#429-06

STATEMENT OF PURPOSE

RS 19209

This legislation provides a process for the Commission to consider a license applicant's previous license revocation before issuing a new real estate license. The legislation also clarifies that a general court martial is equivalent to a felony conviction and requires review.

FISCAL NOTE

None to the General Fund. None to any state or local political subdivision.

CONTACT
Name: Jeanne Jackson-Heim
Agency: Real Estate
Phone: 334-3285

STATEMENT OF PURPOSE / FISCAL NOTE **Bill No.**

RS19209

#429-06

LEGISLATURE OF THE STATE OF IDAHO

Sixty-first Legislature Second Regular Session - 2010

IN THE _____

BILL NO. _____

BY _____

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2012, IDAHO CODE, TO PROVIDE FOR AN EXEMPTION REVIEW PROCESS TO DETERMINE SUITABILITY FOR LICENSURE FOR CERTAIN REVOKED LICENSES, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTIONS 54-2015, 54-2026 AND 54-2033, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. That Section 54-2012, Idaho Code, be, and the same is hereby amended to read as follows:

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE. (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license revoked, suspended~~,~~ or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have had a real estate or other professional or occupational license revoked for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction; provided that, after a period of five (5) years from the date the license was revoked, the applicant may make a written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the disciplinary action that resulted in the license revocation and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

(ii) During the review, the commission shall consider the following factors and evidence:

1. The severity or nature of the disciplinary violation for which the applicant's license was revoked;
2. The period of time that has passed since the disciplinary violation occurred;
3. The existence, number and pattern of any other misconduct for which the applicant has been disciplined;
4. The circumstances surrounding the disciplinary violation that would help the commission determine the risk of repetition;
5. The relationship of the disciplinary violation to the licensed practice of real estate; and
6. The applicant's activities since the disciplinary violation under review, such as employment, education, participation in treatment, payment of restitution or any other factors that may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(f) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(~~f~~g) Not have been convicted of any felony in a state or federal court or convicted by military general court-martial; provided that, after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence or confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors or evidence:

1. The severity or nature of the felony;
2. The period of time that has passed since the felony under review;
3. The number or pattern of felonies or other similar incidents;
4. The circumstances surrounding the crime that would help determine the risk of repetition;
5. The relationship of the crime to the licensed practice of real estate; and

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution~~,~~ or any other factors ~~which~~ that may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(~~g~~h) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(~~h~~i) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(~~i~~j) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure~~,~~ and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission;

(~~j~~k) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known address of the licensee. All licensees shall provide the commission a full and current mailing address and shall notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(~~k~~l) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(~~l~~m) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(~~m~~n) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees~~,~~ as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this ~~subsection~~ paragraph shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing and pay associated fees.

SECTION 2. That Section 54-2015, Idaho Code, be, and the same is hereby amended to read as follows:

54-2015. INDIVIDUALS ACTIVELY LICENSED IN ANOTHER STATE OR JURISDICTION SEEKING PRIMARY IDAHO LICENSURE. (1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in section 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsection (1)(~~g~~h) of section 54-2012, Idaho Code; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

(2) An individual who holds an active license in good standing in another state or jurisdiction may, upon written request to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver shall be submitted with the application for exam as provided in subsection (3) of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code, notwithstanding the terms of the agreement.

SECTION 3. That Section 54-2026, Idaho Code, be, and the same is hereby amended to read as follows:

54-2026. CERTIFICATION OF COURSE PROVIDERS. (1) Degree-granting institutions. Degree-granting, accredited colleges and universities in any state or jurisdiction shall be deemed to be approved course providers in Idaho. However, course content must still be approved for the real estate education course to receive credit toward prelicense or continuing education licensing requirements in Idaho.

(2) Other course providers. All other course providers desiring to offer real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following qualifications and receive certification. Each applicant seeking certification as a course provider shall comply with the following:

(a) File an application for certification in the form and manner required by the commission, along with proper fees, at least two (2) months prior to contemplated date of opening or first accredited course offering;

(b) Designate a "director" or "individual in charge," who shall be responsible for the course provider's operation and its real estate courses, and with whom the commission may communicate. Unless this requirement is waived upon special review of the commission in the manner stated below, the individual in charge must not have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. The designated individual in charge must not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of proper jurisdiction. The failure of the provider to have in place a designated individual meeting the

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE COMMISSION

qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the provider's certificate as provided in section 54-2025(3), Idaho Code;

(c) File a properly executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and in substantial accordance with section 54-2012(1)(~~j~~k), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certification as it deems advisable and, if good cause exists, may deny or accept the application for certification.

SECTION 4. That Section 54-2033, Idaho Code, be, and the same is hereby amended to read as follows:

54-2033. INSTRUCTOR QUALIFICATIONS. (1) Qualified instructors at degree-granting institutions. A qualified or full-time instructor or professor of an accredited college or university in any state or jurisdiction and who teaches real estate-related courses is deemed to be an approved instructor of such courses, in Idaho, for the purposes of this chapter.

(2) Other instructor applicants. All other individuals wishing to teach any real estate courses for credit toward Idaho prelicense requirements, including the business conduct and office operations course, or the commission continuing education core course requirements must first meet the following additional qualifications and receive separate certification for each course to be taught:

(a) Unless this requirement is waived upon special review of the commission in the manner stated below, no individual instructor seeking certification may have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. Further, the individual may not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing, in a court of proper jurisdiction. The failure of a certified instructor to maintain the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the instructor's certificate as provided in section 54-2025(3), Idaho Code.

(b) Each applicant for certification shall also:

(i) Submit a completed application for instructor certification in the form and manner required by the commission, with all required fees;

(ii) File an executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and according to section 54-2012(1)(~~j~~k), Idaho Code;

(iii) Qualify as at least one (1) of the following:

1. An attorney at law actively licensed in any state or jurisdiction with at least five (5) years of active practice in the areas of study proposed to be taught, and who has also

RECEIVED
NOV 04 2009
IDAHO REAL ESTATE
COMMISSION

successfully completed a commission-approved instructor training course or procedure, including an assistant teaching period;

2. An individual currently approved or certified and in good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;

3. An individual who is appointed to teach a nationally recognized real estate course which is generally accepted in other states or jurisdictions; or

4. An individual with at least five (5) years active real estate-related experience who has also successfully completed a commission-approved instructor training procedure, including an assistant teaching period.

(3) Instructor teaching standards. An instructor certified to teach any real estate course for credit toward the requirements of this chapter shall comply with the minimum teaching standards established by the commission. A certified instructor shall not teach the course in a manner that is detrimental to the purpose of educating licensees.