

IDAPA 33 - REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-1401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. That action is authorized pursuant to Sections 54-2007 of the Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 22, 2014 – 10:00 a.m.

Idaho Real Estate Commission
575 E. Parkcenter Blvd. Suite 180
Boise, ID 83706

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is housekeeping in nature and makes a technical correction and deletes obsolete references. No substantive changes are being made.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission has already consulted with industry representatives about the text of the proposed change and they are in agreement with the desirability and need for this rule change.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No documents are being incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Jackson-Heim, (208) 334-3285.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 25th day of August, 2014.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 575 E. Parkcenter Blvd. Suite 180
Boise ID 83706
(208) 334-3285; (208) 334-2050 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0101-1401
(Only those Sections being amended are shown.)

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

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

~~(3-15-02)~~(____)

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

(4-2-03)

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

(4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

121. FAILURE TO MAINTAIN INSURANCE.

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

(4-2-03)

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

~~(4-2-08)~~(____)

~~**02. Reactivation.** Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees.~~

~~(3-15-02)~~

03. Failure to Maintain Insurance. Any failure of a licensee to maintain errors and omissions insurance while on active license status, regardless whether coverage is later obtained and made retroactive by the carrier, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. A late renewal is considered failure to maintain insurance and constitutes a violation of the law.

(3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

304. ~~OFFICE OPERATIONS AND BROKER SUPERVISION. (RESERVED)~~

~~A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he is responsible. The following factors will be among those used to determine adequacy of supervision; however, the Commission is not limited to making a determination on these factors alone, but will examine all pertinent evidence.~~
(3-15-02)

~~01. Designated Broker Physically Available to Supervise. Was the designated broker physically available to supervise?~~
(3-15-02)

~~02. Experience Level of the Licensed Associate. What was the experience level of the licensed associate?~~
(3-15-02)

~~03. Designated Broker Contracted to Avoid Supervisory Responsibility. Has the designated broker contracted to avoid supervisory responsibility?~~
(3-15-02)

~~04. Types of Activity. What types of activity were licensed sales associates or unlicensed personnel engaged in?~~
(3-15-02)

~~05. Established Written or Oral Policies and Procedures. Had the designated broker established written or oral policies and procedures?~~
(3-15-02)

~~06. Determine That Policies and Procedures Are Being Properly Implemented. Does the designated broker hold regular staff meetings and follow up meetings to determine that policies and procedures are being properly implemented?~~
(3-15-02)

~~07. Corrective or Remedial Action. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered?~~
(3-15-02)

IDAPA 33 - REAL ESTATE COMMISSION

**33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO
REAL ESTATE COMMISSION GOVERNING CONTESTED CASES**

DOCKET NO. 33-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. That action is authorized pursuant to Sections 54-2007 of the Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 22, 2014 -- 10:00 a.m.

**Idaho Real Estate Commission
575 E. Parkcenter Blvd. Suite 180
Boise, ID 83706**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will clarify the agency office hours, delete gender specific and obsolete terms that are unnecessary to the chapter, and provide for electronic service of process.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission has already consulted with industry representatives about the text of the proposed change and they are in agreement with the desirability and need for this rule change.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No documents are being incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Jackson-Heim, (208) 334-3285.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 25th day of August, 2014.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 575 E. Parkcenter Blvd. Suite 180
Boise ID 83706
(208) 334-3285; (208) 334-2050 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0102-1401
(Only those Sections being amended are shown.)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

- 01. Office Hours.** The office hours are 8 a.m. to 5 p.m., mountain time, Monday through Friday, excluding holidays. (5-3-03)()
- 02. Mailing Address.** The mailing address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)
- 03. Street Address.** The street address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)
- 04. Telephone Numbers.** The Commission can be reached by telephone at (208) 334-3285 and by fax at (208) 334-2050. A toll-free number for JTRS Relay Service (telecommunications for the hearing impaired) is 1-800-377-3529. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

- 01. Administrative Code.** The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)
- 02. Agency.** The Idaho Real Estate Commission as created in Chapter 20, Title 54, Idaho Code. (7-1-93)
- 03. Agency Head.** The body of individuals appointed pursuant to Section 54-2005, Idaho Code, and in whom ultimate legal authority of the Commission is vested. (5-3-03)
- ~~**04. Chairman.** Chairman of the Idaho Real Estate Commission. (7-1-93)~~
- ~~**05. Commission.** Idaho Real Estate Commission. (7-1-93)~~
- ~~**06. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)~~
- ~~**07. Executive Director.** Executive director of the Idaho Real Estate Commission. (7-1-93)~~
- ~~**08. Hearing Officer.** Person appointed by the executive director to hear contested cases before the agency. (7-1-93)~~
- ~~**09. License.** A real estate broker, associate broker or salesman, corporate, limited liability company or partnership license as provided in Chapter 20, Title 54, Idaho Code. (7-1-96)~~
- ~~**10. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)~~
- ~~**11. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party. (7-1-93)~~
- ~~**12. Person.** Any individual, partnership, corporation, limited liability company, association,~~

- governmental subdivision or agency, or public or private organization or entity of any character. (7-1-96)
- ~~131.~~ **Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal: (7-1-93)
- a. Statute; or (7-1-93)
- b. Rule or decision of the court. (7-1-93)
- ~~142.~~ **Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)
- a. Law or policy; or (7-1-93)
- b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)
- i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)
- ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)
- iii. Intra-agency memoranda; or (7-1-93)
- iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)
- ~~153.~~ **Rulemaking.** The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

104. SERVICE BY AGENCY.

01. Personal Service and Service by Mail. The officer designated by the agency may to serve notices, summonses, administrative complaints, or orders and other documents may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address, or by personal service upon the party; pursuant to Idaho Rules of Civil Procedure, or by state statute. The agency designated officer must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (5-3-03)()

02. Electronic Service. If a party has appeared in a contested case, or if a party has not appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, the officer designated to serve notices and orders in a contested case may serve those notices and orders by FAX or by e-mail in lieu of service by mail or personal service. ()

03. When Service Complete. Unless otherwise provided by statute, these rules, order, or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a State employee or State agency or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. Service upon a party by mail shall not enlarge the prescribed period of time within which the party served has the right or is required to act. ()

04. Proof of Service. Every notice and order that the agency serves in a contested case must be accompanied by a proof of service stating the service date, each party or other person who was served, and the method of service. The agency may use a proof of service similar to those used by parties. See Rule 303. ()

(BREAK IN CONTINUITY OF SECTIONS)

106. FEES AND REMITTANCES. (RESERVED)

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss.

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

152. REPORT CONTENTS AND PROCEDURE.

The report submitted by the Executive Director to the agency head shall be in writing and signed by the executive director and shall contain a summary of alleged relevant facts determined through the investigation and a summary of potential violations committed by a licensee or other individual. ~~Such report shall also contain a statement indicating whether a settlement had been offered prior to seeking authorization to file an administrative complaint.~~ The report shall not disclose names, locations or other identifying information regarding the accused, nor shall the report make any reference to the penalty that Commission staff will seek or to the terms of any offered or potential settlement that may be negotiated in future.

(5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

209. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS.

01. Service by Parties. From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency.

(7-1-93)()

02. Method of Service. A party required to serve documents upon another party under these rules may serve such party by regular mail, or by certified mail, return receipt requested, to the other party's last known mailing address, or by personal service upon the party.

()

03. Electronic Service. If the party or person to be served has appeared in the contested case, or if the party or person has not appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, such party may be served by FAX or by e-mail in lieu of service by mail or personal service unless otherwise ordered by the agency's designated officer.

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04. When Service Complete. Unless otherwise provided by statute, these rules, order or notice, service of a document is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail if the party is a State employee or State agency or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. Service upon a party by mail shall not enlarge the prescribed period of time within which the party served has the right or is required to act.

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05. Proof of Service. Every document served by a party in a contested case must be attached to or accompanied by a proof of service in the same or similar form provided in Rule 303.

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(BREAK IN CONTINUITY OF SECTIONS)

303. PROOF OF SERVICE.

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this
_____ day of _____, served the foregoing
(name(s) of document(s)) upon all parties of record
in this proceeding, (by delivering a copy thereof
in person: (list names)) (by mailing a copy thereof,
properly addressed with postage prepaid, to:
(list names and addresses))
(by facsimile transmission to: (list names and FAX numbers))
(by e-mail to: (list names and e-mail addresses)).

(Signature)

(7-1-93)(_____)