

PRELIMINARY CONCEPTS FOR PROPERTY MANAGEMENT LICENSING – IDAHO

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1) Type of license

The real estate licensing structure should have a “**base license**” that would be essentially what is in place with the current real estate salesperson license less the content specifically focused on residential sales. All persons involved “as an agent” in real estate in Idaho should be required to have the base license unless exempt from licensing as a trust officer, attorney, or other similar exemptions.

Each **Specialty** within real estate should then have an “**endorsement**” for that specialty that requires some additional education and/or testing. Perhaps a certain amount of experience as an “intern” or “trainee” in that specialty either in addition to or instead of the additional education, could substitute for courses or testing. A licensee with the base license, or an endorsement other than one required in a given activity, could participate in the activity or transaction if done in concert with and *under the supervision of* one who has the proper endorsement. The following are examples that might be considered:

Residential Endorsement. In order to sell “residential” property (1-4 residential units or land for same) a “residential endorsement” would be required, which would involve knowing how to complete the standard residential contract forms, disclosures, fair housing laws, etc., and know the residential financing world.

Commercial Endorsement. To sell or lease non-residential and larger residential (more than 4 residential units) or land for same, a salesperson would need additional education/testing/experience, in handling these kinds of transactions, including the relevant contract forms, financing structures, income/expense analysis procedures, etc.

Residential Property Management Endorsement. To manage residential property (1-4 units) “as an agent” a base license would require additional education/testing/experience in the ethics, systems and procedures of professional property management.

Commercial Property Management Endorsement. Because the management of commercial property, with its more complex lease and administrative structures, is more sophisticated, a special endorsement permitting the management of commercial, industrial, and 5 or more residential units should be included.

Rural/Agricultural Endorsement. Because rural and agricultural property is so dramatically different than residential property, this endorsement would address the unique nature of rural and/or agricultural property and agri-business properties.

With this structure, everyone would be required to have a basic understanding of real estate law, economics, principles and procedures but, for the base license, would not be required to “declare a specialty.” A Base License would be required to work under the direct supervision of a designated broker, associate broker, or salesperson with an appropriate “endorsement” for a specified period of time. To work without that direct trainee/trainer relationship, the base license would need his/her own “endorsement” on his license for the particular specialty. Once that endorsement is obtained through the additional education/testing/experience requirements, the licensee could then work independently either as a salesperson, associate broker, or a designated broker.

Having worked in all of the above specialties over the past 30+ years, my observations are that each of these specialties has its own unique requirements and characteristics. One who is qualified as a commercial broker, for example, and has never sold single family dwellings, is definitely out of his element when trying to complete the forms and satisfy all disclosure requirements, fair housing laws, etc., that a qualified residential broker does without much thought. Similarly, a residential broker who only occasionally tries to sell or lease a commercial property, has neither the expertise nor the network of commercial brokers and buyers to do an adequate job for a client. Requiring anyone who works “as an agent” in real estate in Idaho to have a base level of knowledge about real estate law, economics, and practice, is a foundation. That foundation would be *less than currently required for the salesperson’s license* – especially omitting the parts dealing with putting together residential sales transactions. Building on that base license knowledge for a given specialty would then provide a *second tier of education and qualification* that specifically apply to the area of practice intended by the licensee and would **assure the public** that the person with whom they work has at least the basic knowledge **plus** the specialized expertise in the area of the client’s *specific* needs.

One additional benefit this structure would produce is a recognition by the profession and the public that real estate is a very diverse field and that specialized knowledge and experience in a particular sub-discipline is required for **competent** real estate services to the public.

2) Out of State Management Firms.

Since out of state firms would be handling trust funds and other assets in trust for properties (owners and tenants) in Idaho, they need to be under the jurisdiction of the Idaho Real Estate Commission. Therefore, just as the IREC now enforces the principle that Idaho licensees are to be involved in the marketing of Idaho property, it should also require an Idaho property management licensee to be involved in the management of any real property located in Idaho. No exceptions except a manager who has a stipulated *minimum percentage of ownership* in the property managed, or a direct employee (non-agent) of same.

3) Trust Fund Accounting.

In Nevada in the early 1990’s, I, literally, “wrote the book” on trust fund accounting for the Nevada Real Estate Division (the Blue Book). I think it is still used in Nevada.

The primary requirement should be that the definition of “trust funds” should include all funds held in accounts in which the title owner to the property is not a signer on the account with the property manager. Thus, if a property owner sets up a bank account *exclusively for his property* and permits the manager to be a co-signer on the account with him, the rents and other funds handled by the property manager are considered “trust funds” until they are deposited into that joint account owned by the property owner ***not the agent***. Until and unless the funds are in such a joint account, with the owner an approved signer on the account, the funds are trust funds and should be subject to audit and supervision by the Idaho Real Estate Commission. That means that it must be in a bank branch physically in the state of Idaho subject to Idaho law, not in an account outside of the state.

An essential component of the accounting requirements would be a financial report with supporting documentation delivered to the owner no less frequently than quarterly, showing a **beginning balance**, all funds **received with sources**, all funds **disbursed, with supporting documentation**, and **ending cash balances**. Unless otherwise authorized by the property owner, accounts should be maintained on a “cash accounting basis.” No accrual account should be permitted without specific direction from a property owner/client.

One crucial point that needs to be included is that if a trust account is used that contains trust funds from more than one client must have a subledger system for each client and each property. A strict requirement must be enforced that no individual client ledger may be placed in a **negative cash balance** at any time. One flagrant practice I have observed is a manager who has multiple clients’ trust funds in one trust account, some running negative balances and others positive balances. As long as the net balance is positive, they think it is ok. Actually, it is **comingling** and should be prosecuted as it is converting one client’s funds for the benefit of another client without the other client’s permission. This is illegal and should be prosecuted with the utmost urgency!