

IREC/IAR®
Property Management Work Group

Meeting Notes
Monday, December 10, 2012; 9:00 a.m.

- ✓ Andy Enrico, Chair
 - ✓ Marc Banner
 - ✓ Craig Boyack, IREC
 - Pam Bullock, Idaho Affordable Housing Assn.
 - ✓ Trish Callies
 - ✓ Steve Cannariato (CCIM)
 - ✓ Jake Durtschi, Eastern Idaho Property Assn.
 - ✓ John Eaton, IAR®
 - ✓ Matt Engel
 - ✓ Steve Fender, IREM
 - Senator Russ Fulcher
 - Brad Golphenee
 - James Holtzclaw
 - ✓ LeAnn Hume
 - ✓ Jeanne Jackson-Heim, IREC
 - ✓ Mike Larsen, DOF
 - ✓ Miguel Legaretta, ACAR®
 - Paul Lorenzen
 - Jim Reimer, NARPM
 - Tayson Rockefeller
 - ✓ Brian Shaffer, NARPM
 - ✓ Geoff Wardle, BOMA
 - Amy Wernsing, Governor's Office
- Idaho Real Estate Commission
575 E. Parkcenter Blvd., Suite 180
Boise, Idaho 83706

I. Call to Order – Introductions

Chair Andy Enrico called the meeting to order at 9:02 a.m. (Attendees are noted with a check mark above, plus Commission attorney Kim Coster and guests on the attached list.)

II. Draft Licensing Framework

Chair Enrico presented a portion of draft legislation to add the definition of property manager to the real estate license law, based on the work group's previous discussion. Several concerns were raised about the possibility of trying to introduce legislation in the 2013 legislative session. Given the short time until the session starts, the amount of work left to formulate acceptable draft legislation, and the necessity to reach out to property managers statewide, there are no plans to introduce the legislation in 2013.

There was lengthy discussion about the initial draft presented (copy attached). The consensus of the work group was:

- ✓ Separate out the property manager definition and requirements and add them to a new section of the license law, rather than interweaving it into the real estate language
- ✓ “Leasing” should be added back to the definition of real estate brokerage activity as well as included in the definition of property management
- ✓ Further discussion is needed regarding cross-border commercial transactions, especially for leasing activity when no funds are handled
- ✓ A real estate license should cover both brokerage and property management
- ✓ A separate property manager license would be available for those who do not want to conduct real estate brokerage activity, or for licensees whose broker does not want to supervise their property management activity
- ✓ Clarification is needed in the definition of “property management” – suggestions were provided to Commission counsel
- ✓ Management of homeowners associations should also be included in the definition
- ✓ There was renewed discussion regarding education requirements for a property management license with some attendees urging substantial prelicense education to better prepare new licensees and legitimize property management as a profession

Kim Coster will revise the initial draft legislation for the next meeting (to be scheduled after the first of the year).

III. Adjournment

The meeting was adjourned at 10:35 a.m.

Idaho Real Estate Commission
December 10, 2012
Boise, ID

Name	Email
1. ¹ Daniel Riley	daniel@nextsteprm.com
2. Steve Cannariato	stevec@hcollc.com
3. Marc BANNER	mbanner@cablone.net
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6. JOHN EATON	
7. Geoffrey Wardle	gmw@hch.com
8. STEVE FENDER	VERITY Property Mgmt
9. CRAIG BOYACK	IREC STAFF
10. Trish Callie's	callie@mmakpm.com
11. Michael Larsen	Idaho Dept. of Finance -
12.	
13. Le Ann Hume	(By phone)
14.	
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Leasing and Property Management

DRAFT -

2 AN ACT

3
4 RELATING TO THE REAL ESTATE COMMISSION LICENSE LAW; AMENDING
5 SECTION 54-2023, IDAHO CODE, TO
6

7
8 Be It Enacted by the Legislature of this State of Idaho:
9

10
11 **54-2002. Licensure required.** No person shall engage in the business or act in the
12 capacity of real estate broker, ~~or~~ real estate salesperson, or property manager, in this state,
13 without an active Idaho real estate license therefore. Unless exempted from this chapter, any
14 single act described within the definitions of "real estate broker," ~~or~~ "real estate salesperson" or
15 "property manager" shall be sufficient to constitute "engaging in the business" within the
16 meaning of this chapter. Any person who engages in the business or acts in the capacity of real
17 estate broker, ~~or~~ salesperson, or property manager, in this state, with or without an Idaho ~~real~~
18 ~~estate~~ license, has thereby submitted to the jurisdiction of the state of Idaho and to the
19 administrative jurisdiction of the Idaho real estate commission, and shall be subject to all
20 penalties and remedies available under Idaho law for any violation of this chapter.
21

22
23 **54-2003. Exceptions to licensure -- Active licensees -- Transactions involving personal**
24 **property.** (1) Exceptions to licensure. Except as otherwise stated below, an Idaho real estate
25 license is not required for the following:

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

28 (b) ~~The acquisition, exchange or other disposition of any interest in real property or~~
29 ~~business opportunity by its owner or a regular employee of the owner, acting within the scope of~~
30 ~~his or her employment; (b) The acquisition, exchange or other disposition of any interest in real~~
31 ~~property or business opportunity by its owner or a regular employee of the owner, acting within~~
32 ~~the scope of his or her employment; Any act described within the definition of "real estate~~
33 ~~broker" or "property manager" performed by a person (including a corporation, partnership, or~~

1 limited liability company acting through its officers, partners, managers, or regular employees
2 receiving no additional compensation therefor) for the person's own account or use.

3 (b) The rental of tourist accommodations, including hotels, motels, tourist homes,
4 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
5 similar public accommodations for a period of less than thirty (30) consecutive days, and the
6 management activities associated with these; or

7 (c) The leasing or management of surface or subsurface minerals or oil and gas interests,
8 if the leasing or management is separate from a sale or lease of the surface estate, or the
9 management of agricultural property.

0 (d) Acts performed by officers or employees of any federal or state agency, political
1 subdivision thereof, performed within the scope and course of authority or employment.
2

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

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

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

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

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

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

7 (2) The licensed activities conducted as property manager, principal property manager, and
8 property management company are not subject to the licensure requirements as a collection
9 agency under section 26-2201, et. seq, Idaho Code.

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

4 (4) Transactions involving personal property. An active licensee who, while acting on behalf
5 of another, for compensation or for a promise or expectation of compensation, sells, lists, buys,
6 leases or negotiates, or offers to sell, list, buy, lease or negotiate the purchase or sale of a mobile
7 home, manufactured home or floating home as defined by Idaho law, shall comply with this
8 chapter regardless of whether such activity would otherwise require an Idaho real estate license.

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

5 **54-2004. Definitions. As used in this chapter:**

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

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

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

15 (4) "Associate broker" means an individual who has qualified personally as a real estate broker
16 in Idaho under this chapter, but is licensed under, associated with and represents a designated
17 broker in the performance of any act described in subsection (35) of this section.

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

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

25 (7) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal
26 entity, or any other licensed person engaged in acts requiring an [Idaho](#) real estate [broker or](#)
27 [salesperson](#) license ~~in Idaho~~, and which is conducting or holding itself out as conducting the
28 business of real estate through a designated broker.

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

31 (9) "Business conduct and office operations course" means, in reference to a real estate course
32 offering, the component of the advanced real estate course that is required in order to obtain a
33 broker license and that teaches business practices and office operations of the brokerage,
34 including recordkeeping, trust account procedures and the laws governing those practices.

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

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

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

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

7 (14) "Commission core course" means, in reference to a real estate course offering, the course
8 containing curriculum, identified by the commission, that stresses current trends in real estate
9 practices and changes in laws in real estate related industries. A core course must contain no
10 more than four (4) classroom hours of instruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (31) "Main office" means the principal location where the real estate broker is licensed to
19 transact business.

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

21 (33) "Principal property manager course" means, in reference to a real estate course offering,
22 the real estate course that is required in order to obtain a principal property manager license and
23 that is designed for the leasing and rental real estate practice and teaches business practices and
24 office operations of the property management company, including recordkeeping, trust account
25 procedures and the laws governing those practices.

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

28
29 (35) "Principal property manager" means the individual licensed as a property manager in
30 Idaho who is qualified, and appointed by the property management company, to be responsible
31 for the activities of the property management company, including its trust accounts and record
32 keeping in accordance with this chapter.

33
34 (36) "Property management company" means a business, whether a sole proprietorship, a
35 legal business entity, or any other licensed person engaged in acts requiring an Idaho property
36 manager license, and which is conducting or holding itself out as conducting the business of
37 property management through its principal property manager.

1 (37) "Property manager" means any person who, for compensation or a promise or an
2 expectation thereof, engages in the management of real estate situated in Idaho that is owned by
3 another person by:

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5 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
6 participating in a transaction calculated to secure the rental or leasing of real estate,

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8 (ii) showing properties for rent to prospective tenants, accessing or entering otherwise
9 secure properties, exercising control over keys or security

10
11 (iii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
12 estate and accounting for and disbursing the money collected; or

13
14 (iv) authorizing expenditures for repairs to the real estate.

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16 "Property manager" does not include an actively licensed Idaho broker or salesperson who
17 engages in property management activities incidental to the licensee's listing or sale of a
18 property.

19
20 (348) "Provisional license" means an extension of the period of active licensure, beyond the
21 licensee's expiration date, granted by the commission for the purpose of allowing the licensee to
22 complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for
23 any other purpose allowed by this chapter.

24 (359) "Real estate broker" means and includes:

25 (a) Any person other than a real estate salesperson, who, directly or indirectly, while
26 acting for another, for compensation or a promise or an expectation thereof, engages in any of
27 the following:

28 (i) sells, lists, buys;

29 (ii) ~~or negotiates,~~ the purchase, sale, exchange or option; or

30 (iii) offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real
31 estate or any interest therein or business opportunity or interest therein; or

32 ~~for others;~~

33 (b) Any actively licensed Idaho broker or salesperson who engages in property
34 management activities incidental to the licensee's listing or sale of a real estate property.

35 (c) Any actively licensed broker while, directly or indirectly, acting on the broker's own
36 behalf;

37 (ed) Any person who represents to the public that the person is engaged in any of the
38 above activities;