

## **DISCLOSURE OF TRANSACTION FEES - WHEN REQUIRED**

The Commission has received questions concerning the circumstances under which a brokerage is required to disclose, to all parties, the fact that it is charging or receiving a transaction fee. The inquiries pertain to the application of Section 54-2054, Idaho Code.

This provision requires that, whenever the brokerage is receiving “compensation” “from more than one party” (e.g., when the brokerage is receiving compensation from both the buyer and the seller), the brokerage must make a “full disclosure in writing to all parties.”

### **When Disclosure Is Required**

The statute’s disclosure requirement is triggered **only** when the brokerage is going to receive **compensation** from the buyer **and** the seller. If the broker is being paid by **only one** of the parties, then disclosure is **not** required.

The brokerage’s agency (and non-agency) relationships have no direct bearing on the application of the statute. If the broker is receiving compensation from both the buyer and the seller, the broker is required to make the disclosure, regardless of whether the broker is representing both parties (e.g., in-house transaction), or whether the broker is representing only one party (e.g., the other party is working with or being represented by a different broker).

The following scenarios demonstrate how the statute is applied:

A. The listing broker is getting a portion of the brokerage fee from the seller and a transaction fee, also from the seller. Because the listing broker is receiving compensation from only one party to the transaction, the disclosure requirement does **NOT** apply.

B. The listing brokerage is getting a transaction fee from the buyer (even though the buyer is represented by another office), and the listing brokerage is also getting a portion of the brokerage fee from the seller. Because the listing brokerage will be receiving compensation from each party, the listing brokerage **IS** required to make the written disclosure to all parties.

C. The listing broker is not the buyer’s broker. The listing broker receives only a portion of the brokerage fee from the seller (as provided in the MLS agreement) and charges no fee to the buyer. However, the buyer’s broker receives a portion of the brokerage fee from the seller, and also receives a transaction fee from the buyer. Because the buyer’s broker is receiving compensation from the buyer (transaction fee) and the seller (portion of the brokerage fee), **the buyer’s broker must make the disclosure to all parties.** However, because the listing broker is receiving compensation from the seller only, the listing broker is **NOT** required to make the disclosure.

D. The buyer’s broker receives a portion of the brokerage fee from the seller (as provided in the MLS agreement) and charges no other transaction fee or commission to the buyer. The same broker

enters a separate agreement with the buyer to provide additional services outside of the purchase and sale transaction, e.g., as a professional consultant/representative for the buyer in the planning a zoning permitting process, or as a property manager. The statute would NOT be triggered, and the broker would NOT have to disclose the receipt of compensation from outside consulting services or property management services. Although the broker clearly is charging/accepting “compensation” from someone who is a party in the transaction, that compensation is not being charged/accepted “in the one (1) transaction,” but for services performed outside of the transaction.

### **Form and Content of the Disclosure**

When disclosure is required, it must be made “in writing.” There is no requirement that it be made in any particular form or contained in any particular document. Whatever form is used, the Commission strongly advises the broker to obtain the parties’ initials or signatures and dates to document that the required disclosure was in fact made.

The statute does not dictate the contents of the disclosure and the Commission prescribes none. However, for audit purposes, the Commission will deem the requirement satisfied by a written statement, provided to and acknowledged by both parties, containing the following:

“In this transaction, this brokerage will be receiving compensation in the form of a commission and/or transaction fee from both the Buyer and the Seller.”

*This guideline is not a new law but is an agency interpretation of existing law.*

For more information on this guideline, please contact:

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