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CANCELLATION OR WITHDRAWAL OF LISTINGS

The rights of an owner to withdraw a listing or of either party to cancel a listing agreement are determined by contract law and court decisions, and the facts in each case bear heavily on the result. As used in this guideline there are two specific terms:

- **Withdrawal of the Listing:** when an owner instructs a brokerage not to promote the property for sale, and not to deliver any additional offers. The contract remains in full force and effect.
- **Cancellation of the Listing Agreement:** when the broker, the owner or both fully terminate their listing agreement. Cancellation may be by either party, or by the mutual consent of both.

An owner may, at any time, “withdraw” from the broker the authority to sell the property. Some listing agreements specify a penalty for early withdrawal of the property from sale by the owner. Even if no penalty is specified in the contract, the court might award damages to a broker if the seller has acted unreasonably and the broker has acted in good faith.

When an owner “cancels” a listing agreement, (i.e., fires the broker), he or she is essentially “breaking” the contract. Unless the owner has sufficient legal justification to break the contract, he or she may be required to pay the losses, or damages, incurred by the broker. Such damages can include the out-of-pocket costs incurred by the broker, or the full commission the broker would have earned had the owner not cancelled the contract.

An owner who cancels a listing agreement might – or might not – have sufficient legal justification. In some cases, the owner may cancel because the broker is not adequately marketing the property or is not otherwise performing his obligations under the contract. In other cases, the owner may cancel in an attempt to avoid having to pay the broker’s commission.

Likewise, a broker who cancels a listing agreement could be held liable for breaking the contract. Unless the broker has sufficient legal justification to break the contract, the broker could be ordered by a court to pay losses that the owner proves resulted from the cancellation.

Owners and brokers may agree between themselves as to how to resolve their listing agreement disputes. If such disputes are not resolved between the parties, however, either party may bring a civil lawsuit and have a court determine whether breaking the contract was legally justified, or whether to order one party to pay money damages to the other.

The Idaho Real Estate Commission does not have authority to decide listing cancellation disputes.

*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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MiChell Bird, Executive Director at michell.bird@irec.idaho.gov
BROKERING IDAHO PROPERTY REQUIRES AN IDAHO REAL ESTATE LICENSE

This Guideline is designed to advise all brokers and salespersons, whether licensed in Idaho or in another state, that, in order to engage in any real estate brokering activities relating to Idaho real property, a broker or salesperson must hold an active Idaho real estate license. This is true even if the broker, salesperson, or their clients do not reside in or personally enter this state.

1. **An Idaho license is required to engage in any brokering activities relating to Idaho real property.**

Idaho law flatly prohibits any person from engaging in any act of a “real estate broker” “in this state” without an active Idaho real estate license. Idaho Code 54-2002.

“Real estate broker” is defined in the license law to include “any person who, directly or indirectly, while acting for another for compensation or promise or expectation thereof, sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate,” and also includes “any person who represents to the public” that he is engaging in any of these acts. Idaho Code 54-2004(36). This also includes “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.” The Commission interprets procuring prospects to include any marketing or advertising designed to attract the attention of buyers or sellers.

A person is “acting in this state” if he is “dealing with any interest in real property . . . that is situated in this state. . .” Idaho Code 54-2004(2).

Under Idaho Code, then, any person who “sells, lists, buys or negotiates” the purchase or sale of real property “situated in this state” is, by definition, engaging in acts requiring an Idaho real estate license.

2. **A person who does not hold an Idaho license may not “co-broker” Idaho property with an Idaho-licensed broker.**

Idaho Code provides no mechanism to allow a person who does not hold an Idaho license to “co-broker” Idaho property with an Idaho-licensed broker. To the contrary, the law states that each person who performs any defined brokering act – whether as salesperson or broker – must hold an active Idaho license. Idaho Code 54-2002. A person who engages in any defined act of “real estate broker” – including selling, listing, buying, or negotiating the purchase or sale of Idaho real property – but who does not hold an active Idaho license is guilty of unlicensed practice, regardless of any contractual arrangement with an Idaho-licensed brokerage.

3. **An Idaho designated broker may not “co-broker” Idaho property with a person who does not hold an Idaho license.**

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

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MiChell Bird, Executive Director at michell.bird@irec.idaho.gov
Similarly, an Idaho designated broker violates the license law if he “co-brokers” Idaho property with a person who does not hold an active Idaho license.

Idaho designated brokers should also be aware of the license law’s prohibition against “lending” or “permitting” a license to be used to carry on a business for which an Idaho broker’s license is required. Lending a license includes, but is not limited to:

- An Idaho broker allowing a licensee affiliated with another brokerage to use their name and license number for the purpose of a transaction.
- An Idaho broker allowing an out of state licensee to use their name but failing to require the out of state licensee to obtain a cooperative license.
- An Idaho broker agreeing to be the responsible broker for a transaction, but taking no action beyond that.

Under the license law, the Idaho designated broker must “actively manage and have full control” of the transaction. Idaho Code 54-2040(5). Thus, an Idaho designated broker may not contract away his statutory management responsibilities; the Idaho designated broker, and not any other person, must be the active manager in control of the Idaho transactions.

4. **Fee-sharing arrangements between licensed brokers.**

The license law prohibits Idaho brokers from “fee-splitting,” i.e., sharing brokerage fees with, or paying any portion to, any person except persons who are licensed “in Idaho or another state or jurisdiction.” Idaho Code 54-2054(2).

This “fee-splitting prohibition” does not apply to fee arrangements made between Idaho-licensed brokers and brokerages licensed in other states. A proper fee sharing arrangement, such as a referral fee, is not regulated by the Commission as “the Idaho Real Estate Commission shall not be involved in the resolution of disputes between licensees or between licensees and buyers and sellers concerning matters of commissions or fees.” Rule 300.

5. **Obtaining a cooperative Idaho real estate license.**

Although any out-of-state licensee is welcome to obtain an Idaho real estate license through the traditional licensing method, Idaho has adopted a streamlined method to obtain an active Idaho real estate license called a cooperative license. The Idaho Real Estate Commission considers the out-of-state broker and their salespeople as having a proper active Idaho license after obtaining Idaho’s cooperative license.

A cooperative license applies only to transactions on commercial properties, as defined in Idaho Code 54-2004(13). The cooperative license is not available for transactions on residential and agricultural properties. The cooperative license will be valid for one transaction only. The cooperative license is valid for one year, but the brokers may reapply for another subsequent cooperative license as many times as necessary to complete the transaction. An out-of-state broker may apply for multiple cooperative licenses at a time. Each cooperative license carries its own separate fee.

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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To obtain a cooperative Idaho license the out-of-state broker must find an actively licensed Idaho broker to be named on the application. Both brokers must sign the application. The application will also list any of the out-of-state’s broker’s licensees that may be assisting in the transaction, if any. The Idaho designated broker will be responsible for the supervision of the transaction and all licensees working on the transaction. An Idaho broker must be the responsible broker and all rules governing responsible brokers still apply. The Idaho broker must maintain a complete transaction file and adhere to all the Idaho requirements for document retention. The application must be made, and the cooperative license granted, before any out-of-state licensee performs any activity requiring an active Idaho license.

The Idaho broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved. See Idaho Code 54-2041(5).

Once the cooperative license is granted, the out-of-state broker and any of their named licensees may conduct any activity requiring an active Idaho license – sell, list, buy, negotiate, or offer to sell, list, buy, negotiate and procure prospects – for that single Idaho transaction.

The Idaho Real Estate Commission provides a form and process to obtain the cooperative license, and requires certain criteria such as filing a Consent to Service with the Executive Director of the Idaho Real Estate Commission, a certified license history from their home state of licensure, and a current errors and omissions insurance policy. Additional information may be found in Idaho code section 54-2017.

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IDAHO REAL ESTATE COMMISSION
Guideline #3
Revised July 1, 2014

REGULAR EMPLOYEE STATUS DETERMINATION

The License Law recognizes an exception to the licensure requirement when the acquisition, exchange, or disposition of real property is by the property owner “or a regular employee of the owner” acting within the scope of his or her employment.” Idaho Code § 54-2003(1)(b).

In 2014, the legislature adopted a bright-line test for distinguishing a “regular employee” from an independent contractor. For purposes of the licensure exemption:

“Regular employee” means an individual who performs a service for wages or other compensation and whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied. Idaho Code § 54-2004(39) (emphasis added).


A “contract of hire” means an agreement by which the individual provides labor or services to the owner/employer for wages or remuneration or other thing of value supplied by the owner/employer. The agreement need not be in writing. As stated in the statute, the contract of hire may be written or oral, express or implied. See also Daleiden v. Jefferson County Joint School Dist. No. 251, 80 P.3d 1067, 139 Idaho 466 (Idaho 2003).
AGENCY DISCLOSURE BROCHURE (“THE BLUE BROCHURE”) RECORD KEEPING REQUIREMENTS

The Agency Disclosure Brochure, or “Blue Brochure,” is the statutorily-required disclosure form that licensees must give prospective buyers & sellers of real estate. To ensure that this disclosure is made, the law requires that brokerages keep a record of the buyer or seller’s receipt.

Specifically, section 54-2085, Idaho Code, provides, in relevant part:

(1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho Real Estate Commission. The Commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure. (Emphasis added.)

This Guideline attempts to address questions that frequently arise concerning the “record” that is required to be kept under the statute.

**Question #1:** Must licensees use the “receipt” printed in the Blue Brochure as the buyer or seller “record of receipt”?

**Answer:** No. The law requires “a signed and dated record” of receipt – it does not specify the form of that receipt. The Commission has long recognized that acknowledgments included in a signed and dated Purchase & Sale Agreement, or in another document prepared in connection with a real estate transaction, can provide the record of receipt required by statute.

As a matter of good practice, however, many brokerages maintain an office policy requiring licensees to use the Blue Brochure’s receipt. Using the receipt provided with the brochure, provides the brokerage with the best possible documentation of when the licensee gave the Brochure to the consumer, and thereby helps protect the brokerage against any future claim by a disgruntled consumer that the licensee failed to timely give him the Brochure.

**Question #2:** What if the buyer or seller refuses to accept the Blue Brochure or refuses to sign any receipt? Can a brokerage still comply with the statute?

**Answer:** Buyers and sellers can refuse to accept, or refuse to acknowledge receipt of, the Blue Brochure. This most often occurs when the transaction documents are drafted by a bank, attorney, or someone other than a licensee over whom the Commission has no authority. Where such refusal occurs, the Commission advises that licensees document their attempts to give the brochure and to obtain a receipt, and also document the buyer...
Guideline #4

or seller’s response. Such documentation kept within the transaction file will be deemed by the Commission to comply with the statute.

A similar predicament occurs where a bank or attorney that drafts the transaction documents declines to include the “Representation Confirmation and Acknowledgement of Disclosure” verbiage required by the License Law under section 54-2085(4), Idaho Code. Again, the Commission recognizes the licensee’s limited control over the parties and advises that licensees provide the documentation that is within their control, even if the other party or parties refuse to sign.

(4) In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved…

…Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho Real Estate Commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage’s agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A “CUSTOMER” AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.
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 where 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

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purchase and sale transaction, e.g., as a professional consultant/representative for the buyer in the planning and 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**

Where 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, although not required, 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 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.”
OFFERING GUARANTEES

Some licensees offer guarantees to consumers. They do so for various reasons, from creating a perception in the marketplace to simply trying to attract more customers and clients.

Guarantees are not prohibited. They can be somewhat risky, however, and this Guideline is presented to help licensees understand how the Commission enforces the license law as it pertains to guarantees.

There are a variety of guarantees being offered by licensees. The Commission has seen complex arrangements where the licensee lists a property for sale and guarantees to personally buy the property if it doesn’t sell within a certain period of time. The Commission has also seen guaranteed buyback programs for dissatisfied purchasers and even guarantees for finite sums of money.

No matter what type of guarantee is being offered, the licensee offering it must have cash or immediately-available funds, in an amount sufficient to honor the guarantee, at the time the agreement is entered and throughout the entire contract period. Merely knowing someone who may want to invest in the project, or planning to have the money in hand when the time comes, is not sufficient.

Improper use of a guarantee offer has been interpreted by the Commission to constitute misleading advertising and, under certain circumstances, can even rise to the level of reckless conduct, agency violations, or dishonest and dishonorable dealing.

Further, certain types of advertising are considered misleading under Idaho’s Consumer Protection Act, under the jurisdiction of the Attorney General’s Office. For example, advertising a guarantee with the intent not to sell a guarantee but to lure consumers to contact the licensee, and then switch the consumer to other products or services, could be considered illegal “bait and switch” advertising prohibited under the Idaho Consumer Protection Act. A licensee who violates the Consumer Protection Act could be subject to prosecution by the Attorney General in addition to any discipline imposed by the Commission.

Licensees who enter into guarantee transactions are subject to the disclosure requirements applicable to licensees dealing with their own property (see Idaho Code 54-2055).

Here are some additional points to remember about offering guarantees:

1. No licensee should offer or enter into any guarantee unless the licensee has adequate financial resources to meet the commitment. A licensee offering a guarantee should, if requested, provide the consumer proof the licensee has sufficient financial resources to satisfy his/her commitment.

2. Every guarantee must be in writing and contain all conditions and other terms under which the guarantee can be used, including all fees for the service or plan. When the property will be purchased as part of the guarantee, the price for which the property will

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be sold or purchased and the approximate net proceeds the consumer will receive must be included.

3. A guarantee must include a provision clearly stating the licensee’s obligation to purchase property is enforceable ONLY at the option of the consumer.

4. A licensee offering or entering into guarantees must comply with the license law’s disclosure requirements and run the transaction through his or her brokerage. Licensees must therefore advise their brokers that they are offering guarantees and determine whether such practice complies with the policies of the brokerage.

5. A licensee offering a guarantee should give good market exposure to each property covered by any such plan, and shall present to the consumer all offers received for each property, up to and until the time of closing of the guaranteed transaction.

6. Advertising. A licensee offering a guarantee is free to advertise and promote the plan as a service of the licensee available to those who qualify. However, a licensee may NOT advertise the plan in a manner likely to mislead consumers to believe the plan is available without restriction or costs, unless the plan is indeed available without restriction or costs. Any advertisement of a guarantee should include a conspicuous statement advising eligible consumers, costs and restrictions will apply (unless none do), and advising the consumer to inquire of the licensee as to the terms of the guarantee.

7. Disclosures. Prior to issuing a guarantee, a licensee should provide in writing to the consumer all details of the plan. These details should include the precise terms required to use the guarantee. When a property is being purchased, the exact price the licensee will pay for the property, or the precise formula used to determine the price, including an itemization of any and all costs taken into account in determining that price must be included. These details should also include the reason(s) for any difference between the listing or closing price and the price which the licensee agrees to pay.

8. The licensee who advertises a guarantee should, prior to working with a customer or client, advise the consumer whether he/she qualifies for the plan, and if so, explain any restrictions, conditions and costs that apply. The licensee is advised to obtain a signed written confirmation from the consumer that the terms of the guarantee have been explained, and the acknowledgment whether he/she does, or does not, qualify for the plan.

9. Licensees may NOT use a guarantee as a misleading advertisement or a false inducement to obtain a customers or clients. A licensee advertising a guarantee, or any other product or service, should be familiar with the state laws protecting consumers from unfair and misleading advertising, namely, section 54-2053(4) of the Idaho Real Estate License Law, and the Attorney General’s Rules of Consumer Protection.

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1 Licensees considering the use of guarantees are advised to review the Consumer Protection Act and Rules of Consumer Protection at www.ag.idaho.gov/consumerProtection/generalTopics/statutesRules.html
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.
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
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 transaction.
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.

54-2061. Additional Grounds for Disciplinary Action -- Court Actions. 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.

54-2062. Additional Grounds for Disciplinary Action -- Other Administrative Actions. 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.
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.
Idaho Real Estate Commission
Guideline #8
(Adopted May 2020)

Off-MLS and Coming Soon Listings

The real estate industry has historically marketed listings for sale in the same fashion: take the listing, put up a sign, put it in the Multiple Listing Service (MLS) and commence other marketing techniques. Industry trends are appearing that have altered these methods in some transactions. Two of these practices are Off-MLS and Coming Soon listings.

First, the definitions of each:

- **Coming Soon Listings**
  A Coming Soon Listing is a listing that the Seller and listing Broker have agreed will be marketed for sale immediately, but no Buyers or Agents are allowed to view the property until the coming soon phase is complete. Reasons for this agreement vary but include the Seller is making needed repairs, the Seller wishes to move out prior to showings, or the Seller and Broker wish to build pent up demand.

- **Off-MLS Listings**
  An Off-MLS Listing is a listing that the Seller and listing Broker have agreed will never be marketed in the MLS. The listing Broker uses other marketing techniques to procure Buyers for the property, just not the MLS.

Other names of Off-MLS listings include:
- Pocket Listings
- Office Exclusive Listings

The Idaho Real Estate Commission receives calls about properties being marketed as Off-MLS and Coming Soon and offer the following guidance. There may be legitimate reasons to promote a property like this, and there are also improper reasons. The Idaho Real Estate Commission (IREC) takes no position on Off-MLS and Coming Soon listings aside from how Idaho license law may play a part. Three issues licensees need to remain aware of are **Marketing too soon, Failed Agency Duties and Not Presenting All Offers to the Seller**.

1. **Marketing too soon.** Idaho Code 54-2050 states that all representation agreements must be in writing. In order to advertise a property for sale the brokerage company must have a written listing agreement signed by the property owner(s). This is required before placing a sign on the property and before ANY marketing activities begin. This includes properties to be marketed on and off the MLS. A property owner’s verbal agreement and promise to pay you a fee if you can bring them a Buyer but refuses to sign a listing agreement, is not a listing. Remember, the Seller(s) must sign documents giving the Broker and/or Agent permission to commence marketing in any fashion.

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2. **Failed Agency Duties to a Client.** When a Brokerage is representing a Seller, Idaho Code 54-2087(4) requires the licensee to promote the best interest of the [Seller] client, and to seek a Buyer to purchase the property at a price and under terms and conditions acceptable to the Seller.

Agency duties are mandatory and may never be waived or abrogated. Those duties are violated when the licensee does not act solely in the client’s best interest.

3. **Not Presenting All Offers to the Seller.** Listing Agents need to remember Idaho Code 54-2051(1) which requires the Seller be presented every written offer to purchase as promptly as practicable. This applies to all listings, even Off-MLS and Coming Soon listings.

If the listing Agent receives an offer to purchase from a Buyer working with a different company than the listing company or outside the targeted network of selected companies and/or Buyers, they are still required to present that offer to the Seller as soon as practicable.

Aside from those statutory duties, the Idaho Real Estate Commission has no further authority over these types of property marketing. That said, additional commentary is warranted. IREC maintains there are both **proper** and **improper** uses of Off-MLS and Coming Soon listings.

1. **Proper use:** Off-MLS listings may not violate state law, REALTOR® Code of Ethics, or MLS rule. But you still:
   - Must have a signed listing agreement with all property owners
   - Must have a compelling reason that it is in the best interest of the Seller client
   - Must have the Seller’s informed consent in writing to NOT place it in the MLS or hold it out as Coming Soon
   - Understand that it restricts showings and potential offers from MANY potential Buyers who would have seen it on the MLS

   It is acceptable to withhold listings from the MLS at the express direction of the Seller who may have a personal interest to limiting the exposure of their property. Reasons a Seller might choose to retain the listing as Off-MLS or Coming Soon might be privacy, confidentiality, or even a desire to limit or restrict access to the property. Additionally, the Seller may wish to complete repairs or otherwise get the property in a more market ready condition while their Agent begins to market the property.

   Coming Soon listings are proper when ALL interested Buyers must wait to see the property once the Coming Soon phase is complete.

2. **Improper use:** Off-MLS and Coming Soon listings may also be a concern if used for the wrong reasons or without the Seller’s understanding the potential consequences of limited market exposure. This happens when:
   - There is no signed listing agreement

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• It is not in the Seller’s best interest
• It is done without the Seller’s written consent
• It is only shown to a select group of Buyers

It is a widely known that exposing the listing to the widest possible audience for a reasonable amount of time provides the best chances for the Seller to receive the most favorable offers.

An Off-MLS listing drastically reduces its exposure to the market, which may result in the Seller not receiving the best possible offer, since potential Buyers may never have had the chance to view the property. Properties sold through an MLS typically command higher sales prices by promotion of the property to a wider range of potential Buyers. An MLS also provides an economic incentive to agents by offering compensation to buyer agents who show their clients the listed properties, which in turn brings more Buyers to the property and gives the property a wider exposure.

Encouraging a Seller to allow the listing company, team or agent to market the property Off-MLS solely for the purpose of collecting a larger commission by not cooperating with other brokers and agents is seen as placing their own personal interest above the interests of their clients.

The Idaho Real Estate Commission warns that Off-MLS listing arrangements and advertising that is used to market a property to only a select group, such as investors or Buyers represented by the listing agent, team or company, may be self-serving and constitute an agency violation.

Coming Soon listings are improper when it allows the only the listing agent and listing company to show and sell the listing during the coming soon phase, but all other interested Buyers from other companies must wait to see the property once the coming soon phase is complete.

With such a high percentage of active Idaho licensees as members of the National Association of REALTORS® (NAR), it bears mentioning NAR’s Clear Cooperation Policy that imposes on its members duties to cooperate with other firms and their licensees. Additionally, MLSs have rules and policies its members must follow.

Although improper Off-MLS advertising may violate state laws and regulations, marketing property Off-MLS is not inherently wrong or illegal. If this technique is used by the listing agent or office, be sure to remember:

• You must have a signed listing contract with all the property owners and that contract gives you explicit permission to market the property Off-MLS.
• Ensure you fulfill your agency duties by promoting the Seller’s best interest.
• You must present all written offers to the Seller.

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TERMS UNDER WHICH RENTAL OR LEASE FEES MAY BE SPLIT WITH NONLICENSED PERSONS

Compensation (commissions) received by a licensed real estate broker or a salesperson for leasing or renting real property may be split or shared with nonlicensed persons.

However, if the lease or rental agreement includes any provision which requires the licensee to act in the capacity of a real estate licensee, then the compensation may not be split with any nonlicensed person, with the exception of the buyer or seller in the transaction, as provided in section 54-2054. Some examples of lease provisions which require a real estate license are as follows:

1. An option to purchase;
2. A definite purchase agreement at the end of the lease term (a lease/purchase agreement); or
3. A first right of refusal.
4. For any other questionable practice, the Idaho Real Estate Commission should be contacted for clarification.

IDAHO REAL ESTATE LICENSE LAW

54-2054. Compensation, Commissions and Fees – Prohibited Conduct.
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 a 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 transaction. However, no commission, fee or compensation may be split with

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Guideline #9

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.

Therefore, if the compensation received by the licensee is for an act which requires the licensee to act in the capacity of a real estate licensee, the compensation may not be split with nonlicensed persons, unless that person is the seller or buyer, and is a party to the contract.
SPLITTING FEES WITH UNLICENSED PERSONS PROHIBITED – FINDER’S FEES, DONATING TO CHARITIES

The Real Estate License Law prohibits Idaho licensees from “splitting fees” with unlicensed persons. This prohibition means that a licensee may not pay any part of his commission, fee or other compensation to any individual or entity that does not have an active real estate license.

Paying Finder’s Fees.
The Commission routinely receives calls asking whether a licensee is permitted to pay or reward an unlicensed person for the referral of customers. Under Idaho law, the answer is “no.” The law specifies that paying or offering to pay a “finder’s fee” or referral fee to an unlicensed person is considered fee splitting and is prohibited. Moreover, any person who engages in “procuring of prospects” is required to hold an active real estate license; an unlicensed person who engages in this activity is in violation of the law’s licensing requirement.

If there is an “intent” by the licensee to compensate the unlicensed person for referring customers, or the unlicensed person expects to be compensated for referring customers (either buyers or sellers), then one or both parties may be in violation of the License Law: the licensee for fee-splitting; and the unlicensed person for unlicensed practice.

Note: Presentation of a relatively inexpensive gift to an unlicensed person in a gesture of gratitude is not prohibited if the gift has not been promised to (and is not expected by) the unlicensed person.

Making Charitable Donations.
The Idaho Real Estate Commission often receives calls from licensees asking whether the law permits them to donate a portion of their sales commissions to charity, and whether they may advertise their charitable giving to the public. IREC is not against charitable efforts, but IREC is concerned that a licensee’s charitable-giving program does not violate the law’s fee-splitting prohibitions, or that its advertisement not mislead the public.

It is the Commission’s position that a licensee may, consistent with the license law, advertise that he or she will donate a portion of earned commissions to charity, even a specific charity, provided the following conditions are met:

1. The designated broker is made aware in advance, and condones this activity.
2. The receiving charity does not act or participate in any manner that could be considered the procuring of prospects, or in any other activities that would require a license.
3. The licensee must exercise reasonable care to ensure that any charity advertised is a bona fide nonprofit.
4. All advertising of any charitable giving arrangement must clearly disclose the terms under which the donation will be made and must otherwise comply with all laws regarding advertising.

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Guideline #10

5. A full written disclosure must be made to all principals, lien holders, and new mortgage underwriters if one of the parties or licensees controls or benefits from the charity involved.

An arrangement whereby a charity makes referrals to a licensee in anticipation of a contribution is not permissible. Making referrals is considered the procuring of prospects and constitutes unlicensed practice by the charity. Paying for such referrals constitutes illegal fee splitting by the licensee.

In considering whether an advertised charitable giving program violates the license law, the Commission will assess the following factors:

- Does the charity only receive a contribution if they provided one of the principals?
- Do only charities that provide principals receive contributions?
- Does the charity advertise an affiliation with a specific brokerage that contributes to it?

Licensees are also cautioned to keep abreast of HUD laws regarding discriminatory practices. This falls under Federal jurisdiction, and IREC does not enforce these laws. Conviction by HUD could lead to a disciplinary action by the Commission.
INTERNET AND SOCIAL MEDIA ADVERTISING

Licensees can use the Internet in multiple ways to contact consumers about real estate services and to advertise properties or their services. Licensees should be aware that all statutes and rules respecting advertising apply equally to the Internet. This includes websites, e-mail, and any other potential “on-line” identification, representation, promotion, or solicitation to the public that is related to licensed real estate activity.

This guideline discusses required information that must be included by licensees in all advertising and provides a few examples of advertising that the Commission considers misleading. More ways to use the Internet are likely to be invented, and this guideline is subject to change at any time as practice on the Internet evolves. Further, it is impossible to illustrate every possible advertisement that could be considered misleading.

Required Inclusion of Broker’s Licensed Business Name. Section 54-2053(2) of the License Law requires all advertising of listed property to include the broker’s licensed business name. A brokerage that registers a “DBA” (“doing business as” or fictitious trade name) with the Secretary of State may be licensed in that name; in that case, the DBA name must be used. The broker’s licensed business name must be advertised exactly as it appears on the license.

Proper disclosure of licensed business names will help ensure that online consumers know when they are dealing with a real estate licensee and identify the brokerage where the licensee can be found.

Misleading Advertising. Section 54-2053(4) of the License Law prohibits a licensee from providing “misleading” information to the public or prospective customers or clients. Information is defined as 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.” The Commission interprets this section to require any licensee who is advertising real estate brokerage services to include the broker’s licensed business name so as not to mislead or deceive the public about the advertiser’s status as a licensee or the brokerage where the advertiser is licensed.

All Internet-related advertising of listed property or brokerage services that consumers can view or experience as a separate unit (for example, e-mail messages or web pages) must include the broker’s licensed business name. The burden of the requirement falls on the licensee and the designated broker. However, in the case of e-mails or other electronic messages, the broker’s licensed business name is not required once an agency relationship has been established with a buyer or seller.

It is recommended that each brokerage develop and maintain a written policy regarding use of Internet and social media advertising by its sales associates and employees.

• The Web

Whenever a licensee owns a website or controls its content, every viewable page should include the broker’s licensed business name. (A “viewable” page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.) If a licensee gives permission for a third party to advertise listings, the

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licensee should maintain regular and thorough oversight to ensure the information is correct. It is also important to adhere to copyright laws.

• **E-mail Farming, News Groups, Discussion Lists, Bulletin Boards, Blogs, Video Blogs, Facebook, MySpace, LoopNet, and Similar Media**

Such formats should include the broker’s licensed business name at the beginning or end of each message. This would not apply to subsequent communications between a licensee and a member of the public where the licensee’s initial communication contained the broker’s licensed business name.

• **Instant or Text Messages**

The broker’s licensed business name is not necessary in this format if the licensee provided the information via another format or medium (e.g., e-mail or letter) prior to providing, or offering to provide, brokerage services requiring a license.

• **Chat**

Disclosure of the broker’s licensed business name prior to providing or offering to provide brokerage services must be made during the chat session or in text visible on the same web page that contains the chat session.

• **Social Media**

The broker’s licensed business name should be prominently displayed and be no more than one click away from the viewable page.

• **Multimedia Advertising (e.g., web based, executable e-mail attachments, etc.)**

The broker’s licensed business name should be visible as part of the advertising message.

• **Banner Ads**

Banner ads must link to a web page, no more than one click away from the viewable page, that includes the broker’s licensed business name, unless the banner ad itself contains the broker’s licensed business name.

**Procuring Prospects “On-Line.”** The Internet poses additional problem areas for licensees:

• Licensees who maintain individual websites should ensure that when listings have expired or are no longer available, they are removed from the websites in a timely manner.
• Similarly, sites maintained by the multiple listing service(s) of which the licensee is a member and other third party sites which display MLS data should be monitored to ensure they are updated in a timely manner and in compliance with Idaho License Law & Rules.
• Licensees who submit information to third party sites should provide written communication of any change of listing status to the publisher in a timely manner.

• Licensees should refrain from giving the impression they are licensed or providing services in jurisdictions where they are not licensed.

• **Misleading Images.** Licensees should not use images that have been edited to give an inaccurate representation of the property or images that misrepresent or conceal the current condition of the property. Licensees may not use images to mislead consumers concerning the identity of the individuals actually providing the brokerage services. Licensees are cautioned that photographs taken by others are considered copyrighted. This includes photos taken by other brokerages.

• **Metatags** are descriptive words hidden in a website’s HTML code that search engines use to index the website. Most sites use common words such as “real estate,” “Idaho,” city names, “homes,” “houses,” etc., which is acceptable. However, some licensees have also inserted a competitor’s names (or the names of other businesses) into their website metatags, so when a potential customer searches for the competitor’s (or other business’s) site, the licensee’s site will also come up as a match. This should not be done; courts have ruled that this constitutes trademark infringement.

• **Domain names.** A brokerage should maintain a written policy on ownership and use of domain names by its licensees, including continued use of the domain name when an associate separates from the brokerage. An e-mail address containing a brokerage domain name should not be used by a licensee who is licensed at a different brokerage.

• All licensees should periodically review the advertising and marketing information on their websites and social media pages and update as necessary to assure the information is current and not misleading.

Licensees advertising on the Internet should seek legal advice regarding compliance with local, state, and national regulations. Compliance with Idaho real estate license law does not ensure compliance with other jurisdiction guidelines, laws, or regulations, or the REALTOR® Code of Ethics.
ADVERTISING

The Idaho Real Estate Commission receives many advertising complaints every month. Most of these complaints come from within the industry, from competitors that know the laws and expect everyone to follow them.

The Commission is more interested in obtaining compliance with the advertising laws than initiating discipline for violations. This Guideline discusses the advertising requirements applicable to licensees under the Idaho Real Estate License Law and enforced by the Commission.

This Guideline will not delve into trade association codes, franchise requirements, Federal regulations, or the Idaho Consumer Protection Act provisions governing advertising. It is limited in scope to the Idaho Real Estate License Law. Readers should look elsewhere for assistance and enforcement of these other regulations.

The License Law’s advertising requirements are simple and are presented here in their entirety:

54-2053. ADVERTISING. (1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.
   (2) All advertising of listed property shall clearly and conspicuously contain the broker’s licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.
   (3) All advertising by licensed branch offices shall clearly and conspicuously contain the broker’s licensed business name.
   (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.

Black’s Law Dictionary defines clear as “plain” or “evident” and conspicuous as “easily noticeable and obvious”.

The first three subsections, or points, are clear and easy to apply. The restriction contained in point (1) means that, when it comes to property located in Idaho, only the names of Idaho licensees may appear in an ad or sign, and unlicensed staff may not be named in advertising.

Point (2) applies to advertising of listed property, and requires that the licensed name of the brokerage be in the advertisement, including MLS; a team name is not sufficient. It also requires that a new brokerage, or an existing brokerage wishing to change its name, wait until the
application for licensure or name change is made effective (i.e., processed and approved) by the Commission before beginning to advertise.

Point (3) applies to licensed branch offices, and requires that the designated broker be named in advertising; the name of the managing broker or team name is not sufficient.

Point (4), the prohibition against advertising that is “misleading to the public” is not as black-and-white in its application and requires some interpretation. Below is a list of situations the Commission considers misleading. This list is not intended to be all inclusive, but notes the most common violations seen:

- The actual licensed name of the brokerage is missing. While point (2) already requires the licensed name in ads for listed property, point (4) applies to all advertising and includes: cards, automobiles, billboards, radio, MLS data and flyers, television, websites, printed ads, online ads, ads that direct consumers to a website, and every other form of advertising in existence. If the licensed name of the brokerage is not in the ad, then the ad is misleading.
- Advertising a subdivision as having homes starting at a low price, when in fact no homes ever were, or no longer are, available at that price.
- A franchise name alone is advertised. The franchise name is only a part of the licensed brokerage name. The name “Franchise Brokerage” is not the same name as “Franchise Brokerage of Greater Atomic City, Idaho.” Advertisements must contain the complete licensed name.
- An abbreviation is used in place of the licensed brokerage name.
- A company logo is used in place of the licensed brokerage name.
- Although the law requires licensees to conduct their personal transactions through the brokerage they are licensed with, it does not require that they employ the services of that brokerage. Licensees are allowed to offer personally-held real property “by owner.” However, such an ad is misleading unless it includes the term “Owner/Agent” or some other disclosure that the seller holds an active Idaho real estate license.
- Placing ads as an individual licensee or brokerage before actual issuance of the license(s) (gambling that the license(s) will be issued before the ads are published).
- Placing the name of the brokerage in an advertisement, but doing so in a way that is not obvious to a consumer. Some examples are in order here:
  1. Brokerage name in a brochure or newspaper ad is so small a magnifying glass is required to read it
  2. Brokerage name on a sign cannot be easily read at the posted speed limit
  3. Posting a “team” name prominently, while concealing the actual name of the brokerage (perhaps using grey lettering on a grey background that requires a search to reveal the brokerage)

Designated brokers have additional responsibilities as far as advertising is concerned. Idaho Code 54-2038(4) prohibits brokers from allowing “any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license.” This means that a broker may not advertise licensees until they are officially licensed at the brokerage. If placing “franchise” advertising, designated brokers should carefully
check not to mingle their licensees and properties with those of another broker who is under the same franchise.

Idaho Code 54-2040(4) states that a broker shall not conduct business under any name other than the one in which the license is issued. In other words, once a broker has committed to a brokerage name, they must operate under that business name or change it.

Likewise, an individual licensee must also conduct business in the name on the license. A licensee must be licensed in his/her legal name and can also include a nickname on the license, such as “Butch” for the legal name Clement Leroy, or “Kathy” for the legal name Kathleen.

Licensees should familiarize themselves with the advertising laws. Colleagues and consumers are watching. The Commission does not want to initiate disciplinary proceedings for these violations, we prefer compliance.
DISPUTED EARNEST MONEY

One of the most common types of complaints brought to the attention of the Commission concerns disputed earnest money.

The license law provides three options a broker can use to settle an earnest money dispute when the funds are “entrusted” to the broker. It gives no weight to one over the other. There is no order in which these options must be used.

1. When a situation involving disputed earnest money occurs, the broker may try to obtain a written agreement signed by the buyer and seller releasing the broker from the custody of such money and instructing the broker as to the proper disbursement of same.

   The Commission is aware of the fact that, in most earnest money disputes, the buyer and seller are not getting along and, in such cases, it is impossible to obtain a statement signed by both parties as contemplated above which forces the broker to use an alternative method.

2. The broker may rely on the wording of a properly executed purchase and sale agreement under which said money was originally taken and which describes the manner in which division of funds shall occur in the event one of the parties fails to fulfill the terms of the contract.

   In the event a broker disburses the earnest money in accordance with the terms of the purchase and sale agreement, the broker should, of course, keep accurate documentation in his/her files as to why the money was disbursed. Also, prior to such disbursal, the broker must notify both parties in writing as to the broker’s intentions.

   It should be kept in mind that the broker may be found civilly liable to the party not receiving the funds if the broker disburses the funds in a manner found to be inconsistent with the terms of the purchase and sale agreement.

3. If the broker cannot, or is unwilling to, make the decision based upon the written agreement, the broker should notify all parties that the entrusted funds will remain in the trust account until the broker is ordered to disburse such funds by a court of competent jurisdiction.

   Unless the broker has acted in a reckless manner by improperly holding or disbursing the earnest money, the Commission will not get involved in this type of problem. It is up to the buyer and seller to reach agreement concerning the problem or to get the matter resolved either through a broker initiated interpleader action or in civil court. If the dispute involves
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$5,000.00 or less, then, in many cases, it may be handled in Small Claims Court. It is the broker's responsibility to use his or her best efforts to get the dispute resolved between the buyer and the seller.

Many brokerages are allowing the buyer and seller to place earnest money at title companies and foregoing the keeping of a real estate trust account. In these cases, the monies are not considered “entrusted” and the broker has no responsibility to act upon the dispute. This becomes the responsibility of the title company who has its own laws to follow. In the event a title company is used, the broker is to inform all parties in writing that the title company will handle the dispute according to their procedures, and retain proper receipting and ledger card records.
ESTABLISHING REAL ESTATE TRUST ACCOUNTS

This guideline has been prepared in response to concerns arising from routine audits, inspections, and office visits in the field that continue to indicate confusion concerning the requirements of establishing and managing a real estate trust account. It also instructs on the law’s requirement that “entrusted funds” be deposited into a real estate trust account.

Establishing and Managing a Real Estate Trust Account.

Real estate brokers in Idaho are not required to open a real estate trust account. In the event the firm does not have one, funds received by the brokerage from a party to a transaction are to be delivered to a third party, like a title company, as directed in writing by the parties to a transaction. A broker may also have their own real estate trust account but still have parties to the transaction direct funds to be held by a title company.

For the purposes of this section, a Real Estate Trust Account is an account established by the Designated Broker of a brokerage. It does not include accounts under the control of title companies or attorneys.

In order to establish a real estate trust account, the account must be in the licensed business name of the broker; it must be identified as a "real estate trust account"; and the funds must be subject to withdrawal on demand by the broker. The broker may authorize others to sign trust account checks and withdraw funds, but the broker is held strictly responsible and accountable for the funds on deposit. Each real estate trust account must have a separate and complete set of records consisting of monthly accounting, deposits, and charges. See Idaho Code 54-2042.

Regardless of where the broker establishes a real estate trust account, the broker is required to notify the Commission on a form entitled “Trust Account Notification” and includes the “Agreement & Authorization to Inspect.” This form must be signed by the broker and by an officer of the trust account depository. Every broker is required to complete and turn in this form, even if they elect not to have a trust account. The form contains an option that must be selected for those not keeping a real estate trust account.

In the event of a cooperative transaction between two brokerage companies, the funds may be placed in the listing or selling broker’s trust account as either of the brokers may be the “responsible” broker for that transaction. See Idaho Code 54-2048.
Broker’s Duty to Deposit “Entrusted” Funds into a Real Estate Trust Account

A broker is required to deposit any and all “entrusted” funds it receives into a real estate trust account maintained by the broker, and the broker is responsible for those funds. **Any and all funds received by the broker are considered “entrusted” UNLESS:**

1. the parties have directed the broker, in writing, to transfer those funds to control of a third party, such as a title, escrow or trust company; **and**
2. neither the broker nor his licensees have any right to exercise control over the safekeeping or disposition of the funds.

Broker’s Duty regarding Funds that are NOT “Entrusted”

Whenever a broker receives funds with the parties’ written direction to transfer them to a third party, the broker’s duty is to transfer the funds as directed and maintain a ledger record of the time and date of the transfer; he must also obtain and retain a receipt. Because such funds are not considered “entrusted,” the broker has no duty to deposit them into a real estate trust account under the broker’s control.
PRESENTATION OF MULTIPLE OFFERS BY THE LISTING AGENT

Section 54-2051(1), Idaho Code provides:

A broker or sales associate shall, as promptly as practicable, tender to the seller every written offer to purchase obtained on the real estate involved, up until time of closing. A purchase and sale agreement signed by the prospective buyer shall be deemed in all respects an offer to purchase.

Whenever more than one written offer is received in connection with the same property, special care must be taken to ensure that the duties owed to the parties, whether as clients or customers, are carried out by the licensees involved. The following is a list of some of the more common issues to be considered when multiple offers are received:

WORKING WITH THE SELLER

1. **General Duty to Present Offers.** All licensees, whether acting as an agent or nonagent of the seller, have the duty to promptly present to the seller EVERY WRITTEN OFFER up to and until closing of the property.

2. **Duty to Promote Client/Seller’s Interest.** When acting on behalf of a Seller pursuant to an Agency Representation Agreement, licensees owe the seller/client the further, heightened duty “to promote the best interests of the client in good faith, honesty and fair dealing.” This includes “seeking a buyer to purchase the seller’s property at a price, and under terms and conditions acceptable to seller and assisting in the negotiation thereof.” As an agent for the seller/client, the licensee should be diligent in informing the seller about any offers or possible offers on the property that might materially affect the seller/client’s decisions about the sale of the property.

3. **Making Known the Terms of the Offer to Other Buyers.** At the time of the listing, it is advisable that the licensee discusses with the seller/client the issue of disclosing the terms of any offer. Generally, the seller should decide whether to make known to other buyers the terms of the offers he or she might receive. However, **if the licensee also represents the buyer – as a limited dual agent, the licensee’s ability to disclose the terms of the offer to other buyers may be restricted.** For this reason, it is critical that the licensee be aware of whom he or she represents, and that the licensee disclose to the client(s) any limitations upon his or her representation. However, unless the licensee also represents the buyer, the licensee owes no duty to the buyer to withhold terms of the offer from other buyers.

However, while the idea of disclosing offers from one buyer to another may seem appealing at first to a seller hoping to get a higher price, it can also work to the seller’s detriment. For example – a property is listed for $200,000 and seller has offer in hand for $180,000. The seller instructs the agent to reveal this offer to another interested buyer, who then offers $181,000 and buys the house. Actually, the second buyer had intended to offer $195,000. The seller is out $14,000. For this reason, it is important to discuss with the seller, preferably beforehand, the handling of multiple offers.

*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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4. Advising the Seller on Multiple Offers. The licensee should also inform the client/seller that the listing for sale is not an offer, but an invitation for offers from others. As such, the seller is not obligated to deal with multiple offers in any particular order, and, in fact, is not obligated to accept, or counter, or formally reject any of them. However, the seller should be advised that he or she may become contractually liable to the broker for a commission if the seller fails to accept the offer of buyer who is “ready, willing and able” to purchase the property on the listing terms.

5. Advising the Seller After an Offer has been Accepted. On occasion, a seller who has accepted an offer (i.e., entered into a contract) is presented with a better offer from a different buyer, and the seller wants out of the existing contract. In such cases, the licensee should advise the seller to seek legal advice before attempting to terminate the existing contract, and before becoming obligated under a second contract (e.g., contracting to sell the same property to two different buyers). A licensee may not give the seller legal advice; but the licensee can state that failing to perform the terms of a contract, or obligating oneself under two contracts, can have serious legal consequences for a seller. If the seller does accept a second buyer’s offer (other than as a backup offer), it is advisable that the licensee maintain documentation showing that the licensee advised the seller to seek legal advice prior to seller’s agreeing to sell the same property to two different buyers.

WORKING WITH THE BUYER

Licensees working with or representing buyers have some additional issues to watch when dealing with multiple offers.

1. Offer Conditioned on Nondisclosure. A buyer may desire as a condition of his offer that the price and terms of the offer not be disclosed to any other party (e.g., other potential buyers). However, because a seller is not bound by this condition unless or until he agrees to it, the licensee working with the buyer should obtain the seller’s agreement to nondisclosure prior to presenting the buyer’s offer.

2. Multiple Offers by the Same Buyer on Different Properties. On occasion, a buyer who has accepted an offer (e.g., entered a binding contract) on one property, subsequently wants to make an offer on a different property instead, and, if the second is accepted, terminate the existing contract. When faced with a buyer’s request to write up an offer on a second property, the licensee should proceed with caution. The licensee should advise the buyer to seek legal advice before becoming obligated under two contracts (e.g., by buying two properties), and before attempting to terminate the existing contract. Although the licensee may not give legal advice, the licensee can state that failing to perform the terms of a contract, or obligating oneself under two contracts, can have serious legal consequences for a buyer. If the buyer insists on making an offer on the second property, the licensee should maintain documentation showing the licensee advised the buyer to seek legal advice prior to making the offer on the second property.
3. Multiple Offers Presented by a Licensee Representing Different Buyers for the Same Property. A brokerage and its licensees may represent two or more buyers interested in the same property, provided the brokerage or its licensee has notified all such buyers in writing. When this situation arises, the licensee should ensure that the buyer/clients have been notified that the licensee may be presenting competing offers of other buyer clients, and that the licensee is not permitted to promote the interests of one buyer/client over the interests of any other.

On occasion, a seller wishing to avoid the delays of negotiations may make the initial “offer,” or a counter-offer, to all prospective buyers, by presenting terms of a sale which, upon acceptance by the first buyer, will be binding on the parties. Licensees working with interested buyers should advise their customers/clients that it is the first buyer to deliver written acceptance of the seller’s terms that gets the contract, and therefore time is of the essence.

GENERAL:

1. If questions arise on any area of contract law, such as if and when effective acceptance or revocation of an offer or counteroffer will take place, it is in the agent’s best interest to advise the seller or buyer to seek legal counsel.

2. Remember that many issues in multiple offers are determined by the agency status of a real estate licensee. Be certain to follow scrupulously sections 54-2086, 54-2087, and 54-2088, Idaho Code, and to act in a manner consistent with the agency relationship you undertake.

This Guideline is general in nature and is not intended to address each and every circumstance or issue that may arise in a multiple offer situation. As with any area where a question of contract law arises, it is best to urge the seller to seek competent legal counsel before difficulties develop, and, as is always prudent, licensees would be well advised to document in writing that they have advised the client or customer to see an attorney.

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USE OF UNLICENSED ASSISTANTS AND OFFICE STAFF

The Commission often receives questions from brokers and salespersons on the use of unlicensed personal assistants, secretaries, office staff, and transaction coordinators. Personal assistants are generally thought of as unlicensed persons performing various functions as employees (including clerical support) or independent contractors of a real estate broker within the framework of a real estate transaction. Inquiries generally fit into two categories: (1) whether the activity performed is one which requires a license, and (2) what are the supervisory responsibilities of an employing broker?

Personal assistants who hold active real estate licenses and the brokers in whose offices they work should be aware that the brokers are fully responsible for all licensees, whether they are called personal assistants or not, and all licensed “assistants” are fully subject to Idaho License Law and Rules.

The license law prohibits unlicensed persons from negotiating, listing or selling real property. Foremost to the use of unlicensed personal assistants is careful restriction of their activities so as to avoid illegal brokerage practice. Unlicensed personal assistants may complete forms prepared and as directed by licensees but should never independently draft legal documents such as listing and sales contracts, nor should they offer opinions, advice or interpretations. In addition, they should not distribute information on listed properties other than that prepared by the employing broker or broker associate.

On the other hand, they may:

1. Perform clerical duties for an employing broker or salesperson which may include the gathering of information for a listing;
2. Provide access to a property to contractors, home inspectors, & appraisers. They may not provide access to potential buyers;
3. Distribute prepared information at an open house, so long as no negotiating, offering, selling or contracting occurs;
4. Answer simple questions on their own brokerage's listed properties with information from MLS printouts, property flyers, data sheets and, marketing materials prepared by the brokerage and/or employing licensee;
5. Deliver paperwork to other licensees;
6. Deliver paperwork to sellers or purchasers, if such paperwork has already been reviewed by a licensee and no offering of opinions, giving advice, or interpretations of such documents is given;

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7. Assist in the preparation of market analyses for sellers or buyers under the direction and approval of the licensee.

Designated brokers need to be especially aware of their supervisory duties under the license law. Brokers have always been and continue to be responsible for the actions of their licensed and unlicensed staff. Part of that responsibility has been supervising unlicensed staff and seeing that the unlicensed personnel does not engage in any prohibited activity -- that is, activity requiring a real estate license.

A designated broker should have a written office policy explaining the duties, responsibilities and limitations on the use of personal assistants. This policy should be reviewed by and explained to all licensees, licensed and unlicensed assistants, and office staff.

Licensees should not directly share commissions with unlicensed assistants. Although this may not technically be a violation of the license law if the activity is not one which requires a license, the temptation to “cross over” into the area of negotiating and other prohibited practices is greatly increased where compensation is based on the success of the transaction. A transaction coordinator may be paid on a per transaction basis as part of a regulated real estate transaction.

With brokers developing and implementing policies for the use of assistants and routine procedures for monitoring their activities, the assistant can serve as a valuable tool in the success of the transaction. As with any other activity involving the delegation of an act to another, the freedom and convenience afforded to the broker in allowing the use of assistants carries with it certain responsibilities for that person’s actions.
DEALER IN OPTIONS

The Idaho Real Estate License Law requires that a person acting as a “dealer in options” must hold an active Idaho real estate license. A “dealer in options” is defined by statute to include any person who obtains or uses options to purchase real property “for another or others,” whether or not the options are in his name or title passes through him.

This Guideline addresses the License Law’s distinction between being a “dealer in options,” which is defined as brokering activity and requires a license; and using an option to purchase property for a person’s own account, which does not require licensure. The Guideline also addresses the implications of having a licensed person involved in the option holder’s activities.

Purpose and Scope of the License Law

The License Law does not attempt to regulate the real estate market itself. Instead, it defines and regulates the activities of persons who “broker” real estate deals “for another or others.” However, the Law recognizes and exempts from regulation the option, purchase or sale of real estate “for a person’s own account,” and similarly exempts the sale of an interest in real property “by its owner.”

An Option Holder is Not an Owner of the Property, and Must be Licensed to Broker that Property

It is important to note that an Option to purchase does not give the option holder equitable title to the property. A person who obtains an option to purchase property has not obtained any ownership interest in that property, and accordingly, the License Law’s “owner exemption” does not apply. Because an option holder is not an owner of the property, he may not list, sell, negotiate, procure buyers for, or otherwise broker that property unless he has a license.

The Commission often sees documents called “option agreements” or “reservation agreements” which are not legally-enforceable options to purchase. To have an enforceable right, or option, to purchase real property, the option contract must contain all terms material to the contract, including price, expiration date and an exact description of the property. An option contract is binding upon the seller and entitles the option holder/buyer the right - but not the obligation - to purchase the property on the terms and conditions set forth in the option agreement. An “agreement” granting the holder merely the ability to make an offer which the seller is not bound to accept is not a binding option agreement.

Dealer in Options vs. Option for Person’s Own Account

As noted earlier, if a person uses an option to purchase property for his own account or use, no license is required. However, a person is acting as a Dealer in Options and must be licensed if the person uses options to purchase property “for another or others.”
Guideline #18

Example #1 - Use of Option to Purchase Property “for Person’s Own Account.”

Developer locates an agricultural property and obtains from Seller an Option to purchase the property for a sales price of $500,000. Developer then exercises his Option and purchases the property from Seller for $500,000. Subsequently, Developer decides he does not want to develop the property, and he then offers and sells the property to another person and earns a profit.

Because Developer exercised his Option and purchased the property before it offered the property for sale to any other buyer, it would appear that Developer used the Option to purchase the property “for his own account or use.” As such, Developer’s transactions are exempt from the licensing requirement.

However, if Developer had an agreement to sell the property to another at the time he exercised the Option to purchase the property, he did not purchase the property “for his own account or use,” but instead used the Option to purchase the property for another. His transactions therefore would not be exempt from licensure.

Example #2 - Use of Options “to Purchase Property for Another or Others.”

Speculator identifies agricultural properties in an area where significant growth is occurring. Speculator obtains Options to purchase on various properties in that area. Before exercising the Options, Speculator approaches a Developer and offers to sell Developer the properties for a higher price.

Speculator’s option rights do not give him equitable title in the properties, and he is not the owner. By offering to sell the properties to Developer in anticipation of compensation, he is engaging in the activities of real estate broker, and he must be licensed.

Example #3 - Using Reservation Agreements to Sell Subdivision Lots.

Developer submits an application to the county for a preliminary subdivision plat. Developer begins taking “reservations” for the lots he hopes will be approved (and decides to call his contracts “lot options”). Speculator fills out multiple lot reservation agreements and then markets the lots for sale at a higher price, in order to make a profit on the lots in a competitive market.

Speculator is engaging in the practice of real estate brokerage and must be licensed and comply with the Real Estate License Law. In this example, Speculator owns nothing and may never own anything, and he cannot even force the Developer to sell the parcels to him. Regardless of whether the reservation agreements are valid and enforceable contracts, however, they do not convey any ownership interest in or equitable title to a property.
Guideline #18

While an Option to purchase grants the right to purchase the property, reservations are usually not true option contracts (even if that is the name of the document), and they typically provide buyers with few rights. The final plat may never be approved, or it may be approved with fewer lots than originally contemplated, and Developer may never be able to sell the parcels he took reservations on.

Other Brokering Activities for Which Investor Must be Licensed.

Whether an Investor has an option to purchase or not, he may be engaged in Unlicensed Practice if he lists, sells, or negotiates the sale of property he does not own, or if he procures buyers for property that he does not own. For example, where an Investor locates a distressed property and obtains Seller’s agreement to allow Investor to procure an ultimate Buyer for that property, the Investor is engaging in brokering and must have a license.

**Question #1:** If an Investor is acting as a Dealer in Options, or is otherwise procuring buyers for properties that he does not own, is the Investor engaged in Unlicensed Practice if he hires a licensee to list and otherwise broker the transactions?

**Answer:** Yes. If an Investor is using Options to put together sales between property owners and Other Buyers, he is acting as a dealer in options (brokering) and must be licensed, even if he hires a licensee to assist him by listing the property. **NOTE:** In these schemes, the listing typically names the Investor, not the Owner, as seller.

**Question #2:** Does a Licensee Violate the License Law by participating in an Investor’s Dealer in Options scheme?

**Answer:** Potentially, yes. A licensee who knows, or reasonably should know, that the Investor is not the property owner may be in violation of the License Law for misrepresenting the identity of the Seller, and also for assisting the Investor in the Unlicensed Practice of Real Estate.
The Idaho Real Estate Appraisers Act (Appraiser Act) prohibits all persons who are not licensed or certified by the Idaho Real Estate Appraiser Board (Appraiser Board) from doing any type of real estate appraisal, including an analysis, opinion or conclusion relating to the value of real estate. The Appraiser Act does grant exceptions for licensed real estate salespersons and brokers. This Guideline addresses the scope and application of those exceptions.

1. **Comparative Market Analysis Exception.** The first exception relates to price opinions for a prospective listing or a prospective sale:

   [A] licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser (Idaho Code 54-4105(2)).

This exception allows any real estate licensee – salesperson or broker – to prepare and present a price opinion for the purpose of a prospective listing or a prospective sale, also known as a Comparative Market Analysis (CMA). Licensees may not represent or mislead someone into thinking they are licensed or certified real estate appraisers, unless they are.

2. **Brokers Price Opinion Exception.** The second exception relates to broker price opinions (BPOs):

   [A] real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

   (a) The broker’s price opinion shall be in writing and contain the following:

      (i) A statement of the intended purpose of the price opinion;
      (ii) A brief description of the subject property and property interest to be priced;
      (iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;
      (iv) Any assumptions or limiting conditions;
      (v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;
      (vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;

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(vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice;

(viii) A disclaimer that the broker’s price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker’s price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction. (Idaho Code 54-4105(3).)

Under this exception, a real estate broker may prepare and render a BPO for purposes other than procuring listings and sales. This exception is strictly limited to those holding an active associate or designated broker license. BPOs prepared by a broker must include all of the content requirements noted in the Appraiser Act.

A BPO may not be used in place of an appraisal for a federally related transaction, which is defined in the Appraiser Act as “any real estate related financial transaction that a federally regulated institution, regulatory agency, or the resolution trust corporation engages in, funds, contracts for, or regulates” (Idaho Code 54-4104(6)).

Enforcement. The licensing requirements and exceptions contained in the Appraiser Act are regulated by the Appraiser Board. Real estate licensees who violate the Appraiser Act may find themselves before the Appraiser Board facing allegations of unlicensed practice of appraisal. The Real Estate Commission takes the position that if a licensee violates the Appraiser Act in preparing or rendering a BPO or other unlawful activity, that licensee may also be subject to discipline under the Real Estate License Law for dishonest and dishonorable dealings (Idaho Code 54-2060). This means that a finding of unlicensed practice by the Appraiser Board may lead to additional discipline imposed by the Real Estate Commission.

NOTE: The Idaho Real Estate Appraiser Board and the Idaho Real Estate Commission are more interested in obtaining compliance with the laws pertaining to BPOs than initiating discipline for violations.

Payment of Fees. The Real Estate License Law provisions pertaining to broker supervision and fee splitting apply to BPOs. The Real Estate Commission requires an associate broker who prepares a BPO to notify his/her designated broker (Idaho Code 54-2038(3)). In addition, the associate broker may not accept any fee except through the designated broker (Idaho Code 54-2038(3)).

FREQUENTLY ASKED QUESTIONS

Question #1: A lender calls a real estate broker and requests a BPO and the lender would or could not disclose the intended purpose of the BPO. May the broker render a BPO that complies with Idaho law?

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**Answer:** No. The statute plainly states that a BPO must contain a statement of its intended purpose, and it must be included in the BPO. The Uniform Standards of Professional Practice (USPAP) and the Appraiser Board interpret “purpose” to mean how the BPO is going to be used. Examples may include for estate planning purposes, dissolution of a partnership, refinance of a mortgage, short sale negotiations or determination, loan modification, loan origination, insurance purposes, etc. Any purpose that is for a federally related transaction would be unlawful in Idaho (see previous definitions).

**Question #2:** A lender calls a real estate salesperson and requests a BPO. May a salesperson render the BPO?

**Answer:** No. Some states allow salespersons to render BPOs, but Idaho law is very clear that only actively-licensed brokers may render BPOs. Unfortunately, many lenders have contacted Idaho salespersons (or inactive brokers) and requested BPOs. In some cases, the lenders have assured the salespersons it is perfectly fine for these licensees to render the BPOs, and many licensees have relied on these statements. If the salesperson renders a BPO, the salesperson would be violating Idaho law and may be subject to disciplinary by the Appraiser Board, the Real Estate Commission, or civil action under Idaho law. Salespersons who receive requests to render BPOs should decline the requests and/or forward those requests to their designated brokers.

**Question #3:** What if the lender discloses that it wants to use the BPO in its consideration of a short sale? Or a foreclosure? Or a modification of an existing loan? Is a broker restricted from rendering a BPO for these intended purposes?

**Answer:** Not necessarily. The purpose of the “statement of intended purposes” is to define the context of the price opinion. It is the lender’s responsibility – not the broker’s – to comply with any requirement that the written valuation be performed by a state certified or licensed appraiser. Of course, and unless the broker is in fact licensed under the Real Estate Appraiser Act, the broker must include the required disclaimer that the BPO “is not intended to meet the uniform standards of professional appraisal practice.” Brokers must also include a disclaimer, in the language of the statute, that the BPO “may not be used as an appraisal, or in lieu of an appraisal, in a federally-related transaction.”

**Question #4:** May a salesperson assist a broker in preparing a BPO?

**Answer:** Yes, but only if the broker rendering the BPO is the designated broker for the assisting salesperson and the assisting salesperson is acting on behalf of, and under the control and supervision of, the designated broker as required by the License Law. A salesperson who assists his or her designated broker will not be
deemed to be engaging in the unlicensed practice of appraisal. Likewise, a salesperson may assist an associate broker in preparing a BPO, if both the salesperson and the associate broker are licensed at the same brokerage, the designated broker has knowledge of and consents to the assistance, and both the salesperson and associate broker are acting under the control and supervision of their designated broker.

**Question #5:** Who oversees the quality of a BPO? In other words, what happens to a licensee who renders an inaccurate BPO?

**Answer:** As long as a broker meets the BPO requirements of Idaho Code 54-4105(3), the Appraiser Board has no jurisdiction. A BPO is merely one broker’s opinion of price, not value, and as such, the Real Estate Commission will not get involved in complaints regarding the quality or accuracy of a BPO. However, a broker may be subject to civil liability by an injured party. A real estate licensee who performs BPOs should review his Errors & Omissions insurance policy to confirm coverage.

**Question #6:** Is there a difference in an estimate or opinion of "price" and "value"?

Yes. *“Price”* is considered to be a **fact and may change based upon factors unrelated to value** such as the seller being relocated to another city, experiencing financial difficulties and needing to sell the property in a shorter period of time, or other personal circumstances unrelated to value such as a divorce or loss of a job. It is defined in USPAP as “the price paid for a property [which] may or may not have any relation to the value”.

An opinion of *“value”* is **never a fact** since it is an economic concept and always an opinion of the worth of a property at a given time related to a specific definition of value.

Types of value may include market value, salvage value, liquidation value, distressed value, etc. Any statement of value must also include its relationship to time. For example, if the market value of a property is estimated to be $150,000 and the typical marketing time is 12-15 months, and a client then requests a value estimate based upon a 3-6 months time frame, it is likely that the value would be adjusted downward for the shorter marketing period.

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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AUCTIONEERS OF REAL ESTATE

When persons who provide auction services become involved in real estate sales, questions arise as to whether or not that auctioneer needs to be licensed as a real estate broker or salesperson.

An auctioneer’s particular services and business activities in the sale of real estate may well require real estate licensure. The basic test is: Are the activities being performed by the auction company or auctioneer identified in Section 54-2004, Idaho Code, as activities requiring a real estate license? While the specific answer to this question can only be determined on a case by case basis, here are some common questions and answers:

1. Is the taking of a “consignment” to sell real property at auction a licensed brokerage activity?
   Most likely, yes. Procuring of prospects to list or sell real property for compensation is an activity requiring licensure.

2. Is the act alone of calling the sale at auction one requiring a real estate license?
   No.

3. Is a one-time sale by auction, i.e., the sale of one property in a single transaction, alright without having a real estate license?
   Only if conducted exactly according to the statutory exemption in Section 54-2003, Idaho Code, which is the exception for the sale of a single property in a single transaction pursuant to a power of attorney. This exception, while valid, is very limited and may not be relied on in conducting any other regular or frequent or even occasional auction business.

4. Do floor “spotters” at the real estate auction need to be licensed?
   If the activity of the person is limited to pointing out bidders to the auctioneer, no.

5. Can the unlicensed auctioneer advertise upcoming real estate auctions alone, without associating with and naming a licensed broker?
   See answers #2 and #3 above. While possible, the more activities and services performed by an auctioneer in assisting with and facilitating the sale of real property, the more likely that auctioneer is moving into licensed brokerage activity. An auctioneer must not be holding out to the public that he or she is in any way providing any licensed real estate services.

6. Can a licensed real estate broker split the brokerage commission with an unlicensed auctioneer upon sale at auction?
   No. An unlicensed auctioneer can be paid only for specific real estate services rendered, such as calling the auction. The fee just cannot be a split of the brokerage commission or paid from the broker to the unlicensed auctioneer. For example, a broker or seller may purchase advertising on radio or television to market a property. The payment is only for the actual advertising service rendered. While the amount of payment given to an auctioneer can be a

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percentage of the sales price, it is critical that the seller enter separate contractual obligations - one with the auctioneer and one with the licensed broker, delineating their separate services provided and the compensation therefore. See also Section 54-2054(2), Idaho Code, Fee-splitting with unlicensed persons prohibited.

7. If an auctioneer has a license as a real estate salesperson, can he or she act as an auctioneer and receive commissions without the involvement of his or her broker? Generally, no. Any licensed activities conducted by a salesperson are legally possible only through the license of that person’s broker. Technically, a licensee who wishes to merely provide “talent” and call an auction, if not holding himself or herself out as a licensee in any way, may engage in this activity. However, the permission and consent of all brokers should be obtained!! This type of practice is one fraught with hazards and conflicts and is NOT recommended or advised.

8. Is the recruitment of potential buyers of real property to attend an auction considered brokerage activity? “Recruiting” prospects or “assist(ing) in the procuring of...” prospects, for compensation, is brokerage activity requiring a real estate license. Of course, mere execution of clerical tasks or running advertisements alone is not licensed activity. Refer to Guideline #17 on the Use of Unlicensed Assistants and Office Staff for additional guidance.

9. If an auction company is a licensed real estate brokerage, must all advertising follow license law and rules?
   If the auction company is engaged in licensed activity involving the sale or auction of real property, yes. If the public believes the licensee is acting in a licensed capacity, and/or the licensee is holding himself or herself out as acting in a capacity of a licensee, then, yes, all law and rules of the Idaho Real Estate Commission will apply to that licensed activity, whether or not an auction.

10. What about agency? Whom does the auctioneer or auction company represent and how must this issue be disclosed before, during and after the sale? All fees except for non-licensed auction services (calling the action, advertising, set-up, etc.) should be directed to real estate agent not auctioneer. If the auctioneer is also a real estate licensee, he or she is bound by all license law including disclosures required by the Brokerage Representation Act. It is the responsibility of the licensee to hand out a blue brochure at first substantial business contact. Any real estate licensee associating with an auctioneer to sell a property should explain his or her own agency or nonagency position prior to beginning the auction, and the fact that the auctioneer is not a real estate licensee.

11. What is a “buyer’s premium” and who receives it? A buyer’s premium is a fee, usually a percentage of the bid price, which is paid with and added onto the successful bid amount. Who receives this fee? This depends on the written contractual arrangement between the licensees and/or auctioneer, and the buyer. Refer to question #6 for caveats.

12. Who is the responsible broker in an auction sale? Either broker, listing or selling, can be the responsible broker. However, one must be identified in a licensed transaction.

13. Can a licensee auction properties listed by another real estate company? Yes, in theory. However, it must be pursuant to agreement between the brokers in writing, and the

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responsibilities of each brokerage and the licensee should be carefully spelled out, including
identification of responsible broker.

14. Must potential buyers give any consideration up front in order to attend an auction of real
property? If so, what is the responsibility of any affiliated licensee or broker? Auctioneers
structure real estate auctions differently. However, if any type of consideration is “held” by
or on behalf of the parties conducting the auction of real property involving licensed activity,
the licensee will be expected to fully account for the consideration received, according to
license law and rules.

15. What are some of the other issues to consider in auction of real estate?

Be aware of the fact that bidders coming to an auction without a real estate licensee, or those
who pre-register through a licensee, may already have some kind of buyer broker contract
and some type of commission or fee obligation to a licensee.

In conclusion, the final determination on the necessity of licensure must be made on the basis of
section 54-2004, Idaho Code, defining a real estate broker:

54-2004(35). Definitions. “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 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.

If any person is engaged, whether or not through an auction mechanism, in licensed real estate
activity in the state of Idaho, a real estate broker’s license is required.

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MANDATORY DUTY OF THE BROKERAGE “TO BE AVAILABLE” TO RECEIVE AND PRESENT ALL WRITTEN OFFERS AND COUNTEROFFERS

The Commission has received questions concerning the circumstances under which a brokerage must be available to receive and present all written offers and counteroffers. The inquiries pertain to the application of Sections 54-2083(8) and (16), 54-2086, 54-2087, and 54-2051, Idaho Code.

The Real Estate License Law requires that any real estate brokerage that has entered a representation agreement, compensation agreement, or customer services agreement owes its customer or client a statutory duty to provide specific brokerage services, namely, “to be available” to its customer or client “to receive and timely present all written offers and counteroffers.” This duty is mandatory and cannot be waived unilaterally or by agreement.

Questions have arisen as to the meaning and scope of the mandatory duty requiring the brokerage “to be available.” The purpose of this Guideline is to provide the Commission’s interpretation of what is - and what is not - required by this brokerage duty.

The Listing Brokerage. As applied to a listing brokerage, the statute requires the brokerage to be available to its customer/client to: (1) receive written offers from buyers; (2) present those offers to its customer/client; and (3) present any written counteroffer of its seller to the buyer.

It is the Commission’s view that, in order “to be available” to provide these services, the listing brokerage must, at a minimum:

- Include, in any listing or advertisement of the property, sufficient information to allow buyers to submit, and the listing brokerage to receive, written offers from buyers; and
- have in place an adequate means of communication to allow (1) the brokerage to timely present the offers to its seller; and (2) its seller to submit back to the brokerage any written counteroffer for presentation to the buyer.

The Buyer Brokerage. As applied to the buyer brokerage, the statute requires that the brokerage be available to: (1) present its buyer’s written offers to the seller; (2) receive written counteroffers from the seller; and (3) present the written counteroffer of the seller to its buyer.

It is the Commission’s view, in order “to be available” to provide these services, the buyer brokerage should, at a minimum:

- include, with any written offer submitted to the seller, sufficient information to allow buyer to submit, and the listing brokerage to receive, written counteroffers from buyer; and
- have in place an adequate means of communication to allow (1) the brokerage to
Guideline #23

...timely present the counter offers to its buyer; and (2) its buyer to submit back to the brokerage any further written counteroffer for presentation to the seller.

“Sufficient information” may include, but is not limited to, the brokerage’s fax number, or e-mail address, physical (delivery) address, or a telephone number. If the contact information does not provide for direct submission of written offers, (e.g., telephone number), the brokerage must respond to inquiries with information that will allow buyers to submit written offers to the brokerage.

“Adequate means of communication” may include any means agreed upon between the brokerage and its client/customer to permit the broker to present written offers and counteroffers to its customer/client, and for the brokerage to present any counteroffers from its customer/client to the other party. The means of communication may include fax, e-mail, telephone, electronic transmission, or face-to-face meeting.

Frequently Asked Questions

**Question #1:** Once the brokerage receives the written offer, does it have a duty to review that offer? Or is it permissible for the brokerage to simply relay the written offer to the seller?

**Answer:** The brokerage must review the offer. Although the level of required services will depend on whether the seller is a customer or a client of the brokerage, a brokerage is obligated to take certain actions regarding any written offer it receives. These obligations, set forth at section 54-2051, Idaho Code, include: the prompt tender of the offer to the seller; ensuring that the offer recites the actual form and amount of earnest money received; a provision for the division of earnest money; the representation confirmation statement required by statute; appropriate signatures; and a legal description of the property. Fulfilling these statutory obligations necessarily requires that the brokerage review every offer it receives.

**Question #2:** Must a brokerage be available to provide advice to its customers or negotiate on their behalf?

**Answer:** No. The minimum services required by law do not include these services. Unless the brokerage has contracted to provide agency representation, or to provide other heightened customer services, a customer is not entitled to these services.

**Question #3:** If the seller requests, can the listing brokerage agree that offers are to be presented directly to that seller, instead of the listing brokerage?

**Answer:** No. The law flatly states that the duty is “mandatory and may not be waived or abrogated, either unilaterally or by agreement.” Therefore, the seller may not elect to waive this service, even if the seller requests; the brokerage must remain available to receive written offers.
Question #4: Does the law prohibit buyers from presenting offers directly to the seller?

Answer: No. The law requires that a brokerage provide certain services to the customer/client with whom it contracted. The law* does not bar a buyer from presenting offers directly to, or inquiring directly of, the seller; provided a buyer may not “interfere with the contractual relationship between a brokerage and its client. See section 54-2054(4), Idaho Code.

* (REALTOR® Code of Ethics may be implicated here, however.)
IDAHO REAL ESTATE COMMISSION
Guideline #24
Revised May 9, 2013

LICENSEE’S PERSONAL TRANSACTIONS TO BE CONDUCTED THROUGH THE BROKER WITH WHOM HE IS LICENSED

Under Idaho law, all active licensees are required to conduct their personal real estate transactions through the broker with whom they are licensed, regardless whether the property is listed. See section 54-2055, Idaho Code. The law states:

54-2055. LICENSEES DEALING WITH THEIR OWN PROPERTY.
(1) Any actively licensed Idaho broker, sales associate, or legal business entity shall comply with this entire chapter when that licensee is buying, selling or otherwise acquiring or disposing of the licensee’s own interest in real property in a regulated real estate transaction.
   (2) A licensee shall disclose in writing to any buyer or seller that the licensee holds an active Idaho real estate license, if the licensee directly, indirectly, or through a third party, sells or purchases an interest in real property for personal use or any other purpose; or acquires or intends to acquire any interest in real property or any option to purchase real property.
   (3) Each actively licensed person buying or selling real property or any interest therein, in a regulated real estate transaction, must conduct the transaction through the broker with whom he is licensed, whether or not the property is listed.

[Emphasis added].

This Guideline attempts to answer several questions that have arisen as to the requirements of the licensee who conducts his personal transactions through his brokerage.

Question: Must the licensee’s broker always be the “responsible broker” for the transaction? If not, how can the transaction “be conducted through” the licensee’s broker?

Answer: The Commission recognizes there are transactions for which it is impractical to have the licensee’s broker act as the “responsible broker.” The purpose and intent of subsection (3) is to ensure that the licensee’s broker is made aware of and able to supervise transactions for which he might be held liable. The Commission finds that this purpose is satisfied if the licensee timely provides a copy of each transaction document to his broker, even if the original document is provided to a different broker who is the “responsible broker for the transaction.”

Question: Must the licensee enter an Agency Representation Agreement with his Brokerage?

Answer: No. Although the licensee is required to conduct his personal transactions through his brokerage, he and the brokerage are NOT required to enter a written agreement for agency representation. An individual licensee buying or selling property is necessarily acting on his own behalf. However, whether the brokerage agrees to represent the licensee and act as his agent is a decision left to the brokerage and its licensee, and is not required by the law.

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

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The law permits the brokerage and the licensee to enter into a written agreement for agency representation, in which case the brokerage will owe its licensee, for that transaction, those duties owed a client under section 54-2087, Idaho Code. Absent a written agreement for agency representation, the relationship of the brokerage to the licensee in the transaction is that of a “non-agent” to a “customer.” Whatever brokerage relationship is chosen, it must be indicated accurately in the Representation Confirmation (check the box) section of the Purchase and Sale Agreement. And, of course, the licensee always is required to make written disclosure of the fact that he is actively licensed.

Question: Must the licensee give himself the Agency Disclosure Brochure?

Answer: No. Complying with the License Law does NOT require that the licensee give himself a copy of the Agency Disclosure Brochure. This requirement, contained in section 54-2085, Idaho Code, does not apply where the “prospective buyer or seller” is an active Idaho licensee.

Question: Will my errors and omissions insurance policy provide coverage for my personal transactions?

Answer: Not likely. Insurance contracts vary. However, errors and omissions policies typically exclude from coverage the licensee’s personal transactions. Coverage may exist for the brokerage under the brokerage’s separate policy. All licensees should pay careful attention to the exclusion and exemption provisions of any policy of insurance he or she maintains.

Question: Which transactions have to be conducted through the licensee’s broker?

Answer: Questions have also arisen as to which transactions fall within the scope of subsection (3), requiring that the transaction be run through the broker with whom the licensee is licensed. The answers will depend on the identity of the “person” buying or selling the property, and whether that person is “actively licensed”. A “person” is either an individual or a legal business entity. Unless the “person” buying or selling is actively licensed, the requirement does not apply.

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Example #1

Mary Smith is an active licensee. She is married to John, who is not licensed. John and Mary are the sole shareholders in ABC, Inc., an unlicensed business that owns real property and constructs new homes.

**Question:** Does the law require that ABC, Inc.’s sales of its new homes by ABC, Inc. be conducted through a responsible broker?

**Answer:** No. In this case, ABC, Inc. is the “person” selling property. Because ABC, Inc. is not an “actively licensed person”, the requirement of subsection (3) does not apply. However, under the broad language of subsection (2), 54-2055, Idaho Code, Mary Smith is required to disclose, in writing, that she is an active licensee.

Example #2

Same facts as in #1. Mary and John have agreed to buy their neighbor’s ranch, and to make the purchase in their own names, “Mary and John Smith”. The ranch property is not on the market.

**Question:** Must the transaction be conducted through Mary’s broker?

**Answer:** Yes. Because Mary is one of the persons buying the property, and because she is “actively licensed”, the transaction must be conducted through Mary’s broker, “whether or not the property is listed”. Mary will also have to make written disclosure of her status as an active licensee.

Example #3

Same facts as in #1. John wants to buy a small lot and building for use in connection with his own personal hobbies. John will handle the transaction and Mary will not be involved at all. (The funds used are not John’s sole and separate property.)

**Question:** Must the transaction be conducted through Mary’s broker?

**Answer:** Yes. Even if the property is purchased for exclusive use by John, the property will still belong to the marital community, and Mary will acquire a community “interest therein.” Therefore, the transaction must be conducted through Mary’s broker. Again, Mary is also required to disclose her status as an active licensee.
SHORT SALE GUIDANCE

A “short sale” is a term used to describe a transaction where the sale price of the property would not generate sufficient proceeds to pay off the existing mortgage or mortgages, and the lender(s) offers or agrees to accept less than full payoff.

There are two components to a short sale: (1) the negotiation of the reduced loan payoff amount (between the seller and his lender); and (2) the real property conveyance transaction (between the seller and a buyer). The Department of Finance regulates loan modification activities, including negotiation of reduced loan payoffs. The real property transaction falls under the jurisdiction of the Real Estate Commission.

The Department of Finance and Real Estate Commission recognize that to be successful, a short sale transaction may be a complex and lengthy process involving specialized knowledge and expertise. The purpose of this document is to aid persons in understanding when a license to conduct certain activities is required under either the Residential Mortgage Practices Act or the Real Estate License Law, and to provide additional information to mortgage broker and real estate licensees who participate in short sale activity.

If you have additional questions, please feel free to submit them to:

Department of Finance
finance@finance.idaho.gov
Subject Line: Loan Modification FAQ’s

Real Estate Commission
info@irec.idaho.gov
Subject Line: Short Sale FAQ’s
GUIDANCE FROM THE IDAHO DEPARTMENT OF FINANCE
Third-Party Mortgage Loan Modification Providers, Including Short Sale Negotiators

The Department of Finance has seen growth in the number of persons in Idaho offering to assist homeowners with modifications of their mortgage loans, either by obtaining a lender’s agreement to modify the terms of a loan for the purpose of achieving affordable payments, enabling a homeowner to remain in his or her home, or by obtaining an adjustment of an existing residential mortgage loan in a settlement transaction, such as a deed in lieu of foreclosure or a short sale.

Pursuant to the Idaho Residential Mortgage Practices Act, [Idaho Code § 26-31-101, et seq.], (Act), a loan modification, is defined as, “...an adjustment or compromise of an existing residential mortgage loan. The term ‘loan modification’ does not include a refinancing transaction” ([Idaho Code §26-31-201(2)]). One particular activity that falls within the definition of a loan modification is the practice of representing a homeowner in obtaining an adjustment or compromise of his or her residential mortgage loan for compensation or gain, or in the expectation of such, pursuant to a short sale or pre-foreclosure sale negotiation.

Entities that engage in, or offer to engage in, affecting loan modifications in Idaho for compensation or gain, or in the expectation of such, must obtain a mortgage broker’s license under the Act, and the individuals who conduct loan modification activity on behalf of such entities must obtain a mortgage loan originator’s license. Many short sale transactions do not implicate these licensing requirements because the negotiation for the compromise or adjustment of the residential mortgage loan is conducted as part of the negotiation of a real estate transaction by an Idaho licensed real estate agent. When conducting this activity, individuals licensed by the Real Estate Commission are excluded from the licensing requirements of the Act, unless the real estate agent is paid by the lender, or the lender’s agent, for the loan negotiation services (as opposed to getting paid a commission on the real estate transaction).

That means a real estate licensee can help her customers or clients negotiate a loan modification as long as the licensee is performing activities that require a real estate license (see Idaho Code 54-2004(36) and (37) for a list of those activities). However, this does not extend to unlicensed assistants.

Any purchase or sale of real property for an active real estate licensee’s own benefit becomes a regulated real estate transaction pursuant to Idaho Code 54-2003(2) and Idaho Code 54-2055. In addition, a real estate licensee who is buying or selling property on his own behalf can have himself as a client or customer. Therefore, the SAFE Act exclusion for real estate licensees also applies for a real estate licensee’s personal transactions, and a real estate licensee can negotiate with a lender to purchase a short sale property for his own use.

Remember, the SAFE Act exclusion for real estate licensees does not apply to real estate agents

1 Please note the requirement to disclose licensed status in Idaho Code 54-2055(2).
Guideline #25

who act solely as third-party short sale negotiators. Negotiating short sales for a fee is not an activity that requires a real estate license; therefore, a loan originator license from the Department of Finance is required if that is the only service the real estate agent provides. A licensed real estate agent assisting another licensed real estate agent with a short sale transaction at the same real estate brokerage is permissible.

There is a simple test to determine whether the SAFE Act exclusion for real estate licensees applies to short sale negotiations conducted by real estate licensees: If the fee or compensation for negotiating or assisting with a short sale is paid through the real estate brokerage by the licensee’s designated broker, then the activity is excluded from loan originator licensing requirements. If the fee or compensation for negotiation activity is paid by a lender, or the lender’s agent, then the exclusion does not apply, and a loan originator license is required.

GUIDANCE FROM THE IDAHO REAL ESTATE COMMISSION
Real Estate Brokers and Salespersons

A. The Real Estate Commission is charged with administering Title 54, Chapter 20 of the Idaho Code (the “license law”), pertaining to real estate brokerage. A real estate license may be required to participate in a short sale purchase, if the buyer or investor is:

- Brokering real estate deals for others, but using property deeds, powers of attorney, and trusts to evade the requirement of licensure; or
- Acting as a “Dealer in options.”

The license law requires anyone performing real estate brokerage activities to hold an active real estate license. Under Idaho Code 54-2004(36) and 54-2004(37), a real estate license is required for:

(a) … [A]ny person . . . 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:

(c) Any person who represents to the public that the person is engaged in any of the 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.

(For more information on “dealer in options”, see Idaho Code 54-2004(19) and Idaho Real Estate Commission Guideline 18.)

Idaho Code 54-2003(4) states, “Exceptions to licensure shall not be used in any way to evade the purposes of this chapter. Any such attempt to evade this chapter shall be considered the
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unlicensed and unlawful practice of real estate.”

**Taking title to property through deeds, powers of attorney, and trusts.** There are several exceptions to licensure (Idaho Code 54-2003) that allow persons to conduct real property transactions without the need for a real estate license, including:

- For sale by owner, or buying property for one’s own account or use (including regular employees of the owner or purchaser when the employee is acting within the scope of his employment)
- An attorney in fact acting under a Power of Attorney when it is granted to consummate a single conveyance transaction
- A trustee in bankruptcy, personal representative of an estate, legal guardian or conservator, or anyone selling pursuant to the default provisions of a deed of trust
- An attorney, in connection with client representation, if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson

These exceptions to the license law occur legitimately in Idaho every day. However, the Commission sees many cases where these exceptions are being used as a “business model” in order to evade the requirements of the license law.

**For Sale by Owner.** Under the statute’s exceptions, a person who owns real property may market it for sale to buyers without having to hold a real estate license. However, if a person obtains a deed from the property owner with the intent of finding another buyer before completing the transaction with the original property owner, i.e., before paying off the owner’s mortgage, the person is really putting deals together for others, with the expectation of a profit for himself. This activity amounts to “brokering”, and the person must be licensed.

Often, an unlicensed person obtains a deed or power of attorney for a distressed property (or has the homeowner convey it into a trust) under the guise of “saving” the property from foreclosure. The documents accompanying the conveyance state that the unlicensed person will market the property and use the sale proceeds to pay off the mortgage. Sometimes the conveyance instruments are recorded, and sometimes not. In almost every case, the mortgage remains in the distressed homeowner’s name. Occasionally, the lender has already determined a short sale payoff price it would accept. More often, the person who obtained the deed or power of attorney attempts to negotiate a short sale payoff with the lender, while at the same time marketing the property for sale at a higher price. The Commission has observed this type of activity and has taken action against the perpetrators for unlicensed practice. Although the unlicensed person may purport to fit within an exception to the licensing requirement, the Commission considers the misuse of the exemption as an attempt to evade the license law.

**Dealing in Options.** The Commission has seen many instances where an unlicensed person obtains “options” to buy property from sellers and then markets those properties for resale. However, an option does not convey any kind of ownership interest in or title to a property. Therefore, it is usually impossible for an option holder to qualify for the “for sale by owner”
exception to licensure. Typically, the “option agreement” is the functional equivalent of a listing agreement, and the unlicensed person’s expected compensation is the profit made upon the sale.

Similarly, the license law specifically defines dealing in options as brokering activity for which a license is required. The option holder may not list, sell, negotiate, procure buyers for, or otherwise broker that property unless he has a license. The Commission has jurisdiction and considers an unlicensed “dealer in options” to be engaging in unlicensed practice.

NOTE: A real estate licensee should use caution and consult his designated broker (if applicable) when asked to take a listing for an “option” property.

B. **An active Idaho real estate licensee must comply with the license law in all of his personal real estate transactions.**

Licensees are required to conduct their personal real estate transactions through their brokerage pursuant to Idaho Code 54-2055(3). This does not mean a licensee is required to “list” his property or sign a representation agreement with the brokerage. It does mean the licensee must provide copies of the transaction documents to his broker so the broker can review the contracts and ensure the correctness of the closing statements. Failure to disclose personal transactions and conduct them through the brokerage will subject a licensee to disciplinary action.

Real estate licensees owe certain duties to their clients and customers. A “client” is a buyer or seller with whom the licensee has a written representation agreement. Licensees who have client relationships with buyers and sellers have enhanced duties that are specified in Idaho Code 54-2087. A “customer” is any buyer or seller to the transaction who is not represented by the licensee’s brokerage. That means a licensee buying an unlisted property on his own behalf owes the seller all the “customer” duties identified in Idaho Code 54-2086 for that transaction.

Usually, a seller who is upside down on his mortgage or who can’t make the payments just wants to get out from under his mortgage. Unfortunately, the seller may not have all the information he needs to make a good decision about selling his property. There are some client and customer obligations that should be considered when working short sales. For example:

- Forgiven debt is considered income in the eyes of the IRS; some sellers may be liable for income taxes on the difference between what is owed and what a lender will accept as a short payoff.
- A seller may be required to sign a promissory note with the lender for the amount of a deficiency, i.e., the lender releases the lien, but not the debt. In this case, the seller still owes the money, but the security interest is simply released so the property can be sold.
- A transfer made to keep property out of a creditor’s hands could be considered a “Fraudulent Conveyance”.
- Some mortgage contracts contain “Due on Sale” clauses.

It is important for a licensee to make sure he is fulfilling his duties to a seller under the license law, whether the seller is a client or a customer. In the case of a client, that means promoting the
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best interests of the client in good faith, honesty, and fair dealing, and disclosing adverse material facts. It also means a licensee must, when appropriate, advise a client to seek appropriate tax, legal and other professional advice or counsel. Licensees are also required to disclose adverse material facts to customers and to perform ministerial acts with honesty, good faith, and reasonable skill and care.

It is a violation of the license law for a licensee to engage in dishonest or dishonorable dealings (including double contracts), make fraudulent misrepresentations, or act in a grossly negligent or reckless manner. There have been cases where distressed sellers were misled or subjected to predatory practices by erstwhile “buyers”. Unfortunately, some of those “buyers” were licensees.

The Commission has seen cases where licensees had sellers sign blank deeds, powers of attorney, purchase and sale agreements, and other contracts. Licensees have also encouraged sellers to execute conveyance documents to the property (often conveying legal title to the licensees), while promising to “prevent” or “rescue” the sellers from foreclosure. These arrangements do not stop a foreclosure! In fact, such activity usually makes it more difficult for the seller to close a sale to a legitimate buyer.

Unfortunately, there have been instances where a licensee prepared and presented a “phantom offer” to a lender to start the short sale process, when in fact there was no legitimate offer to purchase the property. Typically, the offer price was quite low, and other legitimate (higher) offers were withheld from the lender. This is dishonest and dishonorable activity at the very least – and the Commission has had some success proving fraud in these situations.

When a lender agrees to a short payoff, that agreement often comes with certain conditions or requirements. A real estate licensee who fails to make required disclosures or purposely hides information from a lender may be disciplined. Sellers may be required to sign affidavits or other disclosures verifying these requirements were fulfilled. Some commonly-seen criteria include:

1.) The seller cannot receive any proceeds from the transaction.
2.) The mortgage holder may not approve a short sale if it involves a “flip” transaction.
3.) When a lender approves a short sale, the lender expects the property to have been marketed at a fair price.
4.) The mortgage holder wants to see all the offers to make an informed decision on what is best for its mortgage investors.

1. **The seller cannot receive any proceeds from the transaction.**

This includes a sales commission, a negotiator’s fee, or any sum that is not disclosed to the lender. We have seen cases where the seller is paid a minimal amount for a deed to the property to “prevent” a foreclosure. This is a sale, and the seller got something! A real estate licensee who acquires title to a property in this manner must conduct the transaction through his/her brokerage, and all license laws must be followed (including the customer or client duties owed to the seller).
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In some cases, the real estate licensee is the distressed seller. There have been situations where a seller/licensee arranged for another licensee in the same office to “list” the property. The agent named on the listing received a small portion of the total commission, and the seller/licensee obtained the bulk of the commission for himself. The seller received money from the transaction!

In one case the seller/licensee filed an entity with the Secretary of State that was a short sale negotiation company. The company was paid a “loss mitigation fee” for the transaction, and the seller/licensee pocketed the money. It was the only transaction this “company” ever negotiated. Again, the seller received money from the transaction.

Sellers have liability under their mortgage contracts. A mortgage holder has the right to sue if it feels it was ripped off. In the case above, the lender actually sued the seller/licensee to recover over $20,000.00.

2. *The mortgage holders may not approve a short sale if it involves a “flip” transaction.*

A lender is entitled to every cent of the lien it holds. If a property can be flipped for a profit, it might be to the mortgage holder’s advantage wait for a better offer, or even take the property back, sell it, and make that profit for itself. In order for a mortgage holder to make an informed decision, it is important that all terms of the transaction are disclosed.

Many lenders have established “seasoning” requirements for deeds, requiring the property to have been titled to the seller for a certain length of time, typically 90 days. A legitimate buyer trying to purchase a short sale property may not be able to obtain a new mortgage if the deed is not “seasoned”, which harms both the buyer and the distressed seller. The “seasoning” requirement is not absolute and can be waived, and there are legitimate reasons for doing simultaneous closings, but many lenders have chosen to enforce this requirement.

One case involved a real estate licensee whose business model was to make an offer on a distressed property (in the name of a company he owned) and then negotiate a short sale payoff with the seller’s mortgage holder. Once the licensee knew what the lender would accept as a short payoff, he began marketing the property as the seller at a higher price. If he could find a buyer who would pay more than the short sale payoff, he arranged a simultaneous closing. If he could not find a new buyer, the licensee walked away from the transaction and let the property go into foreclosure. The licensee said he never intended to close on the original purchase transaction unless he could make money on the “flip”. The planned “flip” was never disclosed to either the short sale mortgage holder or the lender for a subsequent buyer.

Commission staff has interviewed many mortgage holders about this very idea during the course of investigations. In every single case, mortgage holders said they would cancel a transaction if they knew it was part of a “flip”.

In the cases investigated, great effort was expended to keep the mortgage holders from finding
out about subsequent flip transactions. This is the kind of effort that can lead to a fraud charge.

Likewise, a real estate licensee who has a property flipper for a client is not required to participate in a violation of the license law at the client’s request. On the contrary, the licensee should consider advising the flipper of potential violations and even terminating the relationship if the flipper continues to pursue illegal behavior.

3. **When a lender approves a short sale, the lender expects the property to have been marketed at a fair price.**

Sometimes short sale properties are listed for double and even triple the fair market value to discourage buyers from presenting an offer. The representation is made to the mortgage holder that after 3 months of hard marketing, there was not a single offer. Then, at the last minute, a real estate licensee or a favored client makes the only offer, based on the payoff data, which is public information.

Often, the opposite occurs, and the properties are listed for far less than fair market value or the amount owed on the mortgage to encourage “lowball” offers, and a representation is made to the mortgage holder that the property won’t sell for more. We have heard of still other situations where a representation was made to the mortgage holder that a property was on the market, but the property was never entered into the MLS, no ads were placed, and no signage was put up.

Many times, the “buyers” in these transactions are either actively seeking or already have subsequent buyers lined up for undisclosed “flips”. In all these situations, the mortgage holder is misled about the status of the market and may accept an offer in reliance on these misrepresentations.

4. **The mortgage holder wants to see all the offers to make an informed decision on what is best for its mortgage investors.**

The mortgage holder agrees to consider a short sale in exchange for the right to consider all offers on the property, not just the offer that is the most favorable to the licensee or flipper. The seller is asking for a favor, and the mortgage holder must be satisfied before granting that favor.

At closing, the seller may be required to sign an affidavit or other disclosure stating all offers were presented to the mortgage holder. The seller would have liability if the lender learned there were other undisclosed offers on the property. If the property could have sold for more money, the mortgage holder and its investors may have a claim for money damages and/or fraud.

A real estate licensee could be subject to disciplinary action for suggesting that his customer or client withhold offers from the lender. If the seller is licensee’s client, the licensee has a duty to represent the seller’s best interests. Subjecting the seller to a lawsuit, allowing him to commit perjury, or implicating him in a fraudulent transaction is not in the seller’s best interest.
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Keep in mind that when the ultimate buyer comes along, he will likely want to finance the purchase. A new mortgage lender may not finance a property that is part of a flip. Failure to disclose this information to a new lender could result in a double contract. Full disclosure is the best safety measure a licensee can take. Don’t put yourself into the position of determining what an underwriter doesn’t need or want to know.

C. There are legitimate ways to profit from short sales.

Unfortunately, many questionable practices have been reported in the short sale realm, involving both real estate licensees and unlicensed participants. It is important for Idaho real estate licensees to keep their designated brokers in the loop on all transactions and report questionable activity. The Real Estate Commission is also available as a resource, although the Commission does not approve or recommend business models.

1.) Buy a short sale property on the competitive market. Allow the mortgage holder to consider all offers.
2.) Close the transaction. Record the deed and take possession of your property.
3.) What you do from here is your business. You may want to spruce the place up a bit, allow six months for deed seasoning, and resell it. The point is: don’t market it until you actually own it.
4.) Disclose, disclose, disclose. Tell all parties, especially the mortgage holder, exactly what is being done and what the intentions are. Put all disclosures in writing in the Purchase and Sale Agreement, so the mortgage holder is sure to see them. It’s also a good idea to keep proof that you made these disclosures. If the mortgage holder wants to go through with the deal, at least they made an informed decision. A licensee is only responsible for fair dealings.

Frequently Asked Questions

For Individuals Purchasing or Selling Properties Subject to a Short Sale Approval

Question #1 – What triggers a licensing requirement under the Idaho Residential Mortgage Practices Act for an individual or company when dealing with a residential real property that may be subject to a short sale approval from a lender?

Answer – A license from the Idaho Department of Finance is required when, in a third-party capacity for compensation or gain or in expectation of such, a person offers or undertakes to affect a compromise or an adjustment of a homeowner’s residential mortgage loan. The following are examples of activities that require a license:

1. A person who is not an Idaho real estate licensee communicates with the homeowner’s lender, in a representative capacity for the homeowner, for the purpose of affecting a compromise or adjustment of the homeowner’s residential mortgage loan.
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2. A person who is not an Idaho real estate licensee obtains personal financial information from a homeowner and, in a representative capacity for the homeowner, communicates that information to the homeowner’s lender for the purpose of obtaining a compromise or adjustment of the homeowner’s residential mortgage loan.

3. A person who is not an Idaho real estate licensee obtains authorization from a homeowner for the release of personal, private, financial information and uses such authorization and information in a representative capacity for the homeowner to negotiate, (i) a release of the lender’s lien on property in consideration of the payment of less than the amount owed by the homeowner pursuant to a residential mortgage loan; (ii) a waiver by the lender of any amounts to be paid pursuant to a residential mortgage loan; or, (iii) the settlement of an existing residential mortgage loan on terms which differ from the original terms of the loan.

Question #2 – Does a person need to obtain a license from the Department of Finance solely for the act of purchasing or selling a residential property that is subject to a short sale approval?

Answer – No. When not acting as a representative of a homeowner/seller to affect an adjustment or compromise of the homeowner’s/seller’s mortgage loan, an individual or company that purchases a residential real property subject to a short sale approval by a lender, does not need a license from the Department to make such a purchase or to resell the property.

Question #3 -- I read the default notices in the paper or search through courthouse records to identify distressed properties. I have a homeowner deed his home to me (or place the property in a trust, or give me a power of attorney) to stop the foreclosure. Then I attempt to sell the home for a profit. The mortgage is still in place against the property, however, and the distressed homeowner is still liable on the mortgage. Do I need a real estate license?

Answer - Yes. Although every situation is fact specific, this appears to be a business model where you are engaging in unlicensed real estate brokerage because you are attempting to procure buyers and sellers for compensation. It is also likely the Commission would consider you to be in violation of the license law for using an exception to licensure to circumvent the requirement that you be licensed to conduct brokerage activities.

Question #4 - I have an Option to purchase a specific property, and I want to market it for sale. When I find a buyer, I will exercise my Option rights and do a simultaneous closing with the second buyer. Do I need a real estate license?

Answer - Yes. Your rights as an Option holder do not give you an ownership interest in the property. Dealers in options are required to hold an active Idaho real estate license. You should also note that, to be enforceable, an option to purchase must meet the statute of frauds requirements.
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Question #5 - I make offers to buy distressed properties. Then I go to the seller’s mortgage holder and negotiate a short payoff of the loan. Once I get a payoff number, I market the property to a new buyer. This helps the seller avoid foreclosure. I keep the money I make on the sale to the new buyer. Since I’m buying these properties for myself, I don’t need a real estate license, right?

Answer - Wrong! If you do not intend to close on the purchases unless you procure new buyers for resale, you are likely engaging in real estate brokerage activity and using the offers to purchase as a way to circumvent the real estate license law.

For Real Estate Agents

Question #6 – Is a real estate licensee required to obtain a license from the Idaho Department of Finance if he negotiates with a lender to obtain a short sale approval on behalf of his client or customer?

Answer – No, unless the real estate licensee is paid by the lender or his agent for such negotiation services (as opposed to receiving a commission on the real estate transaction). Otherwise, a real estate licensee, whether directly representing a homeowner in a real estate transaction or representing other parties in a real estate transaction, is excluded from licensure for the activities of negotiating a short sale approval with a lender or the lender’s agent on behalf of a homeowner.

Question #7 – If a real estate licensee forms a company that conducts the activities subject to licensure by the Department of Finance, is the company also excluded from licensing by the Department based on the real estate agent’s exclusion?

Answer – No. If a real estate licensee forms a company whose business activities include offering or undertaking, in a third-party representative capacity, to affect compromises or adjustments of homeowners’ residential mortgage loans for compensation or gain, or in expectation of such, the company is subject to licensure as a mortgage broker under the Idaho Residential Mortgage Practices Act.

Question #8 – I’m a licensed real estate agent who buys properties subject to a short sale. If I also negotiate the short sale approval with the lender or the lender’s agent on behalf of the homeowner/seller, is a license required from the Idaho Department of Finance?

Answer – No. The Idaho Department of Finance recognizes that when a licensed real estate agent is a party to a purchase or sales transaction, his or her act of negotiating an adjustment or compromise to the homeowner’s residential mortgage loan is authorized under his or her real estate license and excluded from the licensing requirements of the Idaho Residential Mortgage Practices Act.
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**Question #9** – I am an Idaho real estate licensee who negotiates short sale approvals with lenders or their agents on behalf of my clients. My assistant does much of my clerical work, faxing documents or making document submissions on my behalf. Does he or she need any special license?

**Answer** – No. As long as an assistant performs only clerical or administrative functions, and does not engage directly or indirectly in negotiations with a lender, or lender’s agent, no license is required from the Department of Finance.

**Question #10** – I am a real estate licensee who negotiates short sale approvals with lenders or their agents on behalf of my clients. I also want to offer assistance to consumers in obtaining modifications to the repayment terms of their existing loans without the modification resulting in a real estate transaction, such as a short sale. Do I need a license from the Department of Finance?

**Answer** – Yes, if such modification activity is conducted for compensation or gain or in the expectation of compensation or gain, and is not an activity for which a real estate license is required. However, an Idaho licensed real estate agent, or anyone else, may offer mortgage loan modification services without the need for licensure so long as such services are provided for no direct or indirect compensation or gain.

**Question #11** – What if a homeowner utilizes a licensed real estate agent to negotiate a compromise of the terms of the homeowner’s mortgage loan in a short-sale transaction after the homeowner has failed to qualify for a mortgage loan modification? Does the real estate agent need a license from the Department of Finance where the real estate agent receives no compensation from the lender or the lender’s agent?

**Answer** – No. A real estate agent may engage in negotiating a short sale approval as a real estate agent representing a buyer or a seller under the scope of the agent’s real estate license without the requirement of a license from the Department of Finance, so long as the real estate agent is not compensated by the lender, or lender’s agent, for the agent’s negotiation activities.

**Question #12** – I obtained a Warranty Deed to a property where the seller is behind on his mortgage payments to stop his foreclosure. Next, I immediately made an offer and forwarded it to the seller’s mortgage holder to start the short sale process while I try to find a buyer for the property. I told my broker what I’m doing. He told me to ask if it is OK for me to put this property on the MLS?

**Answer** - Hmmm..... Why would you need to make an offer on a property that you already hold a deed to? In addition, most lenders do not appreciate having property in which they hold a security interest conveyed to someone else without their consent or knowledge. If you do not intend to go through with the purchase unless you find a new buyer, and you don’t make full disclosure to the mortgage holder regarding your plans, you may be subject to disciplinary action by the Real Estate Commission.
Question #13 – Can I have sellers sign blank Purchase and Sales Agreements that I will fill out once I know what the mortgage holder will accept?

Answer – No. Under Idaho’s Consumer Protection Act, having consumers sign blank documents is illegal. The Attorney General’s office is charged with enforcing the Consumer Protection Act, and they could get involved. The Real Estate Commission will pursue a violation of Dishonest and Dishonorable Dealing for any licensee involved with this activity. If it is illegal, it is certainly dishonest.

Question #14 – A client of mine just bought and closed on a property where the seller had to have the mortgage holder take a short payoff. He wants me to list it for him and wants to make a $20,000 profit. Is this legal?

Answer - Yes. Once a person has actually paid money for and closed on a property (including recording of the deed), what he does with the property is his own business. You may have some problems reselling quickly, however, because a new lender may want more “seasoning” on the deed. You should research several lenders to see if this is a road block to selling the property. It should not be a concern after six months in any case.

Question #15 – I have been approached by a short sale investor to list several properties he is in the process of purchasing. I need the business, but I want to make sure I operate within the law. The investor assured me the Idaho Real Estate Commission has reviewed and approved his program, so I don’t need to worry about jeopardizing my license, right?

Answer - Wrong. The Idaho Real Estate Commission does not approve business plans or investment models. When in doubt, check it out. Call the Enforcement Department of the Real Estate Commission.

Question #16 - I am a Designated Broker. I know one of my licensees just went through a messy divorce, and she is trying to sell the house as part of the divorce process. She needs to get her mortgage holder to agree to a short sale. She referred herself to another agent in the office who is now her listing agent. The listing agent asked me to pay a referral fee to the seller. Is this OK?

Answer - Mortgage holders typically include a restriction in the short sale payoff letter that precludes a seller, no matter the personal problems, from receiving anything from a short sale transaction.

For Mortgage Brokers/Lenders and Loan Originators

Question #17 – Does my existing license allow me to conduct loan modification activities, including short sale negotiations in a third party representative capacity with a homeowner’s lender or the lender’s agent?

Answer – Yes. Third-party loan modification activities, including short sale negotiations, are
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mortgage brokering activities for purposes of the Idaho Residential Mortgage Practices Act. A company that has obtained a license as a mortgage broker has the necessary licensure to engage in these activities and its licensed loan originators may conduct the activities on the company’s behalf. A mortgage broker/lender licensee must submit to the Department of Finance an amendment to its license application filing to show that it will be engaging in such activities along with the forms it will use to conduct the activities, and a description of its business activities along with a description of upfront fees, if any, it intends to charge.

Question #18 – If I have a loan originator license, may I conduct short sale negotiations with a lender or the lender’s agent on behalf of a homeowner/seller even though I am not employed by a mortgage broker?

Answer – No. A mortgage loan originator licensee who conducts short sale negotiations with a lender or the lender’s agent on behalf of a homeowner/seller may only do so on behalf of either a licensed mortgage broker/lender or an exempt entity. Under the provisions of the Idaho Residential Mortgage Practices Act, individuals who wish to conduct these activities as a sole-proprietor must obtain a license as a mortgage broker for their sole-proprietorship and an individual license as a loan originator.

Question #19 – I have applied for a loan originator license, and I want to negotiate with a lender or the lender’s agent on behalf of a homeowner/seller for the purpose of affecting a compromise or an adjustment of the homeowner’s/seller’s residential mortgage loan. Do I need to be supervised by someone with experience doing mortgage modifications, including short sales?

Answer – In order to conduct business as a loan originator, an individual must obtain a license and work for a licensed mortgage broker/lender or an exempt entity. A mortgage broker/lender must demonstrate that it has a qualified person in charge of its operations who has at least three years’ experience in residential mortgage lending or brokering. This experience does not have to be specific solely to activities leading to compromises or adjustments of homeowner’s/seller’s residential mortgage loans.
Education & Certification Policy

This booklet contains Idaho Real Estate License Law and Rules and established policies of the Idaho Real Estate Commission pertaining to education and exam requirements for licensing purposes, and the certification of real estate providers, instructors, and courses.

This Education & Certification Policy supersedes all other revisions.

The portions of the Real Estate License Law and Rules contained in this policy are intended for use solely as a reference and should not be used as a substitute for the official Idaho Code and Idaho Administrative Rules.
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GENERAL LICENSING INFORMATION (WITH EMPHASIS ON EDUCATION)

54-2004. DEFINITIONS.
(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.
(13) “Commission” means the Idaho real estate commission, unless the context clearly indicates a different meaning.
(14) "Commission core course" means the annual course covering the twelve (12) month period between July 1 and June 30, which contains curriculum identified by the commission that stresses that year's trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.
(15) “Continuing education elective course” means a real estate course offering, other than the commission core course, for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.
(18) "Council" means the Idaho real estate education council.
(21) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by both distance and time.
(30) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication.

Courses taught by “interactive video conference (IVC)” or “compressed video” are live courses.

Remote delivery is live education that is presented by an instructor and attended by students through two-way audio and visual connection via a virtual classroom platform.

Courses taught through IVC and remote delivery must meet all Commission standards established for live courses. Courses taught through IVC must meet the Minimum Standards for Interactive Video Conferencing and Remote Delivery Through a Virtual Classroom.

MINIMUM STANDARDS FOR INTERACTIVE VIDEO CONFERENCING AND REMOTE DELIVERY THROUGH A VIRTUAL CLASSROOM

(1) The setup and technology at each location must be pre-approved by the Commission. A provider who has already been approved by the Commission to offer a course via IVC or remote delivery must work with the Commission to receive approval for each new location or technology that is added. Any changes to the setup or technology used at existing locations must also be pre-approved by the Commission.
(2) Any instructor teaching a course offered through IVC or remote delivery must hold a current Certified Distance Education Instructor (CDEI) Certification. Guest speakers are not
required to have this certification; however, they must be directly supervised by a certified instructor during all portions of the IVC or remote delivery session they guest instruct.

(3) Supervision and remote site support. For every IVC class or session connecting two or more sites remotely for a video conferencing distance education experience, a minimum of one moderator shall be present at each site at all times. For remote delivery, one moderator is required for every 25 students present. The moderator is responsible for:
   (a) Ensuring compliance with the Commission’s Attendance policy
   (b) Providing technical support
   (c) Ensuring the faces of all students and the instructor are in camera view
   (d) Promptly addressing any unprofessional behavior or distractions
   (e) Assisting students in using the microphones (if applicable)
   (f) Ensuring that there is continuous audio and video feed from all students and instructors
   (g) Timely reporting student attendance and class participation to the instructor and provider daily.

(5) A student enrolled in the class cannot be appointed to represent the provider for this purpose.

(6) The instructor may not serve as a moderator for a remote delivery class while also acting as the instructor.

(7) All moderators must have attended a commission-approved training within the two years immediately preceding use as a moderator. The provider is required to maintain proof that the moderator(s) they use have attended this training.

(8) All students must have full view of at least one monitor at each class location. Additional monitors should be placed, as required, to ensure a clear view of the screen and its contents by all of the audience.

(9) Due to the brief time delay in transmitting audio, students and the instructor should allow others to finish speaking before responding.

(10) Instructors are expected to repeat any questions asked by student to ensure the entire class has heard the question.

(11) All instructors must read or publish the required Student Remote Delivery Engagement Terms and IREC Attendance Policy at the beginning of each class.

(12) All non-certified individuals instructing an elective course through remote delivery must file an agreement Instructor Remote Delivery Agreement with the Commission.

(13) Individuals who are found to be out of compliance with one or more of the Minimum Standards are not eligible to instruct or participate in a class offered via IVR or remote delivery until they have demonstrated full compliance with all of the Minimum Standards.

(33) "Post license course" means a commission-approved or certified elective course that is specifically oriented toward salespersons in their first two (2) years of Idaho practice. The course must contain no more than twelve (12) classroom hours of instruction.

(35) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the Commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(45) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a Commission-approved final assessment or examination.

Instructor - the individual who teaches the course material to students.
Provider (school) - the certified entity who offers or hosts education course sessions for prelicense or continuing education purposes and is responsible for the administrative tasks related to offering the course.

Provider Director - the individual appointed by the provider to oversee the provider’s operation. As such, the provider director accepts the responsibility on behalf of the provider to ensure the education is conducted according to Commission standards.

Course developer - the individual or entity who develops course material for dissemination. Moderator – an appointed representative of the certified provider who has received a certificate of completion for attending the commission approved training and who manages classroom activities for the remote location when a course is presented by interactive video conferencing (IVC) or remote delivery.

Homework – a set of tasks assigned to all students in a class by their instructor. This work is to be completed outside of the classroom and should consist of tasks designed to prepare the students for the following lesson.

Make-up work – a set of tasks assigned to an individual prelicense student by that instructor to replace a portion of the class time the individual student did not attend due to absence.

54-2008. ESTABLISHMENT OF IDAHO REAL ESTATE EDUCATION COUNCIL.
An Education Council consisting of six (6) members, four (4) of whom are to be appointed by the Idaho Real Estate Commission, plus one (1) Commissioner and the Commission's Executive Director, may be established to act as an advisory group to the Commission, and to perform functions as set forth in this chapter and in the Council’s bylaws, which bylaws must be approved by the Commission. The Council shall recommend to the Commission real estate education policy and course content quality for all education courses approved by the Commission as meeting the education requirements of this chapter and its rules, and for such other courses or clinics deemed advisable by the Commission for promoting higher standards of practice in the real estate business. The Council will prepare for approval by the Commission any additional recommended procedures or guidelines for certifying educational courses, instructors and providers.

54-2009. COUNCIL APPOINTMENT, QUALIFICATIONS AND TERM.
One (1) member of the Council shall be named from each of the four (4) geographic districts of the state: north, south, east and west. The education director of the Commission shall serve as the Council executive at all Council meetings and functions. Each Education Council member shall be appointed for a term of four (4) years. The Commission may remove any Council member for neglect of duty, for incompetency, or for unprofessional, dishonorable or any other conduct which the Commission believes interferes with that person's ability to properly act or serve as a Council member.

54-2010. COMPENSATION.
Members of the Education Council are not employees of the state of Idaho, but shall be reimbursed expenses in the same manner as state employees in addition to a per diem allowance in the same amount as that received by the Commissioners for each day of approved service.

BYLAWS OF THE IDAHO REAL ESTATE EDUCATION COUNCIL
ARTICLE 1. The Idaho Real Estate Education Council is charged with the responsibility of planning, coordinating, and directing a viable education program for all licensees in the State of Idaho. This responsibility shall include the development of required education for initial licensure at the sales associate and broker levels, continuing education for general professional development, and coordination of education programs for specialized development. The following functions reflect the Council member's duties:
1. Technical direction in regard to the development of standards of certification for education programs.
2. Technical direction in regard to research, development and/or revision, and publication of education courses or materials.
3. Coordination, cooperation, and visitations with colleges, universities, private institutions, etc., for conducting real estate oriented courses and the auditing of such.
4. Technical direction in regard to the instructor development training programs.
5. Technical direction concerning the development of standardized course outlines, instructor guidelines, training aids, etc.

In addition, the Council is delegated the following authority by the Real Estate Commission:
1. In accordance with Commission policy, to grant or deny a license/certification applicant’s request concerning the following:
   - Waivers or modifications of prelicense education requirements
2. To grant or deny requests to extend the period of time for the Commission to accept license exam results or courses completed to satisfy licensing or certification requirements.

ARTICLE 2. The Council shall cooperate and provide coordination with the public educational institutions and private schools for the conduct of industry oriented courses offered throughout the state. Additionally, coordination shall be maintained with nationally sponsored and/or endorsed educational organizations presenting courses in or near our state. The primary purpose of the Council is to serve the Commission and the industry and comply with the law. Every effort will be made to establish open and effective lines of communication to all levels and areas of the industry.

ARTICLE 3. An administrative staff shall carry out the day-to-day workload of the Council. This staff is administratively aligned with and functions as a division of the Real Estate Commission.

ARTICLE 4. Selection criteria for appointees to the Idaho Real Estate Education Council shall include: 1) Appointees shall provide evidence of a reasonable degree of real estate-related knowledge; 2) Appointees shall provide evidence of an involvement in real estate education in Idaho; and, 3) Appointees shall not serve in any capacity which may adversely affect the performance of the appointee’s official duties nor create an appearance of impropriety. Appointees must avoid self-dealing in any decision made in their official capacity. Any appointee having a private interest in any discretionary matter shall not act, but shall withdraw him or herself.

ARTICLE 5. Each of the four appointed members shall be appointed on a staggered basis for a term of at least four years—one new appointee each year. Replacements for such representatives shall be made concurrently with the dismissal date but in no case shall the appointments be made later than thirty days after such dismissal.

ARTICLE 6. A Chair and a Vice Chair shall be elected from within the Council membership and by the Council membership during its annual reorganization meeting. Officers shall be elected to serve for a term of one year, but may be reelected.

ARTICLE 7. In the event of temporary inability or disability of a member, the Chair of the Idaho Real Estate Commission may appoint a temporary active member to insure the probability of a quorum at all times.

ARTICLE 8. Regular attendance at meetings is essential for the smooth functioning of the Commission and administrative staff. Individuals are responsible for notifying the Chair in the event of unforeseen circumstances or emergency situations. Absence, even with prior notification, should be avoided. Notation as to the time members are absent for any portion of the Council meeting is included in minutes so that an accurate record is available of which members are
present when votes are taken. Two absences shall be considered grounds for possible dismissal by the Commission.

ARTICLE 9. It shall be the duty of the Chair to preside at all meetings of the Council. He/she shall have the power to call meetings of the Council at such time and place as he/she may direct. In the absence of the Chair, or his/her inability to act, the Vice Chair shall possess all powers of the Chair.

ARTICLE 10. The Council shall hold an annual reorganization meeting in July or August of each year. Other meetings of the Council shall be at least quarterly.

ARTICLE 11. A quorum of members shall be required before any official action may be taken by the Council. A majority of members shall constitute a quorum.

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:

....

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

....

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

(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;

54-2014. LICENSE EXAMS.

(1) Exam required. Unless a written certificate of waiver is obtained from the Commission and submitted with the application, an individual applicant seeking a primary Idaho real estate license shall take and pass the national portion and the Idaho state portion of an approved exam administered by or through the Commission. The license applicant shall take and pass the required portion or portions of the exam within no more than twelve (12) months immediately preceding the date of the license application.

(2) Registration for the exam and exam fee. An individual shall register for the exam in a manner authorized by the Commission and shall pay at the time of registration the nonrefundable exam fee in an amount established by motion of the Commission, not to exceed one hundred fifty dollars ($150).

(3) Waiver of national portion of exam. An individual who has obtained a written certificate from the Commission waiving the national portion of the exam shall be required to take and pass the Idaho state portion of the exam only. The certificate of waiver and exam fee shall be submitted with the application for exam.

(4) Failure to appear for the exam or to pass the exam. An individual who fails to appear for the exam or to pass the exam may register to take another exam. The individual must register and submit a new exam fee.

(5) The Commission shall establish, by motion, fees for the exam which, in its discretion, are sufficient to raise the revenue required to administer the exam. Fees so established shall remain effective from year to year and may be altered only upon motion by the Commission.
An applicant must achieve a passing score on each part of the exam within one year of applying for a license. For example: if the applicant passed one part of the exam (either National or Idaho) on January 11, and then passed the other part on August 1, the applicant would have one year from January 11 to apply for a license.

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)(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.
(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.

54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES – ADDITIONAL REQUIREMENTS.
(1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho Real Estate Commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees, and meet all requirements below:

(b) The individual designated broker shall, within three (3) years immediately prior to the designation, satisfactorily complete a commission-approved business conduct and office operations course.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(c) The individual designated broker shall have satisfactorily completed a commission-approved business conduct and office operations course within three (3) years immediately
(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(b) The designated broker shall designate in the application a branch manager, who shall be an associate broker and who, within three (3) years immediately prior to the designation, shall have completed a commission-approved business conduct and office operations course, to regularly occupy and be responsible for the supervision of the branch office.

54-2018. LICENSE RENEWALS - INACTIVE LICENSES STATUS - PERSONAL CHANGE - EFFECTIVE DATES - FEES NONREFUNDABLE.

(1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on the last day of the month of the birth date of the licensee. A salesperson licensed in this state who applies for and obtains a broker license shall retain the license renewal period and expiration date of his salesperson license. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the Commission office on or before 5 p.m. mountain time of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Certification that the applicant has met the Commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(b) If reactivating an inactive license, the application shall include:

(i) Certification that the applicant has met the Commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(c) Certification that the applicant has met the Commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(d) Certification that the applicant has met the Commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(e) Successfully completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period.

(5) Continuing education. A licensee shall not submit an application to renew a license on active status or to activate an inactive license without having obtained the continuing education credit hours required by section 54-2023, Idaho Code. A licensee who violates this subsection (5) shall be subject to disciplinary action by the Commission.

(6) Time required. The Commission may request satisfactory proof of continuing education compliance from any licensee who has certified to the Commission that he has completed the requirement. The request shall state the time within which the proof must be received at the Commission office, which time shall not be less than ten (10) business days.

(7) Satisfactory proof. Upon request from the Commission, the licensee shall submit satisfactory proof of having met the continuing education requirement set forth in section 54-2023, Idaho Code. "Satisfactory proof" shall, for each course, consist of documentation:

(a) Identifying the licensee, the title of the course, the course certification number, the course provider, the number of classroom hours, the completion date of the course, and including:

(i) A transcript of the course taken;

(ii) A letter from the provider verifying successful completion of the course; or

(iii) A course completion certificate; and

(b) Identifying the course certification approval number to establish that the course is approved for continuing education credit as provided by section 54-2023, Idaho Code. The

prior to the application for license.
Commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit.

(8) Failure to submit proof. A licensee failing to submit satisfactory proof of completing the continuing education requirement after being requested to do so by the Commission may have his license inactivated by the Commission and shall not be entitled to reactivate the license unless and until he provides to the Commission satisfactory proof that he meets the continuing education requirements of section 54-2023, Idaho Code. Nothing in this section shall limit the ability of the Commission to investigate or discipline a licensee for violating subsection (5) of this section or for violating any other section of this chapter.

54-2020. FEES.
The Idaho Real Estate Commission shall establish fees which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter. The Commission shall assess the following fees, in addition to any other fees established in this chapter or by rule, provided that all fees established by administrative rule of the commission shall remain effective from year to year unless changed through the rulemaking process prescribed in chapter 52, title 67, Idaho Code:

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

Refund Policy for Courses Offered by the Commission. If written notification of registration cancellation is received in the office of Commission at least five (5) business days before the course commencement date, the registration fee, less cost of materials received, may be refunded. No refund will be made due to non-attendance. In the unlikely event any course is cancelled due to insufficient interest, a full refund will be made to all registrants.

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) For the compilation of each certified copy of a licensee's education history or license history, a fee in an amount not to exceed ten dollars ($10.00), the exact fee to be established by administrative rule of the Commission.

(8) An application fee for the certification and recertification of each real estate education provider, instructor or course as follows:

(a) For providers, an application fee in the amount of seventy-five dollars ($75.00) for initial certification and fifty dollars ($50.00) for recertification.

(b) For instructors, an application fee in the amount of fifty dollars ($50.00) for initial certification and twenty-five dollars ($25.00) for recertification.

(c) For courses, an application fee in the amount of fifty dollars ($50.00) for initial certification and twenty-five dollars ($25.00) for recertification.

Provided however, that lower fee amounts may be established by administrative rule of the commission.

Initial instructor certification includes certification for one (1) course. The instructor must complete an Instructor Certification application (REE-007) for each subsequent Commission-developed course they wish to instruct.
LICENSING/CERTIFICATION FEE EXEMPTION FOR MILITARY PERSONS
Idaho Code Section 67-2602A and 67-2620

Under Idaho statute, licensees, certified real estate instructors, and individuals whose spouse is serving in the military are exempt from the payment of licensing/certification fees during the period that such licensees, certified instructors, or the military spouse are actively engaged in military services. During the period of such engagement, the licensee, instructor or spouse is not required to renew the license/certification. The following is the policy for implementing this law.

Upon receiving written notification that a renewing real estate licensee, certified real estate instructor, or military spouse has been called to active military duty, and the licensing/certification period would otherwise expire during the period of such active duty, the Licensing/Education Department will cause the license or certification to be renewed, in the type and status currently held, without the requirement to pay a license or certification renewal fee, complete continuing education or instructor development training, or file a renewal application.

In the case that the licensee, certified instructor, or the spouse has paid his or her license/certification renewal fee and is then called to active military duty, which active duty commences on or before the renewal date, the Licensing/Education Department will, upon written notification and request from the licensee, refund the full license or certification fee paid for the licensing/certification period during which the licensee/certified instructor was engaged in active duty. Refund requests must be received no later than six (6) months after the conclusion of active military duty; requests made after the six (6) month period will not be considered.

Licensing candidates and spouses of individuals currently serving on active duty who are exempt from the payment of licensing/certification fees will submit a completed Supplemental Active Military Form (REE-010) along with their salesperson, broker, cooperative broker or instructor application to have the fee waived by the Commission.

The Commission is authorized to expedite applications for veterans of the armed services and individuals serving on active duty or the spouses of such individuals, if notified of veteran or active duty status on the application form.

“Active military duty” is defined as the period during which the person is actually engaged in the military services of the United States or its auxiliary branches, or held as prisoners, plus six (6) months following discharge from such military service.

“Written notification” may include Military Orders showing the deployment, or letter or other document signed and notarized by the licensee, instructor, military spouse, or his designee, or other document substantiating that the licensee/instructor has been called to active duty.

54-2022. REAL ESTATE EDUCATION - PRELICENSE REQUIREMENTS.
(1) Except as provided in section 54-2015, Idaho Code, an applicant seeking a primary Idaho license as a real estate salesperson, broker or associate broker shall furnish satisfactory proof to the Commission that the applicant has successfully completed current Commission-approved and accredited courses of real estate study as follows:
   (a) Salesperson's license. For a salesperson's license, the applicant shall complete a total of ninety (90) classroom hours, or the equivalent in available correspondence hours;
   (b) Broker's or associate broker's license. Applicants seeking a broker's or associate broker's
license shall, in addition to meeting the requirements for a salesperson's license, successfully complete four (4) specified courses in advanced real estate study, for a minimum of ninety (90) additional classroom hours, or the equivalent in available correspondence hours.

(2) Each applicant shall successfully complete all prelicense real estate courses within no more than three (3) years prior to the date of the license application. However, upon written request for special consideration by the license applicant, the Commission may waive or modify the three-year requirement at its discretion, based on the applicant's experience or additional education. Each waiver request shall be submitted with a current certified license history from Idaho or the applicant's other licensing jurisdiction, which history shall indicate all disciplinary actions taken against the applicant's license and the status and standing of such license in such licensing state or jurisdiction, along with sufficient proof of education completion.

(3) To receive credit for prelicense real estate courses, a student must regularly attend and complete the course, and such course must meet all requirements set forth in section 54-2036, Idaho Code.

(4) No credit will be given for courses taken for audit.

(5) Credit for completion of approved prelicense education course work will not be granted when the content of a course repeats that for which credit has been previously received.

(6) Upon written request from a license applicant, the Commission may waive or modify one (1) or more prelicense course requirements based upon the applicant's satisfactory completion of similar real estate courses in Idaho or another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and the number of classroom hours involved in the instruction. "Satisfactory completion" means the applicant regularly attended the course and received a final grade of "C" or better.

**Current Broker required courses:**

- Brokerage Management
- Real Estate Law
- 2 elective courses selected from the following approved list:
  - Real Estate Finance
  - Valuation & Analysis
  - Idaho GRI 101/102 (both portions must be taken to fulfill one elective requirement)
  - Idaho GRI 201/202 (both portions must be taken to fulfill one elective requirement)
  - CCIM Designation Courses (attended live only and not completed by “challenge” or through online delivery, unless the online course is ARELLO certified)
  - CI 101, CI 102, CI 103, CI 104

**Successful completion** of the Idaho Graduate REALTOR® Institute (GRI) Designation will qualify as fulfilling the two elective requirements. Graduate REALTOR® Institute courses completed in another state will be evaluated on a case-by-case basis.

Completion of the following courses through the REALTOR® University Master’s in Real Estate program will be considered as substitution for the equivalent Broker courses for candidates currently enrolled in the program.

- **RE520** – Real Estate Law for the Idaho Real Estate Law required course
- **RE530** – Real Estate Valuation for the Idaho Real Estate Valuation & Analysis elective course
- **RE540** – Real Estate Finance and Investment for the Idaho Real Estate Finance elective course
Licensees wishing to substitute any of these courses will submit a completed Licensee Request for CE Credit form (REE-153) with the required attachments to the Commission no later than sixty (60) days prior to intended date of license application. In addition to the documentation normally required with this form, the licensee will also provide proof of enrollment in the Masters in Real Estate program and a transcript showing they successfully passed all course requirements with a 70% or equivalent.

**Current Salesperson** required prelicense courses:
- Sales Prelicense Module 1
- Sales Prelicense Module 2

**Students are recommended** to complete Sales Prelicense Module 1 prior to beginning Sales Prelicense Module 2.

**If the applicant has a law degree**, AND the applicant is currently practicing law, the following coursework will be waived upon applicant’s written request:

- **For a salesperson’s license**
  - Module 1

- **For a broker’s license**
  - Real Estate Law

**If the applicant is currently licensed as an appraiser**, AND the applicant is currently actively practicing as an appraiser, the following coursework will be waived upon applicant’s written request:

- **For a broker’s license**
  - Valuation & Analysis

**IREC ATTENDANCE POLICY**

**For Live Course Presentations**

Regular attendance means 100% attendance at all sessions of a live (including courses taught by interactive video conference and remote delivery) prelicense or continuing education (CE) course. The Commission obligates instructors and course providers to monitor student attendance and strictly enforce this attendance policy. A certified instructor or course provider may have his/its certification withdrawn for failure to enforce the 100% attendance policy at all course offerings.

Use of any electronic devices is not permitted during class time, unless required as part of the course. This includes texting, checking messages, incoming and outgoing calls, or any activities not related to the instruction of the course content.

**A student who misses any portion (even a few minutes) of a course taken for Post License or CE elective credit may not receive credit for the course unless the provider allows the student to attend the corresponding class session(s) in a subsequent offering of the same course.**

Students will engage in professional behavior and maintain a professional demeanor while attending classes. This includes dressing appropriately for the classroom environment at all times. All students are expected to interact with others in a way that promotes and enhances learning for all. Students have the right to express themselves and participate freely in classes. However, they
are expected to be courteous and respectful. Offensive or inappropriate language is not to be used in any form of communication. Students are allowed to disagree with each other or the instructor but must do so in a civil manner.

**For Prelicense Only**

A student who misses any portion (even a few minutes) of a prelicense course may, at the discretion of the instructor and provider, complete make-up work to satisfy the 100% attendance requirement. **Make-up work is allowed ONLY for prelicense courses, and MUST be completed for all portions of the course the student does not attend.** Make-up work is defined as one or more of the following:

1. Extra homework or other assignment given by the instructor (assignment cannot duplicate material already presented in portion of class attended and must relate to subject matter the student missed)
2. Attendance in the corresponding class session(s) in a subsequent offering of the same course or
3. Supervised presentation of an audio or video recording of the class session(s) missed.

Students may meet this requirement either by completing additional work OR by attending the portion of class they missed in later class offerings but are not obligated to complete both. A student who does not complete the required make-up work within 90 days of the scheduled course completion date for a prelicense course may not receive credit for the course. The provider must develop and maintain a school policy that outlines how make-up work will be handled. The provider’s records regarding make-up work must include a list of all sessions missed by the student and documentation to support the make-up work that was assigned and completed.

**For Instructors only:** If an instructor wishes to allow electronic notetaking, the provider must establish written classroom participation policy governing the use of electronic notetaking in the classroom. The policy must adhere to the following minimum guidelines:

(a) A student shall direct his/her attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction, such as texting, checking email, surfing the internet, completing contracts or other paperwork.
(b) A student shall refrain from engaging in activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class including distracting noise.

Providers are expected to take appropriate steps to ensure that all students comply with their participation policy. The provider shall require the instructor to make an announcement at the beginning of the course and at the beginning of each subsequent day that electronic devices shall only be used for course related activities and notetaking purposes.

**54-2023. CONTINUING EDUCATION REQUIREMENTS.**

(1) Each licensee applying to renew an Idaho broker or salesperson license on active status, and each Idaho broker or salesperson applying to change from inactive to active license status after having renewed the license on inactive status, shall successfully complete two (2) commission core courses, plus twelve (12) classroom hours of continuing education credit. If the inactive licensee is within the initial licensing period, no continuing education is required to change to active license status. Provided that:

**Licensees will not receive continuing education credit** for any course that is not certified or
accepted by the Commission in accordance with Idaho license law.

Licensees may submit non-certified courses (approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements) for consideration of CE credit by submitting a Licensee Request for CE Credit form (REE-153) with the required attachments to the Commission no later than sixty (60) days prior to the end of the renewal period. Online courses must be ARELLO® certified for credit to be granted.

(a) Salesperson -- First active renewal or activation. To renew an Idaho salesperson license on active status for the first time, or to change from inactive to active status for the first time after the expiration of the initial license period, a salesperson shall complete two (2) commission core courses, plus the post license course.

"Post license course" consists of the eight (8) hour Post License Fundamentals course plus one 4-hour post license module of choice. No other course can be substituted for the Commission-developed post license course.

(b) Inactive broker activating as a designated broker or branch manager. To activate as a designated broker or branch manager, a broker on inactive status shall, in addition to meeting the continuing education requirements of this subsection, have completed a commission-approved business conduct and office operations course within three (3) years immediately prior to the license activation.

(2) Credits used to reactivate license. Continuing education credit hours applied to activate an inactive license are considered “spent” and may not thereafter be applied toward the continuing education requirements for subsequent license renewal.

Credits taken to reactivate a license must have been taken within the current license renewal period or the license period immediately preceding the current license period.

(3) No duplicate credit. No licensee may obtain continuing education credit for completing:

(a) Any core course curriculum for which the licensee has previously received continuing education credit; or

(b) Any course curriculum for which the licensee has received continuing education credit in the same license period.

(4) Excess credits. The classroom hours shall apply to the license period in which such course is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(5) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.

(6) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee may:

(a) Successfully complete a commission-approved continuing education or post license course;

(b) Attend a regularly-scheduled meeting of the Commission from the time the meeting is called to order until the meeting is adjourned or until the licensee is excused by the commission chairperson. A maximum of four (4) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(c) Successfully complete a commission-approved broker prelicense course. Continuing education credit may be obtained for retaking the same broker prelicense
course only if completed after three (3) years of completing the previous course; or
(d) Provide to the Commission a transcript or course completion certificate of successful completion of any of the following courses, without Commission pre-approval of the curriculum, instructors, or providers:

(i) Professional designation courses. Any course developed by national professional organizations that is required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice;

Courses taken to earn the following professional designations will automatically be accepted for continuing education elective credit. The accepted courses have been assigned a course number and are listed under the Education Lookup on the Commission website. If a pre-approved designation course is not offered through an Idaho certified provider, licensees wishing to receive credit must submit course completion certificates and course outlines to IREC using the Licensee Request for Continuing Education Credit form (REE-153):

Accredited Buyer Representative (ABR) (through REBAC)
Accredited Land Consultant (ALC) (through RLI, formerly Farm & Land Institute)
Certified Aging in Place Specialist (CAPS) (through NAHB)
Certified Commercial Investment Member (CCIM)
Certified Graduate Builder (CGB) (through NAHB)
Certified International Property Specialist (CIPS)
Certified New Home Sales Professional (CSP) (through NAHB)
Certified Real Estate Brokerage Manager (CRB)
Certified Residential Specialist (CRS)
Graduate Master Builder (GMB) (through NAHB)
Graduate REALTOR® Institute (GRI) (any state)
Master Certified Sales Professional (Master CSP) (through NAHB)
NAR’s e-Pro certification (ePRO)
NAR’s Green Designation (GREEN)
Performance Management Network (PMN) (through WCR)
Resort & Second Home Markets Certification (RSPS)
Seller Representative Specialist (SRS)
Senior Real Estate Specialist (SRES)
Short Sales & Foreclosures Resource (SFR)

Courses taken to earn other designations not listed here will be considered on a case-by-case basis. Online courses must be ARELLO® certified. The online portion of courses taught through blended delivery method must also be ARELLO® certified.

(ii) Courses accredited by another profession or jurisdiction. Any course approved by and offered in satisfaction of another professional or occupational licensing authority’s education requirements, if the commission determines that the course is within the approved topic areas established by the Commission and if the course otherwise meets commission standards for course certification including distance learning and minimum classroom hour requirements; or

This subsection (ii) applies only to courses that:

1. are approved for credit by another professional or occupational licensing authority (e.g., Dept. of Finance; State Bar; Wyoming Real Estate Commission); and
2. are being offered to the other authority’s licensees to satisfy their licensing requirements; and
3. fit within the approved topic areas established by the Commission.

Note: This subsection (ii) does NOT apply to any course being offered to Idaho real estate licensees for credit toward Idaho’s real estate CE licensing requirements. Courses that are being offered to Idaho real estate licensees in satisfaction of their CE requirements must be certified by the Commission.

Examples:
“Mortgage Loans: Beyond Essentials” – where the course offering currently is approved by the Idaho Department of Finance for credit toward the required 16 hours of CE for licensed Idaho Loan Originators, and the course is being offered to Idaho Loan Originators to meet their CE requirements;
“Your First Water Rights Case” – where the course offering currently is approved by the Idaho State Bar for CLE credit, and the course is being offered to Idaho attorneys to meet their CLE requirements.
“Risk Management and Legal Competencies” – where the course is currently approved by the Wyoming Real Estate Commission for CE credit, and it is being offered to Wyoming real estate licensees to meet their CE requirements.

(iii) Courses offered by an accredited college or university. Any course offered in satisfaction of a degree requirement by an accredited college or university if the commission determines that the course is within the approved topic areas established by the Commission.

Credit hours for college and university courses will be calculated using a formula of the number of credit hours times the number of weeks the course was offered.

Licensees may submit courses under this section for consideration of CE credit by submitting a Licensee Request for CE Credit form (REE-153) with the required attachments to the Commission no later than sixty (60) days prior to the end of the renewal period.

Under no circumstances will continuing education credit be given for a course offered in another jurisdiction for which IREC certification has been denied.

(a) If a certified course instructor, teaches a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.

“Certified course instructor” means an instructor certified by the Commission to teach a prelicense, post license, or Idaho Core course pursuant to Idaho Code 54-2032. A certified course instructor must submit an Instructor’s Request for CE Credit form (REE-151) to obtain continuing education credit under this section.

(7) Licensee duty to keep satisfactory proof. The licensee shall keep satisfactory proof of having completed the continuing education requirement and shall submit such proof at the request of the Commission as provided in section 54-2018, Idaho Code.
Any licensee who renews or reactivates a license and who does not have sufficient continuing education hours on file with the Commission WILL receive an audit letter requesting proof of meeting the CE requirements.

(8) Provisional license - Extension of time. A three-month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence shall be:
   (a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;
   (b) Health reasons preventing attendance or completion; or
   (c) Other compelling cause beyond the control of the applicant while engaged in the real estate business. If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

Licensees and the spouses of individuals serving on active military duty at the time of license renewal are not required to complete the continuing education requirement in accordance with IREC’s Licensing/Certification Fee Exemption for Military Persons.

Rule 402. APPROVED TOPICS FOR CONTINUING EDUCATION.
Continuing education is to help assure that licensees possess the knowledge, skills, and competency necessary to function in the real estate business in a manner that protects and serves the public interest or that promotes the professionalism and business proficiency of the licensee. The knowledge or skills taught in an elective course will enable licensees to better serve real estate consumers.

01. Topics Approved by the Commission. Topic areas for continuing education, as provided for in Sections 54-2023 and 54-2036, Idaho Code, will be approved by the Commission as they pertain to real estate brokerage practice and actual real estate knowledge.

02. Topics Not Eligible for Continuing Education Credits. Topics which are specifically exam preparation in nature or not directly related to real estate brokerage practice will not be eligible for approval.

Pursuant to Idaho Code 54-2036(3) and Rule 402, the specific, approved topic areas for continuing education course content are:
   a. Real estate ethics
   b. Legislative issues that influence real estate practice
   c. Real estate law, contract law, agency, real estate licensing law and administrative rules
   d. Fair housing, affirmative marketing, Americans with Disabilities Act
   e. Real estate financing, including mortgages and other financing techniques
   f. Real estate market measurement and evaluation
   g. Land use planning and zoning, land development, construction, energy conservation in building
   h. Real estate investment
   i. Accounting and taxation as applied to real property
   j. Real estate appraising
CERTIFICATION OF PROVIDERS, INSTRUCTORS, AND COURSES

54-2024. PURPOSE OF CERTIFICATION.
It is the intent of this chapter that delivery of high quality real estate education to licensees and to those seeking to become licensed in the state of Idaho is a necessary and reasonable way to protect the citizens, businesses and public interests in Idaho. Therefore, the Commission shall create and maintain a certification program for real estate education providers, instructors and course content.

An expired certification may be renewed up to 30 days after the certification expiration date. After 30 days, the certification may not be renewed.

Fees paid in connection with all certification applications are non-refundable.

54-2025. CERTIFICATION REQUIREMENTS.
(1) Certification required. Certification must be obtained by all course providers, instructors teaching any course other than a continuing education elective course, and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under this chapter.

Continuing education credit will not be awarded to licensees for courses not certified or accepted by the Commission in accordance with Idaho license law. A current list of courses eligible for CE credit is available on the Commission website.

No course, instructor, or provider will be certified retroactively.

(2) Courses, instructors and providers monitored. The Commission or its representative may monitor any course for the purpose of course, instructor or provider certification.
(3) If the Commission at any time determines that an instructor, course or provider is not meeting the requirements for continued Commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The Commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the Commission's satisfaction, the Commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter
For courses requiring a certified instructor, non-certified guest speakers may be utilized to present a portion of the course curriculum as long as the certified instructor is present in the classroom for the entire presentation and directly supervises the guest speaker. The course provider is responsible for the complete and accurate delivery of all Commission-developed course content.

As the owner of the Commission-developed courses, the Commission retains complete control over dissemination of all Commission-developed course materials. Individuals may not distribute these materials to others without written permission from the Commission. Any inquiries about obtaining such materials should be referred to the Commission.

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 shall:

(i) 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;

(ii) 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; and

(iii) Have attended a commission-approved provider training within the two (2) years immediately preceding the designation.

The requirement to complete the provider training also applies when a new director is appointed for an existing certified provider.

If the Idaho Real Estate Commission receives notification that there is no director in place for a certified provider, or if returned correspondence is received, the provider certification will be placed on administrative hold until such time as the issue has been resolved to the satisfaction of the Commission.

The failure of the provider to have in place a designated individual meeting the 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)(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.

54-2027. DUTIES AND REQUIREMENTS OF ALL CERTIFIED COURSE PROVIDERS. Failure of a certified course provider to comply with the following duties and requirements shall be grounds for the Commission to withdraw or cancel the provider's certification for cause.

(1) Discrimination prohibited. Each certified course provider shall at all times be in compliance with state and federal laws, rules and regulations regarding all aspects of equal opportunity and protection of civil rights. No course provider shall engage in discriminatory practices, nor allow their course instructor, or method of delivery to violate laws prohibiting discrimination. Each course provider will fully comply with any requirements of the Americans with disabilities act regarding access to and delivery of its courses, including the provision of accessible facilities and reasonable accommodations for students.

(2) Open access to course offerings. Registration and attendance at all certified courses offered for credit toward the education requirements of this chapter shall be open to all persons meeting normal course prerequisites; provided however, a certified course provider located in or affiliated with a licensed real estate brokerage company or professional association may refuse access to any licensee or unlicensed person based on that licensee's or unlicensed person's affiliation with another organization or brokerage company, or the licensee's or unlicensed person's membership status in any professional organization unless such course provider has received financial support from the Commission for its particular course offering. Nothing in this section shall restrict a course provider from charging a separate and reasonable course fee to nonaffiliated or nonmember licensees or unlicensed persons.

Providers must schedule a course through the IREC Online Services at least twenty-four (24) hours prior to course offering regardless of whether it is open to all licensees or not.

(3) Disclosure of fees. All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books required for coursework, such fees shall be itemized by the provider and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees and the manner in which they are to be paid shall be stated in a student contract, in a form approved by the Commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course.

If an instructor requires the purchase of a textbook(s) for a course, then the use of that textbook must be incorporated into the curriculum and utilized by students. For commission-developed courses utilizing a textbook, each student is required to have the textbook and it must be used in the course.

(4) Facilities and supportive personnel. The provider shall provide the facilities and all supportive qualified personnel or approved proctors necessary to adequately implement its real estate program.

The premises, equipment, and facilities of the school should comply with all city, state, and federal regulations, such as but not limited to fire, building, occupancy, zoning, and public health codes as well as the Americans with Disabilities Act.
If a provider will not be physically present at the class, there must be a provider representative on site who has been instructed in the provider duties they will be responsible for during the class. This is documented by a signed Onsite Provider Representative Form (REE-024) form in the provider’s files.

(5) Student records and other requirements. Each Idaho certified course provider shall comply with the following requirements:

(a) Records. For each individual student, create and retain for a period of five (5) years, a complete, accurate and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study;

Including: legal name, address, telephone number, and email address of school; full legal name of the student, beginning and ending dates of attendance; clock hours completed, i.e. sign-in sheet or attendance sheet; course/exam results.

Upon course completion, students must receive a certificate or statement of completion that includes the student’s full legal name or the name as it appears on the real estate license, provider name, course title, course approval number, course date(s), course delivery method, approved credit hours and the signature of the director.

(b) Course completion lists. Within five (5) business days after conclusion of each course of instruction, the provider shall submit to the council or commission, in the form and manner designated by the commission, a list which shall include the legal names and social security numbers or, if licensed, the license numbers, of the students completing the course of instruction, the name of the course, the name of the instructor, the number of hours included in the course, the date of the course and the location. The list shall be certified by the instructor from whom the students received instruction and an authorized representative of the provider;

Providers shall submit course completion lists using IREC Online Services. It is the Provider’s responsibility to ensure the accuracy of the course completion lists, including use of each student's legal name and license number or social security number, as applicable.

Idaho statute grants providers limited authority to obtain certain information from students that is regarded as confidential; namely: the student’s personal addresses and in some cases, social security numbers. The Provider is permitted to disclose this confidential information only to the Council or Commission, and then only as information included in the course completion list. Every provider must take precautionary measures to ensure that no student’s confidentiality is disclosed, even inadvertently, to any other person. Therefore, any course provider that obtains confidential information must establish a policy and procedure for collecting and keeping of confidential information that safeguards against disclosure.

It remains the responsibility of the Provider to ensure that the confidential information is not disseminated or used for purposes other than the creation and submission of a course completion list.

A student’s confidential information should never be displayed on a sign in sheet.

Use of License Numbers instead of Social Security Numbers. A student’s real estate license
number is not confidential information. A student who is already licensed in Idaho must be permitted to use his or her license number instead of social security number. However, prelicense students generally will not yet have an Idaho license, and therefore social security numbers will have to be used for course completion lists. It is understood that a course instructor, or other employee or agent of the provider, may properly have access to a student’s confidential information in the collection or submission of the required information. However, reasonable measures must be taken to protect the confidentiality of such information. Providers may wish to execute confidentiality agreements with their students.

(c) Grades. The provider will provide written notification to students who successfully or unsuccessfully complete a course within thirty (30) days of the course completion date;

(d) Evaluations. Upon the conclusion of each course, the provider shall collect written evaluations from students for the course and instructor using an evaluation form approved by the Commission. The provider shall keep such evaluations for a period of one (1) year from the course completion date. Upon written request from the Commission, the provider shall submit either the student evaluations for the course and instructor, or a written summary of those evaluations using a form approved by the Commission; and

**Evaluation Instructions for Continuing Education Courses**

_Idaho Code 54-2027_ requires that all certified providers collect written evaluations from students, using an approved form for the course and instructor. Evaluations may be collected electronically only when an opportunity to complete the evaluation form in a manner that does not disclose the student’s identity is offered to every student. Providers are required to keep either the evaluations or a written summary of them for one (1) year from the course completion date, and to provide either the evaluations or summary to the Commission upon written request. The Commission will request the evaluations or the summary thereof from providers on a random or occasional basis to monitor instructor and course performance and to assure compliance with the license law pertaining to collection of evaluations.

_Providers should make each instructor’s evaluations or a summary thereof available to the instructor promptly upon conclusion of a course._

**Evaluation Instructions for Commission-Developed Education Courses**

Evaluations for live offerings of Commission-developed courses must be collected for each course offering and provided to the Commission. The process for distribution and collection of paper evaluations must be handled as follows:

1. Prior to the conclusion of the course, but before the final exam (if any), a sufficient amount of classroom time shall be set aside for students to complete evaluations of the course and instructor.
2. The provider or course instructor must distribute the current Commission-approved evaluation form to each student and appoint one student to collect the completed evaluations. The provider and/or instructor(s) must then leave the room, prior to completion of the evaluations.
3. The student appointed to collect the evaluations will place all completed evaluations in an envelope provided by the provider. The envelope must be pre-addressed to the Commission. The student will seal the envelope and sign his/her name across the envelope flap.
4. The provider must transmit the sealed envelope to the Commission within five (5) business days from the conclusion of the course. Upon receipt of the sealed envelope, the Commission will promptly scan and e-mail all evaluations to the provider director.

Providers may electronically distribute course evaluations for Commission-developed classes using an electronic format approved in advance by the Commission. The form must provide students with Commission contact information to make confidential remarks, if desired by the student.

The Commission may randomly select one or more student(s) from every class for the purpose of obtaining supplemental evaluations on a course and instructor.

(e) Course schedules. Each provider shall submit schedules of courses and instructors as requested by the Commission and submit changes promptly as they occur. Whenever there is a change in a course including, but not limited to, a change in curriculum, course length or instructor, the provider shall promptly notify the Commission in writing of the change.

Providers are required to submit schedules of courses and instructors to the Commission on an ongoing basis by entering the course schedule information into the IREC Online Services at least twenty-four (24) hours prior to the course offering and keeping it updated with any changes or cancellations. The course schedule must also identify the correct instructor. For online courses, the course instructor identified must hold a current Certified Distance Education Instructor (CDEI) designation from ARELLO®.

(6) Instructors. A certified provider may offer a continuing education elective course without obtaining approval or certification for the course instructor; provided however, the provider shall take reasonable steps to ensure that the instructor is competent to teach the course and shall maintain resumes or other biographical information that documents the qualifications of the instructor. The provider shall make such documentation available to the public and Commission upon written request. A course provider shall not offer for credit any course that is being taught below the minimum teaching standards established by the Commission or that is being taught in a manner that is detrimental to the purpose of education licensees.

Reasonable steps to ensure instructor competency. Providers have a legal duty to “take reasonable steps to ensure that the instructor is competent to teach the course offered.” A provider who meets the following steps will be deemed by the Commission to have satisfied this requirement:

Verify instructor credentials. The provider has verified with the Commission that the instructor is currently certified to teach the course, or, if instructor certification is not required to offer the course, the provider has reviewed and verified the instructor’s documented credentials to teach the course. An optional Instructor Qualification form has been developed by the Commission that providers may use to document an instructor’s experience and credentials.

a. Teaching performance. The provider shall promptly review the student evaluations for every course, as it is being taught, and shall immediately advise the instructor of any deficiencies or concerns noted in the evaluations.

b. When using a new instructor for a live course offering for the first time, the provider is responsible for evaluating the instructor performance using the IREC instructor
evaluation form. The provider is also responsible for periodically evaluating its live course instructors using the IREC instructor evaluation forms. Upon completion of an evaluation, the results of the evaluation shall be provided to the instructor and a follow up plan for improvement, if needed, shall be discussed. This evaluation and documentation of the plan for improvement is to be kept with the provider’s records and provided to the Commission upon request.

Minimum teaching standards are set forth in Rule 500.

Failure to take reasonable steps to ensure instructor competency may result in withdrawal of provider certification.

Providers are strongly encouraged to attend each annual IREC Instructor Development Workshop.

(7) Posting and recording fees. The Commission may require that course providers pay to the Commission a nonrefundable posting and recording fee to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the Commission by motion.

(8) Advertising restrictions:

All course advertisements must contain the Commission’s course approval number and the exact title of the course as it was certified. The provider’s name, as certified by the Commission, must be included in all advertising.

(a) Providers may advertise that they are currently certified by the Commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the Commission or the Council;
(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

No course may be advertised as either “approved” or “accepted” for continuing education for Idaho real estate licensees unless it has been certified by the Commission and assigned an Idaho course approval number. An exception is made for an Idaho certified provider, who may advertise a course taken to earn one of the pre-approved professional designations listed on the IREC website as “accepted” for continuing education credit by the Commission.

No course may be advertised as “pending approval” even if an application for certification has been submitted to the Commission. It may only be advertised as “submitted to IREC for CE approval.”

(9) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to the Commission, at least one (1) month in advance of the effective date of the proposed changes.

54-2028. TERM OF PROVIDER CERTIFICATION AND RENEWAL.
(1) Each course provider's certification issued by the Commission shall be for a term of up to one year and shall expire annually on June 30.

(2) In order to maintain certification, each provider shall:
   (a) Return a properly completed renewal application on a form provided by the Commission, along with all necessary attachments and renewal fees to the Commission office prior to the expiration date for Commission approval; and
   (b) Certify that its designated director or person in charge has, within the past two (2) years, attended a commission-approved provider training.

(3) Recertification is not effective until the Commission has formally approved the application for renewal.

(4) Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for courses not yet successfully completed by the expiration date.

Renewal of provider certification must be completed online through IREC’s Online Services.

54-2029. NOTICE OF POTENTIAL EXPIRATION OF CERTIFICATION.
Certified providers who have not applied for renewal of certification or whose renewal applications do not meet the qualifications for renewal of certification shall be notified by the Commission of potential termination at least fifteen (15) days before termination occurs.

54-2030. EXPIRATION OR WITHDRAWAL OF PROVIDER CERTIFICATION - NOTICE TO STUDENTS.
If a provider's certification expires, is terminated or withdrawn for any reason, the provider will no longer be approved by the Commission, and no credit will be given to students for any courses not yet successfully completed by the expiration date. A provider whose certification has expired, been terminated or withdrawn for any reason, shall immediately notify every present or future student in writing that it is not a certified provider of approved real estate courses in Idaho, and that no credit for prelicense or continuing education will be given for its courses.

54-2031. WITHDRAWAL OF IDAHO CERTIFICATION FOR CAUSE - PROCESS.
The Commission may withdraw a provider's certification at any time, for cause, including the violation of any provision of this chapter by the provider or those for whom the provider is responsible. Any withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the Rules of Practice and Procedure of the Idaho Real Estate Commission, this chapter and all laws of the state of Idaho.

54-2032. CERTIFICATION OF INSTRUCTORS.
All individuals wishing to teach real estate courses for credit toward prelicense, post license or the Commission Core continuing education course requirements in Idaho must first be approved or certified by the Commission for each course the individual wishes to teach.

Instructors who are currently on an Instructor Performance Improvement Plan (IPIP) or 30-day notice letter from the Commission are not eligible to be certified as instructor for additional Commission-developed courses until they have successfully complied with the terms of the IPIP or 30-day notice letter to the satisfaction of the Commission.

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 real estate courses for credit toward Idaho prelicense requirements, including the business conduct and office operations, post license, 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 has 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)(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 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 education licensees.

Minimum teaching standards are set forth in Rule 500.

Instructor training procedure for prelicense (including BCOO), post license, and the Commission CORE courses:

1. In considering whether a person could reasonably be expected to train or prepare the average student in a particular subject, the following factors, in addition to the minimum standard as set forth in the law, will be considered. These factors have been established based on the normal and usual training and experience prevailing in a particular subject.
The Commission will review special consideration requests made in writing based upon educational background and experience:

- **Salesperson Prelicense - Module 1 & 2**: Applicant must have active experience as a licensed real estate salesperson or broker in Idaho for at least five (5) years within the 10 years prior to application.
- **Broker Prelicense - Brokerage Management**: Applicant must have an active broker’s license AND at least five (5) years active real estate-related experience.
- **Broker Prelicense - Law**: Applicant must be an actively licensed attorney with a minimum of five (5) years experience.
- **Broker Prelicense - Finance**: Applicant must have at least five (5) years active real estate-related and/or finance experience.
- **Broker Prelicense - Valuation & Analysis**: Applicant must be an actively licensed or certified appraiser OR have at least five (5) years active real estate-related experience.
- **Business Conduct & Office Operations (BCOO)**: Applicant must have at least five (5) years active real estate-related experience and be an active licensed broker.
- **Commission CORE Course**: Applicant must have at least five (5) years active real estate-related experience.
- **Post License Fundamentals**: Applicant must have active experience as a licensed real estate salesperson or broker for at least five (5) years within 10 years prior to application. If active practice is in a jurisdiction other than Idaho, applicant must also pass the Idaho portion of the licensing exam within no more than 12 months immediately preceding the application for certification.
- **Post License Professionalism, Negotiations, and Closings**: Applicant must have active experience as a licensed real estate salesperson or broker for at least five (5) years within the 10 years prior to application. If active practice is in a jurisdiction other than Idaho, applicant must also pass the Idaho portion of the licensing exam within no more than 12 months immediately preceding the application for certification.
- **Post License Pricing, Marketing and Advertising**: Applicant must have active experience as a licensed real estate salesperson or broker for at least five (5) years within the 10 years prior to application. If active practice is in a jurisdiction other than Idaho, applicant must also pass the Idaho portion of the licensing exam within no more than 12 months immediately preceding the application for certification.
- **Post License Introduction to Commercial Real Estate**: Applicant must have active experience as a licensed real estate salesperson or broker for at least five (5) years within the 10 years prior to application. If active practice is in a jurisdiction other than Idaho, applicant must also pass the Idaho portion of the licensing exam within no more than 12 months immediately preceding the application for certification. In addition, applicant must have two (2) years’ experience brokering commercial transactions **PLUS** hold either a post-secondary degree specific to commercial real estate **OR** an active status CCIM or SIOR designation; **and**

**“Real estate-related experience”** is defined as extensive experience:

- As a licensed real estate sales associate or broker
- As an attorney at law with practice in real estate transactions
- With decision responsibility, in closing real estate transactions for escrow companies, mortgage companies, or similar institutions
- As an officer of a commercial bank, savings and loan association, title company
or mortgage company, involving all phases of real estate transactions

- Experience as a real property fee appraiser or salaried appraiser for a governmental agency
- In all phases of land development, construction, financing, selling and leasing of residences, apartments or commercial buildings
- In real estate investment, property management, or analysis of investments or business opportunities

2. Attend 100% of the course as taught by a certified instructor within the three (3) years prior to the date of application; and

3. Instructor exam: Must successfully complete the final course exam for the most current version of the course in effect on the date of the application with a minimum passing score of 70%. If not successfully passed on the first attempt, one (1) retake is allowed; and

4. Attend a full “Instructor Development Workshop” sponsored by the Commission or possess other acceptable teaching experience and/or education in method of teaching adults. The Certified Distance Education Instructor (CDEI) certification course offered through the International Distance Education Certification Center (IDECC) will be accepted to fulfill this requirement; and

5. Serve a student teaching period. The student teaching period involves:
   - Teaching a minimum of 2 hours or 20% of the course material, whichever is greater, under the supervision of the certified instructor*, and
   - Receiving favorable evaluations from students in the class; and
   - Receiving a favorable recommendation from the certified instructor for the assistant teaching.

For instructors seeking certification for subsequent courses who are already certified by IREC to teach, previous student teaching hours may be credited toward the 20% minimum. The instructor must seek an additional opportunity to student teach the amount remaining if the minimum is not fully satisfied by their previous student teaching experience.

* A certified instructor must have taught the course at least three (3) times to supervise a student teacher.

An individual who has completed the “Distinguished Real Estate Instructor” (DREI) professional designation from the Real Estate Educator’s Association (REEA) will be deemed to have satisfied requirements 4 and 5.

Pursuant to Idaho Code 54-2033(1), qualified instructors at degree granting institutions as stated in 54-2033(1) are not subject to 1 through 5 above.

The Commission CORE course is a new course every year on July 1. All CORE instructors must be certified for each new CORE course. This includes observing the entire course and passing the final course exam. The Commission will provide the opportunity to observe the new CORE course and pass the final exam every year at the Instructor Development Workshop to facilitate instructor certification for each new CORE course.

Continuing Education Elective Courses: A certified provider may offer a continuing education elective course without obtaining Commission approval or certification for the instructor as provided in Idaho Code 54-2027(6). However, the course must be certified by the Commission.
54-2034. SPECIAL CONSIDERATION - DISCRETION OF THE COMMISSION.
The Commission may, in its discretion, make such additional investigation and inquiry relative to the applicant for instructor certification as it shall deem advisable, and if other good cause exists, may deny or accept the application for certification. Based upon an applicant's educational background, experience in related activities, or a review of the applicant's evaluations as an assistant teacher, the Commission may modify the requirements for instructor certification; such modification may include reducing the requirements or assigning additional requirements for certification.

SPECIAL CONSIDERATION OF CERTIFICATION AND LICENSING REQUIREMENTS

The Idaho Real Estate Commission is authorized, upon request for special consideration by an applicant, to waive or modify any requirement established by statute for the certification of course providers, prelicense instructors, and courses/course content, and any prerequisite requirement for obtaining a broker or sales associate real estate license.

A. The Education & Licensing Director and Education Council are authorized by the Commission to consider and determine the following matters relating to education requirements for licensure and certification.

1. Certification of course providers (54-2026)
2. Certification of instructors (54-2033 & 54-2034)
3. Certification of courses and course content (54-2036)
4. Waivers or modifications to prelicense education requirements (54-2012(1)(h) and 54-2022(2))
5. Determination of equivalency with Idaho requirements of prelicense and continuing education courses (54-2022(6))
6. Extensions of time for acceptance of exam results or prelicense coursework (54-2014(1) and 54-2022(2))

The Education & Licensing Director is specifically authorized to certify course providers, instructors, and courses, and determine equivalency of CE courses with Idaho requirements.

If an applicant requests an extension of time for acceptance of courses or exam results or special consideration of an education requirement, or if the applicant does not agree with the Education & Licensing Director’s determination of a matter set forth in paragraph (i) above, or if the Education & Licensing Director in his/her discretion deems it appropriate or advisable, then the applicant’s request will be placed on the agenda of the next regularly scheduled Education Council meeting for its consideration and determination by the Council. Applicants will be advised in writing within ten (10) business days of the Council’s decision.

If an applicant does not agree with the Education Council’s decision, then the applicant may request to have the matter reviewed by the Commission members by timely filing a written request for Commissioner Review. Such request must be received at the Commission office within fifteen (15) days from the date of the Education Council’s written notification to the applicant. A request for Commissioner Review of an Education Council decision will be treated in all respects as a request for special consideration before the Commissioners. Unless a written request is timely filed, the decision of the Education Council will be deemed the final agency action.
B. It is the policy of the Commissioners that the Executive Director shall have the authority to determine the following applicant requests:

1. Waivers of the national exam (54-2014 and 54-2015)

Staff will provide written notification of denial of requests within ten (10) business days.

If an applicant does not agree with the Staff decision to deny a request, the applicant may request to have the matter reviewed by the Commission members by timely filing a written request for Commissioner review at a regularly scheduled meeting. Such request must be received at the Commission office within fifteen (15) days from the date of Staff’s written notification to the applicant. A request for Commissioner review of a Staff determination will be treated in all respects as a request for special consideration before the Commissioners.

C. All requests for felony or revocation exemption, waiver of high school graduation/GED or experience requirements, or waiver or modification of any other requirements not specifically enumerated above will be presented directly to the Commissioners to be heard and decided as requests for special consideration.

D. All special considerations, waivers and other modifications of licensing requirements, whether determined by staff, the Education Council, or Commissioners, are valid for six (6) months from the date of the Commission’s written notification to the applicant, unless specifically stated otherwise in the written notification.

54-2035. TERM OF INSTRUCTOR CERTIFICATION AND RENEWAL.

(1) Certification. Each instructor certification issued by the Commission shall be for a term of up to one (1) year and shall expire annually on June 30.

(2) Recertification.

(a) In order to be recertified, each instructor shall:

(i) Return a completed recertification application on a form provided by the Commission, along with all necessary attachments and fees, to the Commission office prior to the expiration date for Commission approval;

(ii) Demonstrate the ability to teach the course. The ability to adequately teach shall be determined by the Commission based upon any or all of the following:

1. Evaluations received from students;

Each instructor is required to maintain at least an annual average of 4.0 (based upon a 1-5 scale) on the standard Commission evaluations for the instructor’s overall average category for each course they are certified to teach.

The provider is responsible for periodically evaluating its live course instructors using the IREC instructor evaluation form. When an instructor falls below the 4.0 average, an Instructor Performance Improvement Plan (IPIP) should be developed by the instructor and provider. The IPIP is to be kept with the provider’s records and provided to the Commission upon request. An instructor on an IPIP is not eligible to be certified to teach additional Commission-developed courses.

2. Direct observation of the instructor's teaching performance by a Commission
A sample of a course offering audited at the point of delivery by a Commission representative shall reflect:

a. comprehensive and current real estate knowledge as a basis for real estate practice at the applicable sales associate’s or broker’s level; and,

b. pre-course preparation and effective teaching methods. Each course must provide well organized up-to-date course outlines and reference materials.

Noncompliance in any of the above mentioned policy guidelines will be further examined by utilizing telephone and written surveys and communication with the instructor. Telephone surveys and follow-up surveys should provide evidence of educational benefits to students.

3. Review of the outline and reference materials provided for the course; and

Course outlines must include current materials and policies as approved by the Commission.

(iii) Have attended a Commission-sponsored instructor development seminar or received other acceptable training in methods of teaching adults during the preceding two (2) years.

The Certified Distance Education Instructor (CDEI) certification and certification renewal courses offered through the International Distance Education Certification Center (IDECC) will be accepted to fulfill this requirement.

It is strongly recommended that all certified instructors attend each annual Instructor Development Workshop.

(b) Recertification shall not be effective until the Commission formally approves the application for renewal. An instructor's failure to obtain approved recertification prior to the expiration of the certification will result in no credit being given for any course taught by the instructor whose certification has expired prior to conclusion of the course.

Licensees and the spouses of individuals serving on active military duty at the time of recertification will be recertified in accordance with IREC’s Licensing/Certification Fee Exemption for Military Persons.

54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT.
Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho Real Estate Commission.

This means all courses except those offered to earn a professional designation as described under 54-2023(5)(e)(i), even if the course has been approved for real estate licensee continuing education credit in another jurisdiction.

Courses offered in satisfaction of another professional or occupational license authority’s education requirements may be accepted by the Commission for continuing education credit, if the Commission determines that the course fits within the approved topic areas as they pertain to Idaho law, is offered through a delivery method that is substantially similar to a Commission approved delivery method, and if submitted by a licensee.
(1) An application for course certification must be submitted in the form and manner required by the Commission, with proper fees, at least two (2) months prior to the contemplated date of the first course offering.

(2) Minimum requirements for course certification:

**Any change in hours or delivery method** or significant change of course content for a currently certified course requires a new course application.

**Course names:** A course submitted for certification should be titled such that the subject matter of the course can be ascertained from the title. Applicants submitting a course for which there already exists a certified course with the same name may be asked to identify a different, unique title for the course as a condition of certification.

Courses submitted for certification must include satisfactory learning objectives using action verbs from Bloom's Taxonomy list as provided by IREC on the Continuing Education Elective Course Certification Application.

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each continuing education course must contain at least one (1) classroom hour.

**Courses submitted with half hour increments will be considered.** (e.g., a course submitted for two and a half hours may be approved for two and one half hours.)

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A classroom hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning courses. The design and delivery of each distance learning course shall be certified by the Association of Real Estate License Law Officials or by another institution whose certification standards are deemed equivalent by the Commission. The credit hours for a certified distance learning course shall be based upon the same number of hours which would be credited for an equivalent live course, and must include a Commission-approved assessment.

**Online courses** are considered “distance learning” courses. Distance learning final exams must include a minimum of 5 questions per hour of instruction. For courses taught through a blended delivery method, the online portion of the course is considered distance learning therefore must be ARELLO® certified.

An accredited college or university listed in the U.S. Department of Education Database of Accredited Postsecondary Institutions and Programs will be deemed to have certification standards equivalent to ARELLO® certification.

(f) Each prelicense course must include a Commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(g) Continuing education course exam. A licensee may receive continuing education course credit without having to take or pass an exam if the licensee personally attends the entire live presentation of an approved course.

(h) Exam retake policy. Each certified course provider may, at its option, allow students who
complete a course and then fail the course exam one (1) opportunity to retake the approved course exam within the following time periods:
(i) Prelicense course exam retakes must occur within one (1) month of the original course exam;
(ii) Continuing education course exam retakes must occur within that course's certification period;
(iii) If the student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit.

The Commission-approved course exams shall be used in their entirety and may not be revised or altered without the Commission’s advance permission. Providers are responsible to preserve the validity and security of course exams. Students shall not be allowed to retain exams or copy any exam questions, answers or distracters. A student who fails a final course exam shall be given a different version of the exam and must pass the entire retake exam with a minimum score of 70% in order to receive credit for the course. Students completing make-up work are still expected to take the exam at the end of the course, as scheduled, with the rest of the class. If the student has missed enough of the course time that taking the exam will jeopardize their ability to pass the exam, the provider should consider asking them to attend a subsequent offering of the missed portion in lieu of assigning make-up work.

(i) Challenge exams. Except where the prelicense requirements have been waived or modified by the Commission pursuant to section 54-2022(6), Idaho Code, a student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements.

(3) Approved topics. The Commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

If a course application is denied, the applicant may revise and resubmit the course one time for reconsideration without payment of an additional fee as described by the course denial letter.

54-2037. TERM OF COURSE CERTIFICATION AND RENEWAL.
Each course certification issued by the Commission shall be for a term of two (2) years. The exact expiration date will be shown on the course certificate. In order to maintain certification a course provider, for each course, must return a properly completed renewal application on a form provided by the Commission, along with all necessary attachments and renewal fees to the Commission office prior to the expiration date and within sufficient time for Commission review and approval. Recertification is not effective until the Commission has formally approved the application for renewal. Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for a course if its certification has expired prior to conclusion of the course.

Rule 500. MINIMUM TEACHING STANDARDS OF THE COMMISSION.
All courses offered for credit by a certified provider will be taught in accordance with the standards and written policies adopted by the Real Estate Commission. Course instructors will conduct themselves in a professional manner when performing instructional duties and will not engage in conduct that criticizes, degrades, or disparages the Commission, any student, other instructor, brokerage, agency, or organization.

01. Certification Requirement. A course required to be taught by a Commission-certified or Commission-approved instructor will be taught only by an instructor that is currently
approved or certified for that course.

02. **Outlines and Curriculum.** A course must be taught in accordance with the course outline or curriculum approved by the Commission.

03. **Attendance Requirement.** The course instructor will adhere to the Commission’s written attendance policy and credit hours will only be submitted for students who have successfully met the attendance requirements for which the course was approved.

04. **Maintaining Exam Security.** The instructor will take reasonable steps to protect the security of course examinations and will not allow students to retain copies of final course examinations or the exam answer key.

05. **Use of Exam Questions Prohibited.** The instructor will not obtain or use, or attempt to obtain or use, in any manner or form, Idaho real estate licensing examination questions.

**Professional mannerism includes:**

1) Avoidance of any form of student harassment, which is not limited to harassment based on the gender, national origin, race, religion, age, or physical or mental ability of any student.

2) Demonstration of sufficient subject matter knowledge of the course material being instructed.

3) Adherence to the Commission’s written policies regarding product and service promotion and recruitment in the classroom.

4) Display of competent teaching skills, which include but are not limited to, the ability to:
   a) Communicate effectively through speech
   b) Present instruction in an accurate, logical, orderly, and understandable manner
   c) Respond appropriately to questions from students
   d) Utilize varied instructional techniques in addition to lecture, such as class discussion, role playing, or other techniques that enhance student interaction and learning
   e) Utilize instructional aids and modern technology in a manner that enhances learning
   f) Maintain an appropriate learning environment and effective control of the classroom
   g) Interact with adult students in a respectful and professional manner that encourages student learning
   h) Utilize relevant experience and research to supplement student learning
   i) Form constructive relationships with students and
   j) Utilize instruction time effectively

Use of competent teaching skills may be measured by student evaluations. The instructor must maintain, for the course, an annual average of 4.0 or better (based on a 1-5) on the Commission’s standard student evaluation form. Providers are responsible for tracking and documenting instructor scores for CE elective classes and providing these scores to the Commission upon request.

**Recruitment Activities and Product and Service Promotion Policy Purposes:**

1. To ensure education classes remain instructional and professional
2. To prohibit use of instructional time for recruitment
3. To prohibit use of instructional time to product and service promotion AND
4. To address students’ desire for information about employment opportunities.

**Recruitment Activities Policy:** No instructor, school director or provider employee shall use class time to encourage, induce or promote student employment, affiliation or membership with any particular real estate licensee, real estate organization, franchise or network. “Promote” includes
the making introductory remarks about a licensee, organization, franchise or the naming of such in examples (unless a reported court case).

**Permissible Promotion and Recruitment Activities:**

1. Must clearly be designated as “recruitment” and student attendance must clearly be optional
2. Must be clear that IREC does not favor or embrace one brokerage over any other AND
3. Must be conducted outside of instructional hour (e.g., not during classroom or “credited” time).

If conducted during the instructional day, permissible promotion and recruitment activities must occur before or after class, or during the lunch break. If during a lunch break, it must be clear that students are free to leave. Schools may organize a “recruitment session” outside of the regularly scheduled class. Student attendance at such sessions must be optional.

Classroom time must not be devoted to the discussion or promotion of marketing materials. Firm brochures and material must not be included within any IREC approved instructional materials and course outlines. (This restriction does not apply to a brokerage firm’s “in house” educational activities, except to the extent that credited classroom time may not be used to promote the firm.)

**Product and Service Promotion Policy:** Sponsors, providers and instructors may make available for purchase materials and services that belong to the sponsor, instructor, or some other party on a limited basis. Sponsors and instructors shall not present a course for the main purpose of selling products or services and shall limit the announcement of products or services during the course. It is the Commission’s intent that product and service promotion does not interfere with the presentation of the approved course material and the course is presented completely as it was approved.

Pursuant to the exam provider’s policies, test takers are not allowed to share or discuss the questions or answers seen in the licensing exam with other candidates. It is the policy of the Idaho Real Estate Commission that certified instructors and representatives of certified providers will not solicit or request students to provide license exam questions or answers from the licensing exam and will refrain from discussing such information or utilizing it in any way.

Certified instructors and representatives of certified providers may not apply for or take the real estate licensing exam for any other purpose than to obtain an Idaho real estate license or to obtain certification as specified in the requirements for post license instructor certification.

**FORMS** - Visit the Commission’s website at [irec.idaho.gov](http://irec.idaho.gov) and click on the “Forms” link to access the education forms.

**Idaho Real Estate Commission**
575 E. Parkcenter Blvd., Suite 180
Boise, ID 83706
(208) 334-3285
(208) 334-2050 FAX
[irec.idaho.gov](http://irec.idaho.gov)
SPECIAL CONSIDERATION OF CERTIFICATION AND LICENSING REQUIREMENTS

The Idaho Real Estate Commission is authorized, upon request for special consideration by an applicant, to waive or modify any requirement established by statute for the certification of course providers, instructors, courses, and any prerequisite requirement for obtaining a broker or sales associate real estate license.

A. The Education & Licensing Director and Education Council are authorized by the Commission to consider and determine the following matters relating to education requirements for licensure and certification.

1. Certification of course providers (54-2026)
2. Certification of instructors (54-2033 & 54-2034)
3. Certification of courses and course content (54-2036)
4. Waivers or modifications to prelicense education requirements (54-2012(1)(h) and 54-2022(2))
5. Determination of equivalency with Idaho requirements of prelicense and continuing education courses (54-2022(6))
6. Extensions of time for acceptance of exam results or prelicense coursework (54-2014(1) and 54-2022(2))

The Education & Licensing Director is specifically authorized to certify course providers, instructors, and courses, and to determine equivalency of CE courses with Idaho requirements.

If an applicant requests an extension of time for acceptance of courses or exam results, special consideration of an education requirement, or if the applicant does not agree with the Education Director’s determination of a matter set forth in paragraph (i) above, or if the Education Director in his/her discretion deems it appropriate or advisable, then the applicant’s request will be placed on the agenda of the next regularly scheduled Education Council meeting for consideration and determination by the Council. Applicants will be advised in writing within ten (10) business days of the Council’s decision.

If an applicant does not agree with the Education Council’s decision, then the applicant may request to have the matter reviewed by the Commission by timely filing a written request for Commissioner Review. Such request must be received at the Commission office within fifteen (15) days from the date of the Education Council’s determination.
Council’s written notification to the applicant. A request for Commissioner Review of an Education Council decision will be treated in all respects as a request for special consideration before the Commissioners. Unless a written request is timely filed, the decision of the Education Council will be deemed the final agency action.

B. It is the policy of the Commissioners that Staff shall have the authority to determine the following applicant requests:

1. Waivers of the national exam (54-2014 and 54-2015)

Staff will provide written notification of denial of requests within ten (10) business days.

If an applicant does not agree with the Staff decision to deny a request, the applicant may request to have the matter reviewed by the Commission members by timely filing a written request for Commissioner review at a regularly scheduled meeting. Such request must be received at the Commission office within fifteen (15) days from the date of Staff’s written notification to the applicant. A request for Commissioner review of a Staff determination will be treated in all respects as a request for special consideration before the Commissioners.

C. All requests for felony or revocation exemption, waiver of high school graduation/GED, waiver of experience requirements, or waiver or modification of any other requirements not specifically enumerated above will be presented directly to the Commissioners to be heard and decided as requests for special consideration.

D. All special considerations, waivers and other modifications of licensing requirements, whether determined by Staff, the Education Council, or Commissioners, are valid for six (6) months from the date of the Commission’s written notification to the applicant, unless specifically stated otherwise in the written notification.
PROCEDURE FOR ACCEPTING AND PROCESSING REQUESTS FOR SPECIAL CONSIDERATION

License applicants and applicants for instructor and provider certification are entitled to request special consideration to waive or modify licensing or certification requirements. The purpose of this policy is to set forth the procedures and minimum documentation required from an applicant to submit a request for special consideration to the Education Council or Commissioners.

All applicants who want to request special consideration must submit a written request detailing the reason and “good cause” for the request, including all appropriate supporting documentation, to the department indicated before the request can be placed on a Commission or Council agenda packet.

The packet the Commission or Council receives will consist of the request letter and documents submitted by the applicant, a copy of the applicant’s licensing record, and documentation of all communication between the Commission and the applicant.

I. BROKER AND SALES ASSOCIATE – EDUCATION or EXPERIENCE WAIVERS

NOTE: An applicant who wishes to request special consideration for an education or experience waiver must have completed all other requirements for licensure/certification prior to submission of the request.

Requests and documentation must be received no later than 12:00p.m. Mountain Time, one week prior to the scheduled meeting.

Idaho Code 54-2012(1) – The Commission may waive or modify a minimum licensing requirement for good cause and upon special consideration.

A. The following requests are heard by the Education Council. A review of an unfavorable Council decision is heard by the Commissioners, in accordance with the Special Consideration Policy.

1. Waiver, Modification, or Extension of Exam Scores
   Standard: Idaho Code 54-2012(1) (“good cause”)
   Documents to be submitted:
   a. Documentation to support the good cause reason for the waiver, modification, or extension

2. Waiver, Modification, or Extension of Prelicense Courses
   Standard: Idaho Code 54-2012(1) (“good cause”) and 54-2022(2) (based on the applicant’s experience or additional education)
   Documents to be submitted:
   a. Sufficient proof of having completed the education (college transcripts, course completion certificates, certified education histories, etc.)
b. Proof of experience (list of references, verification letters from previous employers, copies of transactional documents, recommendations from former clients, newspaper or newsletter articles, etc.)
c. Documentation to support the good cause reason for the extension

B. The following requests are heard by the Commissioners to determine good cause and suitability for licensure.

1. High School Graduation/GED Waiver (for all applicants)
   **Standard:** Idaho Code 54-2012(1) (“good cause”)
   **Documents to be submitted:**
   a. Documentation to support the good cause reason for the request

2. Experience Waivers (for broker applicants)
   **Standard:** Idaho Code 54-2012(1) (“good cause”) and 54-2012(2)(a)(iii) (based on applicant’s educational background or experience in related or affiliated business activities)
   **Documents to be submitted:**
   a. Documentation of education (college transcripts, course completion certificates, certified education histories, etc.)
   b. Signed experience verification form(s) if the applicant is or has been licensed in any jurisdiction
   c. Other documentation of experience (reference letters, transactional documents, professional certifications, certified license histories, etc.)

3. Extension of Fingerprint Results
   **Standard:** No waiver or extension of fingerprint results will be granted.

4. Terminated License
   **Standard:** A license that has terminated cannot be “reinstated.” Instead, an applicant must apply for a new license. A request from a terminated licensee to “reinstate” the license must be treated as a waiver request for all prelicense and experience requirements. Appropriate documentation must be provided for each item for which a waiver is requested.

II. BROKER AND SALES ASSOCIATE - FELONY AND REVOCATION EXEMPTION REQUESTS

All exemption and revocation requests and documentation must be received no later than 12:00 p.m. Mountain Time, two weeks prior to the scheduled meeting with all materials to be included in the agenda packets.

A. Felony Exemption (had been convicted of a felony in a state or federal court or convicted by military general court-martial; whether or not a judgment or sentence has been imposed, withheld or suspended)
NOTE: No felony exemption will be considered if the requesting party has not yet completed any term of probation, sentence or confinement or period of parole or supervised release, and a period of 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, has passed.

The following requests are heard by the Commissioners to determine good cause and suitability for licensure

1. **Standard**: Idaho Code 54-2012(1) (“good cause”) and 54-2012(1)(g)(i) and (ii) (“suitability for licensure” by considering these elements)
   
   **Documents to be Submitted:**
   a. Judgment and sentencing documents (plea agreement, court decision, etc.)
   b. Documents evidencing release from probation or parole
   c. Any information pertaining to the circumstances surrounding the crime that would help determine the risk of repetition
   d. Papers documenting participation in treatment, payment of restitution or other factors of current rehabilitation
   e. Resume or employment history documenting activities since the time of the felony
   f. Reference letters

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

The applicant has the burden of establishing current suitability for licensure.

B. **Revocation Exemption** (had a real estate or any professional license revoked for fraud, misrepresentation, or dishonest or dishonorable dealing)

NOTE: No revocation exemption will be considered for a period of five (5) years from the date the license was revoked.

The following requests are heard by the Commissioners to determine good cause and suitability for licensure

1. **Standard**: Idaho Code 54-2012(1) (“good cause”) and 54-2012(1)(e)(i) and (ii) (“suitability for licensure” by considering these elements)
Documents to be Submitted:

a. Final order or judgment
b. Reference letters
c. Resume or employment history documenting activities since the time of the revocation
d. Papers documenting participation in treatment, payment of restitution or other factors of current rehabilitation
e. The circumstances surrounding the disciplinary violation that would help determine the risk of repetition

2. Consideration: 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.

The applicant has the burden of establishing current suitability for licensure.

III. PROVIDER AND INSTRUCTOR CERTIFICATION APPLICANTS

NOTE: An applicant who wishes to request special consideration for a provider or instructor certification must have completed all other requirements for licensure/certification prior to submission of the request.

Requests and documentation must be received no later than 12:00 p.m. Mountain Time, one week prior to the scheduled meeting with all materials to be included in the agenda packets.

A. Providers.
   1. Idaho Code 54-2026(2)(c) – The Commission may make such additional investigation and inquiry relative to an applicant for provider certification as it deems advisable. If good cause exists, the Commission may deny or accept the application.

   The following requests are heard by the Commissioners, in accordance with the Special Consideration Policy.

   2. Felony Exemption
NOTE: Provider applicants are required to attest they have not had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or been refused a license renewal. They must not have been convicted, fined, placed on probation, received a withheld judgment, or been confined on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing. However, there is no 5-year time limitation on misdemeanors, suspensions, or revocations for certification applicants. (Idaho Code 54-2026(2)(b) and 54-2033(2)(a.).)

If a provider applicant requests a waiver of this requirement, the request would go directly to the Commissioners in the same manner as a request from an applicant for sales associate or broker license.

B. Instructors.
1. Idaho Code 54-2034 - The Commission may make such additional investigation and inquiry relative to an applicant for instructor certification as it deems advisable. If good cause exists, the Commission may deny or accept the application. Based on an applicant’s educational background, experience in related activities, or a review of the applicant’s evaluations as an assistant teacher, the Commission may reduce or assign additional requirements for instructor certification.

The following requests are heard by the Education Council. A review of an unfavorable Council decision is heard by the Commissioners, in accordance with the Special Consideration Policy.

1. Waiver of the active real estate-related experience requirement
   Standard: Idaho Code 54-2034 (based on educational background or related experience)
   Documents to be submitted:
   a. Sufficient proof of having completed the education (college transcripts, course completion certificates, certified education histories, etc.)
   b. Proof of experience (list of references, verification letters from previous employers, copies of transactional documents, recommendations from former clients, newspaper or newsletter articles, and so forth)
   c. License history or verification from the applicant’s professional licensing jurisdiction (if applicable)
   d. Documentation of courses taught

2. Waiver of requirement to be licensed broker, appraiser, attorney
   Standard: Idaho Code 54-2034 (based on educational background or related experience)
   Documents to be submitted:
   a. Sufficient proof of having completed the education (college transcripts, course completion certificates, certified education histories, etc.)
   b. Proof of experience (list of references, verification letters from previous employers, copies of transactional documents, recommendations from former clients, newspaper or newsletter articles, and so forth)
   c. License history or verification from the applicant’s professional licensing jurisdiction (if applicable)
The following requests are heard by the Commissioners, in accordance with the Special Consideration Policy.

3. Felony Exemption

NOTE: Instructor applicants are required to attest they have not had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or been refused a license renewal. They must not have been convicted, fined, placed on probation, received a withheld judgment, or been confined on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing. However, there is no 5-year time limitation on misdemeanors, suspensions, or revocations for certification applicants. (Idaho Code 54-2026(2)(b) and 54-2033(2)(a).)

If an instructor applicant requests a waiver of this requirement, the request would go directly to the Commissioners in the same manner as a request from an applicant for sales associate or broker license.
DISPLAYING DISCIPLINARY ACTIONS ON COMMISSION WEBSITE

The Idaho Real Estate Commission has adopted this Policy to provide for the displaying of disciplinary actions and related Final Orders on the Commission website (www.irec.idaho.gov). This policy is effective October 1, 2008 and applies to all disciplinary Final Orders issued on or after the date.

Disciplinary Actions and Final Orders to be Displayed. The Commission will display all disciplinary actions and Final Orders issued pursuant to the filing of Administrative Complaint, including Final Orders agreed to that are filed pursuant to a written Stipulation that serves as the combined Stipulation/Complaint. However, the Commission will not display the disciplinary actions or Final Orders issued in cases that pertain only to violations of the continuing education or insurance requirements for licensing, or any Final Order that dismisses an administrative compliant. Such records may be obtained upon written request for public records (see below).

Display of Disciplinary Actions and Final Orders. The existence of a disciplinary action and the related Final Order will be accessed through the Licensee Search. A search result for a licensee will display information indicating any violation(s) for which the licensee was disciplined by a Final Order, along with a link to a PDF version of the related Final Order.

Associated Records Not Displayed. Only the Final Order will be displayed on the website; any related public records of proceedings pertaining to the issuance of the Final Order will not be displayed but may be obtained from the Commission via written request for public records (see below).

Other Disciplinary Record Not Displayed. Although disciplinary in nature, the Commission will not display records of violations or fines imposed where no Administrative Complaint is filed. This includes: (1) violations cited during routine office audits/inspections; (2) fines resulting from late license renewal, failure to maintain E&O insurance, or continuing education (CE) violations; and (3) information letters of warning or informal reprimands issued by the staff. Public records of these actions may be obtained from the Commission via written request for public records (see below).

Time of Display. Disciplinary actions and Final Orders will be displayed after the fourteen (14) day period for filing for reconsideration has expired, as provided in Idaho Code Section 67-5246(4). Unless amended, dismissed, or otherwise ordered by the Commission, the disciplinary action and Final Order shall remain displayed on the website for a period of five (5) years.

Publication in Real Estatement Not Impacted. This website display policy does not replace, reduce or otherwise change the Commission’s ability to continue its current practice of publishing all License Law violations in the Real Estatement newsletter.
Obtaining Other Records – Public Records Requests. Copies of any public record kept by the Commission may be obtained by submitting a written public records request to the Designated Records Custodian for the Commission. Obtain a Request for Public Records form from the website, or contact the Commission office to have one sent to you. The written request may be submitted by mail, fax, e-mail or in person.

Idaho Real Estate Commission  
575 E. Parkcenter Blvd, Suite 180  
Boise, Idaho  83706  
Phone:  2018-334-3285  
Fax:  208-334-2050  
E-mail:  info@irec.idaho.gov  
Website:  www.irec.idaho.gov

Not all records kept by the Commission are available to the public. Some types of records are “exempt” from the disclosure requirements of the Public Records Act. The Commission’s Public Records Request Policy is also available on the Commission’s website.
Public Records Request Policy

I. INTRODUCTION. The Public Records Act provides that all "public records" are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law. The law also provides each person the right to request the agency to correct inaccurate public records pertaining to that person. The provisions of the Public Records Act are contained in Title 74, Chapter 1 of the Idaho Code. Title 74 of the Idaho Code may be accessed online at http://legislature.idaho.gov/idstat/Title74/T74CH1.htm.

II. TYPES OF PUBLIC RECORDS KEPT BY THE COMMISSION. The Idaho Real Estate Commission ("Commission") is the state agency that administers the Idaho Real Estate License Law, Chapter 20, Title 54 of the Idaho Code. In accordance with this chapter, the Commission is responsible for licensing, educating, and disciplining Idaho real estate brokers and salespersons, and for maintaining a certification program for real estate education. The Commission also administers the Subdivided Lands Disposition Act (which includes timeshares), Chapter 18, Title 55 of the Idaho Code. To this end, the Commission keeps and maintains the following general types of records: licensing records for each individual or entity licensed to do business in Idaho as a real estate broker or salesperson; records relating to Commission-approved real estate providers, instructors and courses; and records concerning complaints, investigations and disciplinary actions taken against licensees for violating the license laws.

The Commission also keeps records pertaining to the open meetings held by the Commission and the Real Estate Education Council, such as their agendas and minutes, and records concerning the general operations of the Commission, such as records relating to its staff, internal agency operations, and fiscal information. The Commission is authorized to promulgate rules and to submit proposals for legislation. As such, keeps records relating to that law-making process. Under the Subdivided Lands Act, the Commission keeps registrations, including public offering statements.

III. EXEMPTIONS FROM DISCLOSURE. Certain types of records are specifically exempted by law from the disclosure requirements and will not be made available to the public. The Commission will review all public records requests to determine whether the records falling within such requests are exempt from disclosure pursuant to such laws. The exemptions include, but are not limited to, the following:

A. Licensing Information:
   - Information and results obtained from an office audit (Idaho Code 74-106(9));
   - Information provided in any application for real estate license or for certification as an education provider or instructor, including information obtained from a petition for special consideration to waive or modify a requirement for licensing or certification;
   - Idaho Code 74-106(9), which specifically exempts any information obtained as part of an inquiry into a person’s fitness to obtain or retain a license or certificate;
   - Personal Information provided to the Commission on any application for license or certification, including home phone numbers and addresses of applicants, licensees or certificate holders (Idaho Code 74-106(8));
   - Any real estate examination, test questions, scoring keys, exam results, etc. (Idaho Code 74-108(5));
   - Computer software programs (Idaho Code 74-107(15));
• Investigatory records of the Commission, including public complaints, investigative files and reports (Idaho Code 74-106(9) (exempting information gained from inquiry into a person’s fitness for licensure or certification); Idaho Code 74-101(1) (exempting records protected from disclosure under state-law recognized attorney-client privilege or work-product doctrine)
• The content of any course submitted to the Commission as part of an application for certification or approval by the Commission, to the extent such content contains proprietary information of the applicant (Idaho Code 74-107(1));
• Any application for registration under the Subdivided Lands Disposition Act, to the extent that such application contains proprietary information of the applicant. However, the Public Offering Statement of a registered subdivision or timeshare shall be available to the public (Idaho Code 74-107(2)).

This section does not contain the full text of the statutory exemptions, and the Commission will rely on the full text and all exemptions of the law when determining whether to grant or deny a records request.

B. Personnel Information (Idaho Code 74-106(1) and (2)). Records of a current or former employee’s service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency are public record and MUST be disclosed upon request. All other personnel information relating to a public employee or applicant for employment, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall NOT be disclosed to the public without the employee’s or applicant’s written consent.

C. Access to Records By a Person About the Person (Idaho Code 74-113). The law provides that a person is entitled to examine, copy, and request amendments to records pertaining to himself or herself, even if the record is otherwise exempted from disclosure to the general public. However, this does NOT include the right to review:
• Investigatory records of the Commission that are otherwise exempt (e.g., under Idaho Code 74-106(9)), if the investigation is ongoing (Idaho Code 74-113(3)(a));
• Information that is compiled in reasonable anticipation of litigation and is not otherwise discoverable (Idaho Code 74-113(3)(b)), or;
• Other records that are specifically exempt from disclosure by statute or court rule (Idaho Code 74-113(3)(d));
• The Commission will require adequate identification before disclosing otherwise exempt records to a person about that person. 74-102(5)(a)

IV. PROCEDURE FOR MAKING AND RESPONDING TO RECORDS REQUESTS.

A. Request must be in writing. The Commission requires that any request to inspect public records be made in writing and delivered to the "Designated Records Custodian" for the Idaho Real Estate Commission:

Idaho Real Estate Commission
575 E. Parkcenter Blvd., Suite 180
Boise, ID  83706
Fax: 208-334-2050
e-mail: info@irec.idaho.gov
Written requests may be delivered by mail, fax, e-mail, or in person. The Requestor's name and address information should be provided for the purpose of enabling the Commission to contact the Requestor with its response. The Requestor may use the form provided by the Commission, which may be obtained from the Commission's office or through the Commission's website at http://irec.idaho.gov/forms/ree102.pdf.

Upon receipt of a written request, the Designated Custodian will record the date and time of the request, and promptly forward it to the appropriate department head or staff person to compile the records.

B. Time, Place and Manner of Inspection (Idaho Code 74-102). Whenever practicable, the Commission will provide access to or make copies of records immediately upon request. A Requestor's examination of records must be done during normal business hours, unless otherwise authorized by the Executive Director.

The custodian may not ask the Requestor why the information is being sought, other than to provide information to help the Requestor narrow the scope of the request or to help the Requestor make the request more specific when the response to the request is likely to be voluminous or require payment. The custodian also may ask Requestor for information necessary for delivering the requested records, such as the Requestor's name, address and telephone number or email address. The custodian is not allowed to review, examine or scrutinize the copies, photographs, or notes taken by or provided to the person examining the records, and shall extend to the person examining the records all reasonable comfort and facility for the full exercise of the rights granted under the law. However, the law does not prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

C. Time for Responding to the Request - Timing (Idaho Code 74-103). A request to inspect or copy records must be granted or denied within three (3) working days. However, if more time is needed to locate or retrieve the requested records, the Commission may take up to ten (10) days to respond, provided the Executive Director first notifies the Requestor, in writing, that additional time is required. If no response is provided, the request will be deemed to have been denied after ten (10) working days from the request.

D. Exempt and Non-exempt Records to be Separated (Idaho Code 74-112). If a requested public record contains information that is nonexempt as well as information that is exempt from disclosure, the Commission must separate the nonexempt and exempt information, and provide the nonexempt information, along with a written denial from the Executive Director stating the statutory authority for the denial the right to seek relief from the district court.

E. Denial of a Request to Inspect Records (Idaho Code 74-103). A request to inspect or copy a public record may be denied in whole or in part only by the Executive Director after having an opportunity to have the request reviewed by legal counsel. A denial or partial denial of a request must be provided to the Requestor in writing, stating the statutory authority for the denial, and clearly stating that the Requestor has the right to petition the district court for order to compelling disclosure, and the time for doing so (180 days).

The Commission is required to keep all records in question until the end of the challenge period (180 days), or if an action is instituted, until such litigation is concluded, or as otherwise required, whichever is longer. Therefore, whenever any request is denied, the Records Custodian or staff should make a note
on the record in question that it shall not be purged without the approval of the Executive Director or the Designated Custodian. Idaho Code 74-115(2)

F. Making A Request to Correct a Record (Idaho Code 74-113). A person may request, in writing, that the Commission make an amendment of any record pertaining to that person. Such requests are to be immediately referred to the Executive Director.

G. Responding to a Request to Correct a Record (Idaho Code 74-113(2)). Within ten (10) days of receiving the request for amendment of record, the Commission will either: (1) make the correction of the portion of the record that the person has established is not accurate, relevant, or complete; or (2) notify the person in writing that the requested amendment has been refused, and the reason why, and inform the person of the right to petition the district court to compel the requested change, and that such petition must be brought in the county where the records are kept and filed within one hundred eighty (180) days of the refusal. The notice of denial shall be accompanied by a certificate of mailing.

V. CHALLENGING THE DENIAL OF A REQUEST TO INSPECT OR AMEND RECORDS.

A. Right to Petition the District Court (Idaho Code 74-113(b) and 74-115). The sole remedy for a person aggrieved by the Commission's denial of a request for disclosure, or by the Commission's refusal to amend a record, is to bring an action in the district court to compel the Commission to make the requested record available or make the requested change. The action must be filed within one hundred eighty (180) calendar days of the notice denying the request, and must be brought in the county in which the records, or some portion of them, are located.

B. The court will determine whether the Executive Director’s decision to refuse the request was justified, and the court will issue an order accordingly.

Costs and Attorney Fees - Additional Penalty for Bad Faith Refusal (Idaho Code 74-116 and 74-117). If the court concludes that the request or its refusal was pursued frivolously, the court will award reasonable costs and attorney fees to the prevailing party. If the court finds that the Executive Director deliberately and in bad faith improperly refused a legitimate request for inspection or copying, the court shall impose a civil penalty not to exceed one thousand dollars ($1,000).

C. Immunity for Release of Records (Idaho Code 74-118). Neither the Commission, the Executive Director, nor records custodian shall be liable for any loss or damage based upon the release of a public record so long as such person acted in good faith in attempting to comply with the public records law.

VI. FEES AND CHARGES FOR PROVIDING PUBLIC RECORDS. The following is the Commission’s copying fee schedule, pursuant to Idaho Code 74-104(10):

<table>
<thead>
<tr>
<th>Type of Work Involved</th>
<th>Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photocopying less than 100 pages on standard 8 ½ x 11 paper where no redacting of confidential information is required</td>
<td>No charge</td>
</tr>
<tr>
<td>Photocopying on paper other than standard 8 ½ x 11 paper (e.g. blueprints, maps, etc.)</td>
<td>Actual copying cost, varies depending on size</td>
</tr>
</tbody>
</table>
If the Commission determines that circumstances reasonably require, it may use a commercial copying service to photocopy public records in response to a public records request. In such cases, the Requestor shall be responsible for the amounts charged by the commercial copying service if the cost is $5.00 or more. The Commission will make reasonable efforts to inform the Requestor beforehand that it will use a commercial copying service and provide a reasonable estimate of the anticipated costs to the Requestor. The Requestor may be required to pay such charges prior to the Commission arranging for the commercial copying service to copy the public records responsive to the request.

If the Commission has reason to believe that a Requestor or group of Requestors is attempting to break down a large request for copies of public records into a series of smaller requests for the purpose of avoiding the imposition of charges, the Commission will aggregate such requests for the purpose of determining appropriate charges and will impose charges accordingly.

When copies or printouts are duplexed, each side of a sheet of paper on which print appears shall be treated as a separate copy for the purposes of charges due.

Idaho sales tax shall be assessed to the Requestor on all charges payable to the Commission for copying fees and other costs incurred by the Commission in responding to a public records request.

A Requestor is not responsible for payment of charges incurred by such request, if the Requestor demonstrates: (a) the inability to pay; or (b) the public’s interest or the public’s understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee (Idaho Code 74-104(10)(f)). Any request to waive otherwise chargeable costs and fees made by a Requestor must be supported by the demonstration referenced in Idaho Code 74-104(10)(f).

**Shipping and Mailing Fees**

Where copies of public records provided by the Commission in response to a public records request are mailed or shipped to the Requestor, and the cost is $5.00 or more for such mailing or shipping, the Requestor shall be responsible for reimbursement to the Commission of the actual mailing or shipping cost incurred by the Commission. The Commission may require that the Requestor pay such charges in advance of the mailing or shipping of the public records responsive to the request.
Advance Notice to Requestor of Charges Due for Public Records

When it appears to the Commission that its response to a public records request will subject the Requestor to charges of $5.00 or more, the Commission may provide a reasonable estimate of the expected charges to the Requestor prior to preparing the public records to be provided to the Requestor. Once such reasonable estimate has been provided to the Requestor, the Commission may require prepayment by the Requestor prior to preparation of the public records.

The failure of the Commission to provide a reasonable estimate to the Requestor and to require prepayment of the charges due, will not excuse the Requestor from the responsibility to pay to the Commission the appropriate charges after the response to the request for public records has been provided.