identified as the “trust account maintenance
22 fund” shall be initiated when the principal property manager’s or company’s funds are initially
23 deposited into the trust account. Additions or deductions to trust account maintenance funds
24 shall be posted to the ledger records as soon as the principal property manager is given notice of
25 the deposit or deduction. The balance on the maintenance fund ledger shall be kept current at all
26 times. If the written property management agreement makes the property owner responsible for
27 all costs associated with maintaining a trust account held by the principal property manager on
28 behalf of the property owner, the principal property manager shall be excused from the
29 requirement of creating this ledger.

30 (3) Complete financial reporting records, including, but not limited to the following:
31 general ledger, profit and loss statement, check registers, and such other records as the property
32 owner and property manager agree and specify in writing between them, all of which shall be
33 kept and maintained in the form of sufficiently detailed records to allow the tracking, tracing,
34 authenticating and auditing of all funds, whether transferred by cash, check or electronic means.

35 (4) Physical or electronic copies of all invoices and receipts associated with the trust
36 account disbursements. The system used by the principal property manager shall include
37 sufficient information to allow the correlation of deposits to the items actually deposited and the
38 correlation of checks to payment of the invoices so the records allow for auditing of the account.

39 (5) Where funds are transferred by ACH or other electronic means that do not result in
40 the issuance of a check, the principal property manager shall maintain sufficiently detailed

1 records to allow the tracking, tracing, authenticating, and auditing of the electronically
2 transferred funds.

3 (6) A voided trust account check shall be marked “VOID” and retained in numerical
4 sequence with the other checks for the banking month.

5 (7) Reconciliation and balance of accounts. At least once each month, each principal
6 property manager is required to reconcile and balance each trust account with all ledger records,
7 the check register and the bank statement.

8 (8) Record retention requirement. All records required in this section must be kept by the
9 principal property manager for three (3) calendar years after the year in which the event
10 occurred, the property management agreement terminated, all funds were disbursed, or the
11 agreement and any written extension expired.

12 (9) An electronic record keeping system is required to have a generally accepted and
13 adequate backup system in use at all times.

14 (10) Safe harbor – electronic banking. A principal property manager who has entered
15 into a banking relationship with an approved institution and is utilizing electronic banking
16 services, including but not limited to ACH transfers and the remote or electronic deposit of
17 checks and payments by scanning said instruments, shall be deemed to be in compliance with the
18 provisions of this section if all of the requirements imposed by the financial institution in
19 connection with the electronic banking services are complied with on a timely basis and
20 sufficient records are maintained by the principal property manager. “Sufficient records” shall
21 mean all of the records generated in connection with the banking relationship for the three full
22 calendar years prior to the current year.

23 (11) Safe harbor – property management software. A principal property manager who
24 uses commercial software which is marketed and sold as property management software and
25 which provides all of the financial records, reports and information required by sections 54-
26 XXXX through XXXX, Idaho Code, provided all of the data is entered into the software on a
27 timely basis, shall be deemed to comply with the requirements of the act.

28
29 **54-2099F. Trust account disbursements - commingling prohibited.** All cash or like payments
30 in lieu of cash must be disbursed from a property management trust account only in accordance
31 with this section. Failure to comply with this section is a violation of license law and will subject
32 the property manager to discipline.

33 (1) Withdrawal of property management fee. A property manager shall disburse earned
34 management fees from the property management trust account at least once each month unless a
35 different schedule of disbursement is specified in the property management agreement.

36 (2) Disbursement or transfer by principal property manager. A property manager shall
37 not disburse funds from a property management trust account or security deposit account unless
38 there are sufficient funds in the ledger account against which the disbursement is made.

1 (3) A property manager may only transfer funds between two or more owner's ledger
2 accounts for the same owner if the owner has given prior written approval and the property
3 manager enters the transfer information in each of the affected ledger accounts.

4 (4) Entrusted moneys shall not be commingled with moneys from any other source,
5 except for that minimum amount that may be required to open and maintain the trust account or
6 as otherwise allowed by section 54-XXXX, Idaho Code.

7
8 **54-2098G. Licensees dealing with their own property.** Any actively licensed Idaho principal
9 property manager, property manager, real estate broker, real estate salesperson, or legal business
10 entity who owns the real estate being managed shall:

Comment [j16]: For discussion

11 (1) Disclose in writing to the property owner no later than at the time of negotiation of
12 the property management agreement that the licensee holds an active Idaho property manager
13 license;

14 (2) If a property manager licensee, notify the principal property manager with whom he is
15 licensed that he is managing his own property; and

16 (3) Comply with the requirements set forth in sections 54-XXXX through XXXX;
17 provided that a licensee who manages his own property is not required to use the principal
18 property manager's trust account and may establish one or more personal trust accounts for his
19 managed property.

Comment [j17]: Another item for discussion

20
21 **54-2099H. Final accounting.** As soon as practicable but in no event later than 60 days
22 following termination of the management relationship between the principal property manager
23 and the property owner, the principal property manager shall render a final accounting of all
24 funds held by the principal property manager for the benefit of the property owner and shall
25 disburse to the property owner, or as directed by the property owner, all of the funds belonging
26 to the property owner. Such accounting shall include all transactions following transfer of the
27 operational control of the managed property since the date of the last or final monthly accounting
28 through and including the transfer of all funds remaining in the possession or under the control of
29 the principal property manager.

30
31 **54-2099I. Records subject to audit.** Upon reasonable notice, the commission may conduct
32 periodic inspections and audits of the principal property manager's records, including financial
33 records, reports, bank statements and financial institution activity for the purpose of ensuring
34 compliance with this act. Any trust account records located outside the state of Idaho shall
35 promptly be made available to the commission upon request at the licensee's own cost and at the
36 location or in the manner requested by the commission.

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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 five (5) members appointed by the governor as follows: one broker (1) from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one broker (1) from the southeastern district... *[Maybe an opportunity to redraw these lines...]*; and one (1) property manager from the state of Idaho.

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

(1) Each member of the commission shall be either an actively licensed Idaho designated real estate broker or associate broker who has had at least five (5) years active license experience as a designated broker or associate broker in the real estate business in Idaho, or an actively licensed Idaho principal property manager who has had at least five (5) years active experience in the property management business in Idaho.

(2) ...

[NOTE: We have not discussed referral fees or how they should be addressed – below is the section of the real estate license law pertaining to broker and salesperson compensation, for reference.]

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, salesperson, or property manager, 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 a legal business entity, all of whose shareholders, members or other persons having a similar ownership interest are active real estate licensees. 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

1 be split with any party to the transaction in a manner which would directly or indirectly create a
2 double contract, as defined in this chapter, or which would otherwise mislead any broker, lender,
3 title company or government agency involved in the transaction regarding the source of funds
4 used to complete the real estate transaction or regarding the financial resources or obligations of
5 the buyer.

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

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

17 (5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the
18 use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section
19 [54-2004](#), Idaho Code, in connection with any regulated real estate transaction. Such conduct by a
20 licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall
21 subject the licensee to disciplinary action by the commission.

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

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

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

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

1 (b) The contractual relationship providing for the referral fee exists at the time the buyer
2 or seller purportedly referred by such person signs a written agreement with the Idaho
3 broker for the listing of the real estate or for representation by the broker, or the buyer
4 signs an offer to purchase the real estate involved in the transaction. It shall be unlawful
5 for any person including, but not limited to, a relocation company or company with a
6 relocation policy or benefits, to directly or indirectly threaten to or actually reduce or
7 withhold promised or expected employee or customer relocation benefits from a buyer or
8 seller in a regulated real estate transaction based upon a broker's participation in payment
9 of a referral fee or other fee.

10 (9) All fees must be paid through broker. No sales associate shall accept any commission,
11 compensation or fee for the performance of any acts requiring a real estate license from any
12 person except the real estate broker with whom the sales associate is licensed. However, if
13 authorized by the broker, a sales associate may pay all or any portion of the accepted
14 commission, compensation or fee to any other sales associate who is licensed with the same
15 broker. A broker may pay a former sales associate for services performed while the sales
16 associate was actively licensed with that broker, regardless of the former sales associate's license
17 status at the time the commission or fee is actually paid.
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1 **OTHER CHANGES THAT MIGHT BE NEEDED FOR THE LICENSE LAW**

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4 **54-2004**

5 (35). "Real estate broker" means and includes:

6 (a) Any person other than a real estate salesperson, who, directly or indirectly,
7 while acting for another, for compensation or a promise or an expectation thereof, engages in any
8 of the following: sells, lists, buys or negotiates, or offers to sell, list, buy or negotiate the
9 purchase, sale, lease, option or exchange of real estate or any interest therein or business
10 opportunity or interest therein for others;...

11
12 **54-2043.** Interest-bearing trust accounts. The broker or principal property manager may deposit
13 funds in a separate, interest-bearing trust account for a single transaction if directed in writing by
14 both parties to the transaction, and only if the following additional requirements are met:

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

18 (2) The deposit shall be made in the name of the broker or principal property manager, as
19 described above, and each such account shall contain only the funds relating to one (1)
20 transaction or managed property.

21 (3) The interest-bearing trust account, when created for this purpose, must allow for
22 withdrawal of the funds upon demand of the broker or principal property manager, unless all
23 parties direct otherwise in writing.

24 (4) There must be a written agreement signed by all parties to the transaction stating who
25 is to receive the interest accrued from the deposit. This agreement is to be retained by the
26 responsible broker or the principal property manager in the transaction file, with a copy given to
27 the parties to the transaction.

28
29 **54-2052.** Electronically generated agreements. Offers to purchase, counteroffers, acceptances,
30 leases and property management agreements may be electronically generated or transmitted,
31 faxed or delivered in another method and shall be deemed true and correct and enforceable as
32 originals.

33
34 **54-2053.** Advertising. (1) Only licensees who are actively licensed in Idaho may be named by an
35 Idaho broker or principal property manager in any type of advertising of Idaho real property,
36 may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

37 (2) All advertising of listed or for-rent property shall contain the licensed business name
38 of the broker or principal property manager. A new business name shall not be used or shown in
39 advertising unless and until a proper notice of change in the business name has been approved by
40 the commission.

1 (3) All advertising by licensed branch offices shall contain the licensed business name of
2 the broker or principal property manager.

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

7
8 [Section 54-2056 – “Terminating or changing licensed business relationships”; and Section 54-
9 2057 – “Death or incapacity of a broker” – will be impacted but are not dealt with in this draft]

10
11
12 **54-2084. Brokerage agency relationships – Creation – inapplicability of act to property**
13 **management companies.** (1) A buyer or seller is not represented by a brokerage in a regulated
14 real estate transaction unless the buyer or seller and the brokerage agree, in a separate written
15 document, to such representation. No type of agency representation may be assumed by a
16 brokerage, buyer or seller or created orally or by implication.

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

- 19 (a) Nonagency;
- 20 (b) Agency representation;
- 21 (c) Limited dual agency representation;
- 22 (d) Limited dual agency with assigned agents.

23 (3) The provisions of sections [54-2082](#) through [54-2097](#), Idaho Code, applicable to
24 brokerage companies, do not apply to activities of property management companies. [Note:
25 these provisions do apply to lease sales, which is brokering]

26
27 END OF DOCUMENT