IDAHO REAL ESTATE COMMISSION
MEETING MINUTES
May 6, 2019

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at 575 E. Parkcenter Blvd., Suite 180, Boise, Idaho on Monday, May 6, 2019 at 1:00 p.m.

Commission Members Present:
Kathy Weber, Chair, Moscow
Jill Stone, Vice Chair, Twin Falls
Michael James Johnston, Member, Idaho Falls
Mike Gamblin, Member, Boise
Martin Espil, Public Member, Boise

Members Absent:

Comprising a quorum of the Commission

Staff Present:
MiChell Bird, Executive Director
Melissa Ferguson, Education & Licensing Director
Craig Boyack, Chief Investigator
Jessica Valerio, Administrative Assistant

Others Present:
David Wynkoop, Commission’s Legal Counsel
David Hensley, Idaho REALTORS®
See attached list

Introductions:
a. Commissioners
b. Staff
c. Guests

Meeting was called to order at 1:02 p.m. MT by Commission Chair Kathy Weber.

Approval of Meeting Agenda: Motion was made by Michael J. Johnston to approve the May 6, 2019 Commission meeting agenda. Motion carried.

Approval of Meeting Minutes: Motion was made by Michael J. Johnston to approve the March 14, and April 2019 Commission meeting minutes. Motion carried.

Staff Reports:
The following reports were presented for members’ review; copies of which are on file at the Commission office:
- March 2019 Financial Report(s)
- License Base Analysis
- Examination Statistics
- Complaint Summary Report
- Enforcement Telephone Activity Log(s) March 2019
- Audit Report(s) March 2019
- March 2019 Education & Licensing Telephone Log

Idaho REALTORS®: David Hensley reports their member number are at a total of (10,115) 10,396. David reports IR is looking at providing health insurance for all members. Annual IR conference will be held in October, in Sun Valley.

Executive Director’s Report:
Approval of FY2019 Management and Travel Budget: Director Bird presented Fiscal Year 2020 management and travel budget proposal.

Motion was made by Commissioner Mike Gamblin to approve the proposed management and travel budget for FY2020. Motion carried.

Administrative Rules/Delegated Authority to Director: Director Bird led discussion on changes in administrative rules. Director Bird presented language to take place of.

Motion was made by Commissioner Mike Gamblin to approve the draft presented by Director Bird and give Director delegated authority to review rules and adopt appropriate language. Motion carried.

Discussion on Printing of License Law Book: Director Bird led discussion on adding information and useful documents in IREC’s 2019 License Law book.

Chair Kathy Weber directed Director Bird to work with Commissioner Michael J. Johnston to add Psychological Impacted Property and Property Condition Disclosure Act pages to IREC’s 2019 License Law Book.

IDW/Core 2020 schedule: Director Bird presented potential change to dates for IDW and Core of 2020 to March.

Education & Licensing Director’s Report:
Approval of Proposed FY20 Fine Money Budget: Director Melissa Ferguson presented her proposed civil penalty fine money report. Explained difference and changes from last fiscal year.
Enforcement

Stipulations:

Staff vs. Joseph L. Richardson, Case No. 18-0182: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Craig Boyack was sworn in and presented the Stipulation. No other testimony was taken. Motion was made by Commissioner Michael J. Johnston to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Jason Steven Kitley, Case No. 18-0385: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Craig Boyack was sworn in and presented the Stipulation. No other testimony was taken. Motion was made by Commissioner Michael J. Johnston to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Aryn E. Schroeder, Case No. 18-0392: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Craig Boyack was sworn in and presented the Stipulation. No other testimony was taken. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Amy Alyssa Gluch, Case No. 18-0587: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Craig Boyack was sworn in and presented the Stipulation. No other testimony was taken. Motion was made by Commissioner Martin Espil to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Probable Cause Memo #18-0298: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice
of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #19-0133: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #18-0322: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #19-0027: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.
Executive Session: In accordance with provisions of Idaho Core (74-206(1)(b), a motion was made by Commissioner Jill Stone to adjourn to executive session. Roll was called, Michael J. Johnston, Mike Gamblin, Jill Stone, Kathy Weber, and Martin Espil voted in favor. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Commissioner Michael J. Johnston to adjourn the executive session and return to open meeting. Motion carried.

Exemption Review #19-009: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to approve request for exemption. Motion carried.

Exemption Review #19-010: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to approve request for exemption. Motion carried.

Reconsideration of Special Consideration #19-011: Request seeking a reconsideration of special consideration to reverse the inactivation of her license. Following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to deny request for special consideration. Motion carried.

Exemption Review #19-012: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to approve request for exemption. Motion carried.

Special Consideration #19-013: Request seeking a waiver of proof of the high school graduation pursuant to Idaho Code 54-2012(1)(c); following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to deny request for special consideration. Motion carried.

Special Consideration #19-014: Request seeking a waiver of experience to obtain a broker license pursuant to Idaho Code 54-2012(2) following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to approve request for special consideration. Motion carried.

Exemption Review #19-015: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion and review of the documents submitted, motion was made by Commissioner Michael J. Johnston to approve request for exemption. Motion carried.
There being no further business, Commissioner Michael J. Johnston adjourned the meeting at 5:38 p.m. MT.

Respectfully submitted,

MiChell Bird
Executive Director

MB:jv

Attachments:
- Financial Report(s) March 2019
- License Base Analysis
- Examination Statistics
- Education & Licensing Telephone Log(s) March 2019
- Complaint Summary Report
- Enforcement Telephone Activity Log(s) March 2019
- Audit Report(s) March 2019
- Final Orders

Minutes of the Idaho Real Estate Commission meeting on May 6, 2019 are hereby approved.

Kathy Weber, Chair
Mike Gamblin, Member
Martin Espil, Member

Jill Stone, Vice Chair
Michael J. Johnston, Member
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

                Petitioner,

vs.

JOSEPH L. RICHARDSON,

                Respondent.

On May 6, 2019, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violations of the Real Estate License Law and Rules, Idaho Code:

a. § 54-2053(4) – No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence. (Respondent advertised two individual properties as being bordered on three sides by BLM land and able to have mobile homes on them. Neither statement is accurate.) (Respondent advertised two properties despite not having signed listing agreements.)

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

FINAL ORDER – J. RICHARDSON
1. This Final Order shall constitute a **Formal Reprimand** of the Respondent for the actions set forth in the Stipulation/Complaint.

2. **Fines and Fees**

   a. Respondent shall pay a **Five Hundred Dollar ($500.00)** civil fine by June 11, 2019.

   b. Respondent shall pay **costs and attorney’s fees in the amount of Four Hundred Fifty Dollars ($450.00)** by June 11, 2019, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   c. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

   d. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**
3. **Continuing Education**

   a. Respondent shall successfully complete the following Idaho real estate educational courses by November 11, 2019:
      
      - Post License Pricing, Marketing & Advertising
      - Ethics: Pricing, Offers and Ads

   b. The above courses shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said courses, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificates to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

   c. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.
5. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

6. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent’s last known address on file at the Commission office.

Issued this 6th day of May 2019.

FOR THE COMMISSIONERS:

[Signature]
Kathleen Weber, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2019, I caused to be served, by the methods indicated, a true and correct copy of the Final Order, upon:

Joseph L. Richardson  
9506 Schism Rd.  
Nampa, ID 83686  

____ U.S. Mail  
____ Email:  
____ Facsimile Transmission

Eric F. Nelson  
Naylor & Hales, PC  
950 W. Bannock St. Ste 610  
Boise, ID 83702  

____ U.S. Mail  
X Email  
eric@naylorhales.com  
____ Facsimile Transmission

MiChell M. Bird, Executive Director  
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

Petitioner,

vs.

JASON STEVEN KITLEY,

Respondent.

On May 6, 2019, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violations of the Real Estate License Law, Idaho Code:

a. § 54-2002 as defined by § 54-2004(2) and (39)(a), (c) and (d) – No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefor. (Respondent continued to hold himself out as being able to practice real estate after his license was inactivated on March 20, 2018.)

b. § 54-2018(9) – Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence, or personal telephone number. Notice shall be provided within ten (10) business days of the change. (Respondent failed to timely update his address and contact information on file with the Commission.)
c. § 54-2058(3) – The commission has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon request, any and all records to the commission at the licensee’s own cost and at the location or in the manner requested by the commission. (Respondent failed to respond to Staff’s investigative letters, emails, and telephone calls.)

d. § 54-2061(1)(a) - The commission may take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee: Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee’s lack of trustworthiness to engage in the real estate business. (Respondent was convicted of one (1) felony count of Attempted Use of Interstate Facilities to Transmit Information about a Minor.)

e. § 54-2061(3) – A licensee who is convicted of, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the commission a copy of the legal document evidencing the same. (Respondent failed to report his felony conviction to Staff.)

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. This Final Order shall constitute a Formal Reprimand of the Respondent for the actions set forth in the Stipulation/Complaint.
2. Fines and Fees

a. Respondent shall pay costs and attorney’s fees in the amount of Four Hundred Fifty Dollars ($450.00) by June 11, 2019.

b. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

c. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

3. License Revocation/Suspension

a. Respondent’s real estate license is revoked as of May 7, 2019.

4. Cease and Desist

a. Respondent shall cease and desist from unlicensed practice in the state of Idaho and in engaging in any of the conduct or violations set forth in the Stipulation or any other conduct violating the Idaho Real Estate License Law and Rules.
5. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient.

6. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

7. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

Issued this 6th day of May 2019.

FOR THE COMMISSIONERS:

[Signature]
Kathleen Weber, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2019, I caused to be served, by
the methods indicated, a true and correct copy of the Final Order, upon:

Jason Kitley, Reg. No. 19461-023
FCI Sandstone
Federal Correctional Institution
PO Box 1000
Sandstone, MN 55072

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

X U.S. Mail
Email: eric@naylorhales.com
Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

                             Petitioner,

vs.

ARYN E. SCHROEDER,

                             Respondent.

On May 6, 2019, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violations of the Real Estate License Law and Rules, Idaho Code:

a. § 54-2060(3) – Failure to account for or remit any property, real or personal, or moneys coming into the person’s possession, which belong to another.

b. § 54-2060(12) – Reckless conduct in a regulated real estate transaction.

c. § 54-2086(1)(c) – Failed to properly account for moneys or property placed in the care and responsibility of the brokerage.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:
1. This Final Order shall constitute a **Formal Reprimand** of the Respondent for the actions set forth in the Stipulation/Complaint.

2. **Fines and Fees**

   a. Respondent shall pay a **Seven Hundred Fifty Dollar ($750.00) civil fine** by June 11, 2019.

   b. Respondent shall pay **costs and attorney’s fees in the amount of Four Hundred Fifty Dollars ($450.00) by June 11, 2019**, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   c. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

   d. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**
3. **Continuing Education**

a. Respondent shall successfully complete the following Idaho real estate educational courses by November 11, 2019:

- Risky Business 1
- Risky Business 2

b. The above courses shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said courses, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificates to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

c. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.
5. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

6. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent’s last known address on file at the Commission office.

Issued this 6th day of May 2019.

FOR THE COMMISSIONERS:

[Signature]
Kathleen Weber, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2019, I caused to be served, by the methods indicated, a true and correct copy of the Final Order, upon:

Aryn Schroeder
5727 N Portsmouth Ave
Boise, ID 83714

___ X U.S. Mail

___ Email:

___ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

___ U.S. Mail

__ X Email

__ Email: eric@naylorhales.com

___ Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

Petitioner,

vs.

AMY ALYSSA GLUCH,

Respondent.

On May 6, 2019, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violations of the Real Estate License Law and Rules, Idaho Code:

a. § 54-2060(11) – For any other conduct, which constitutes dishonest or dishonorable dealings.

b. § 54-2060(12) – Reckless conduct in a regulated real estate transaction.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. This Final Order shall constitute a Formal Reprimand of the Respondent for the actions set forth in the Stipulation/Complaint.

2. Fines and Fees
a. Respondent shall pay a **One Thousand Five Hundred Dollar ($1,500.00)** civil fine by June 11, 2019.

b. Respondent shall pay **costs and attorney’s fees in the amount of Seven Hundred Dollars ($700.00)** by June 11, 2019, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

c. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

d. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkecenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

3. **Continuing Education**

   a. Respondent shall successfully complete the following Idaho real estate educational courses by November 11, 2019:
      
      - Risky Business 1
b. The above courses shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said courses, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificates to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

c. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent’s license shall be suspended for a period of six (6) months, beginning May 7, 2019. However, the entire suspension period shall be withheld provided Respondent:

a. Complies with the terms of this Final Order and violates no other license law.

b. Completes the courses set forth in the Stipulation in the time allotted.

c. Pays in full all fines and attorney’s fees when due.

d. In the event Respondent fails to comply with any portion of the discipline set forth herein, the entire six (6) month suspension period shall be imposed. Such suspension shall begin on the date of noncompliance and extend for six (6) months from that date.

5. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise
required by Idaho Code or IDAPA rules, to immediately take action authorized by the
Stipulation, including but not limited to, suspending Respondent’s license, or
imposing the balance of any withheld discipline or civil penalty fine, in the event of
failure to timely comply with any term or condition of this Order entered pursuant to
the Stipulation. Notice of such action sent to the most current address provided by
Respondent to Staff shall be deemed sufficient. Any license suspended under this
paragraph may be reinstated by Staff upon proof of compliance with the stipulation
term or condition as ordered by the Commission.

6. The Commission shall be entitled to seek an injunction or order from the
district court to enforce the provisions of this Final Order without further
administrative hearing in the event the Respondent fails to comply with this Final
Order entered pursuant to the Stipulation.

7. The Executive Director of the Idaho Real Estate Commission shall cause a
true and correct copy of this Final Order to be served on the Respondent by mailing a
copy to the Respondent’s last known address on file at the Commission office.

Issued this 6th day of May 2019.

FOR THE COMMISSIONERS:

[Signature]
Kathleen Weber, Chair
IDAHo REAL ESTATE COMMISSION
Guideline #7
Revised May 9, 2013

GUIDELINES FOR “SUSPENDED” LICENSEES

Idaho’s license laws impose certain duties and consequences upon the salesperson or broker whose license is “suspended” as part of a disciplinary action taken pursuant to the Commission’s “Disciplinary Powers” or “suspended” under the statute’s “Automatic Suspension” provisions. This Guideline is intended to outline those duties and consequences. (This Guideline is not intended to address a situation in which the license has “expired” after the license period has elapsed and the license is not renewed.)

1. A person whose license is suspended is in the same position as an unlicensed person. Such person may not engage in any real estate activity that requires a real estate license, e.g., he or she may not list, sell, buy, or negotiate, or offer to list, sell or buy or negotiate the purchase, sale, option or exchange of real estate.

2. The person whose license is suspended may receive compensation during the suspended period only for acts performed during the period in which the person was properly licensed. For example, if the person negotiated a sale during the licensed period, the person may receive payment for performance of those acts even though the sale closes during the suspended period.

3. If the suspended person is a designated broker, any transaction that is closed during the period of suspension must be finalized by either another broker, an attorney, a title company, or a financial institution.

4. All advertising naming the suspended licensee, including but not limited to signs on office buildings and on “for sale” properties, must be removed. All evidence of the person’s licensure must be removed from public view.

5. If the suspended person is the designated broker, and if no other broker is designated to act for the brokerage company, the office must be closed during the period of suspension, and the licenses of all associated licensees will be made inactive by the Commission. Telephone service should be canceled, or the telephone must be answered by indicating to all callers that the office is closed due to the suspension of the broker’s real estate license.

6. If the suspended person is the designated broker for a licensed business entity, the law grants the entity ten (10) business days to designate a new broker. If no new broker is designated within the statutory period, the license of the entity is terminated, and the licenses of all associated licensees are inactivated by the Commission.
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The pertinent sections of the Idaho Real Estate License Law and Rules are the following:

1. 54-2002. Licensure Required.
2. 54-2004. Definitions
   "Real Estate Broker" and "Real Estate Salesperson"
3. 54-2039. Broker and Branch Office Manager Absences and Changes.
4. 54-2054. Compensation, Commissions and Fees - Prohibited Conduct.
5. 54-2059. Disciplinary Powers.
7. 54-2061. Additional Grounds - Court Actions.
8. 54-2062. Additional Grounds - Other Administrative Actions.
9. 54-2074. Automatic Suspension.

IDAHO REAL ESTATE LICENSE LAW

54-2002. LICENSURE REQUIRED. No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore. Unless exempted from this chapter, any single act described within the definitions of "real estate broker" or "real estate salesperson" shall be sufficient to constitute "engaging in the business" within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate 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 under Idaho law for any violation of this chapter.

54-2004. DEFINITIONS. As used in this chapter:
   "Real estate broker" means and includes:
   (a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others.
   (b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;
   (c) Any person who represents to the public that the person is engaged in any of the
Guideline #7 above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth.

(e) A dealer in options as defined in this section.

“Real estate salesperson” or “salesperson” means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of act described in this section.

54-2039. Broker and Branch Office Manager Absences and Changes.

Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016, Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker’s license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the Commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity’s license is terminated, and the licenses of all associated licensees are made inactive.


Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson 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.

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 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

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transaction. However, no commission, fee or compensation may be split with any party to the
transaction in a manner which would directly or indirectly create a double contract, as defined in this
chapter or which would otherwise mislead any broker, lender, title company or government agency
involved in the transaction regarding the source of funds used to complete the real estate transaction
or regarding the financial resources or obligations of the buyer.

54-2059. Disciplinary Powers -- Revocation, Suspension or Other Disciplinary Action.
The Commission may temporarily suspend or permanently revoke licenses issued under the
provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to
exceed five thousand dollars ($5,000), and assess costs and attorney's fees for the cost of any
investigation and administrative or other proceedings against any licensee who is found to have
violated any section of the Idaho Code, the Commission's administrative rules or any order of the
Commission. The executive director may issue informal letters of reprimand to licensees without
civil penalty or cost assessment.

54-2060. Grounds for Disciplinary Action.
A person found guilty of misconduct while performing or attempting to perform any act requiring an
Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's
own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the
Commission. The following acts shall constitute misconduct within the meaning of this section:

(1) Making fraudulent misrepresentations;
(2) Engaging in a continued or flagrant course of misrepresentation or making of false
promises, whether done personally or through agents or salespersons;
(3) Failure to account for or remit any property, real or personal, or moneys coming into the
person's possession which belong to another;
(4) Failure to keep adequate records of all property transactions in which the person acts in
the capacity of real estate broker or salesperson;
(5) Failure or refusal, upon lawful demand, to disclose any information within the person's
knowledge, or to produce any documents, books or records in the person's possession for inspection
by the Commission or its authorized representative;
(6) Acting as a real estate broker or salesperson under an assumed name;
(7) Employment of fraud, deception, misrepresentation, misstatement or any unlawful
means in applying for or securing a license to act as a real estate broker or salesperson in the state of
Idaho;
(8) Using, proposing to use, or agreeing to use a "double contract" as prohibited in section
54-2054, Idaho Code;
(9) Seeking or receiving a "kickback" or rebate prohibited in section 54-2054, Idaho Code;
(10) Violation of any provision of sections 54-2001 through 54-2097, Idaho Code, or any
administrative rule made or promulgated by the Commission or any final order of the Commission;
(11) Any other conduct whether of the same or a different character than hereinabove
specified which constitutes dishonest or dishonorable dealings;
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(12) Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

The Commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee:

(a) Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee’s lack of trustworthiness to engage in the real estate business;

(b) Has been declared to lack capacity or to be incompetent or under an infirmity, for the duration of such declaration only;

(c) Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate-related transaction.

The court’s record of conviction, order determining legal competency, or the order entering judgment in a civil case, or certified copies thereof, shall be prima facie evidence of a conviction, or the court’s action.

The Commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

(a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or

(b) Has a real estate or other professional, suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

54-2074. Automatic Suspension of Broker’s, Associate Broker’s or Salesperson’s License on Payment by Commission -- Condition For License Reinstatement. If, pursuant to court order, the Commission pays from the recovery fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensed broker, associate broker or salesperson, the license of such broker, associate broker or salesperson shall be automatically suspended without further order of the Commission upon the effective date of any order by the court as set forth herein authorizing payment.
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from the recovery fund. No such broker, associate broker or salesperson shall be granted reinstatement until he has repaid in full, the amount so paid from the recovery fund plus interest at the legal rate of interest allowable by law for judgments.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2019, I caused to be served, by the methods indicated, a true and correct copy of the Final Order, and Guideline 7, upon:

Amy Gluch
1041 W 5th Street
Weiser, ID 83672

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

X U.S. Mail
_____ Email:
_____ Facsimile Transmission

X U.S. Mail
____ Email
  eric@naylorhales.com
_____ Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

TRACY POWELL,

Petitioner,

FINAL ORDER

This matter came before the Idaho Real Estate Commission on May 6, 2019, on the Petitioner’s request for reconsideration of the Final Order issued by the Commission denying Petitioner’s Request for reversal of license inactivation.

IT IS HEREBY ORDERED the Petitioner’s request was denied. Petitioner failed to establish good cause to reverse the inactivation.

Issued this 16th day of May 2019.

FOR THE COMMISSIONERS:

Kathleen Weber, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2019, I caused to be served, by the methods indicated, a true and correct copy of the Final Order and Notice of Procedural Rights, upon:

Tracy Powell
3424 Trevino Dr
Sierra Vista, AZ 85650

X U.S. Mail

Facsimile Transmission

Email

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
Notice of Procedural Rights

1. This is a Final Order of the Commission. Any aggrieved party may file a Motion for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Commission will dispose of the Motion for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code.

2. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this Final Order or Orders previously issued in this case may appeal this Final Order and all previously issued Orders in this case to District Court by filing a Petition in the District Court of the county in which:

   a. A hearing was held,

   b. The final agency action was taken,

   c. The party seeking review of the Order resides, or operates its principal place of business in Idaho, or

   d. The real property or personal property that was the subject of the agency action is located.

3. An Appeal must be filed within twenty-eight (28) days:

   a. of the service date of this Final Order,

   b. of an order denying Petition for Reconsideration, or

   c. the failure within twenty-one (21) days to grant or deny a Petition for Reconsideration, whichever is later.

See Section 67-5273, Idaho Code. The filing of an appeal to District Court does not itself stay the effectiveness or enforcement of the Order under Appeal.