

*Idaho Real Estate Commission*

# **The Investigative & Hearing Process**

Revised February 2008

*This brochure has been prepared by the Idaho Real Estate Commission to better inform the public and real estate licensees of the procedures followed during an investigation and disciplinary proceeding. Copies of the Rules of Practice and Procedure are at <http://www.irec.idaho.gov>, or may be provided upon request from the Commission office.*

**633 N. 4th St.  
Boise, ID 83702**

**P.O. Box 83720  
Boise, ID 83720-0077**

**208-334-3285  
Toll free in Idaho 866-447-5411**

The Commission is authorized by statute to administer and enforce the Real Estate License Laws and Rules. The Commission is specifically authorized to investigate the actions of licensees and to discipline any licensee found to have violated the Real Estate License Laws. However, the Commission has no jurisdiction or authority to adjudicate the contractual rights of parties; to force a real estate licensee to perform under the terms of a contract; or to award damages. These are civil remedies that may be available to a complainant by filing a lawsuit in a court of appropriate jurisdiction. Disputes involving \$5,000 or less may be resolved in Small Claims Court.

The pertinent provisions of the Commission's investigative and disciplinary authority are set forth below:

**Authority to Investigate**

**General Authority.** The Commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson within the state of Idaho, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the Executive Director, the Executive Director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the Executive Director shall transmit to the Commission a report, in writing, signed by the Executive Director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the Commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the Commission, no further action shall be taken, unless the Executive Director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the Commission deem that the facts set forth in the report are sufficient to proceed with a formal action, the Commission shall authorize the filing of an administrative complaint against such person. A person is acting "within the state of Idaho" if that person is dealing with any interest in real property or a business opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

**Audits.** The Commission or its duly authorized representative is vested with the authority to conduct periodic inspections, surveys and audits of the transaction records and real estate trust accounts of all Idaho licensed designated brokers. Any transaction records or real estate trust account records located outside the state of Idaho shall promptly be made available to the Commission upon request at the licensee's own cost and at the location or in the

manner requested by the Commission. If the analysis of a broker's real estate trust account indicates a deficiency or any irregularity which cannot be resolved between the Commission and the broker, the Commission may order a complete audit of the trust account by a certified public accountant at the broker's expense.

**Licensee's Duty to Cooperate.** The Commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the Commission, and must make available, promptly upon request, any and all records to the Commission at the licensee's own cost and at the location or in the manner requested by the Commission.

### **Authority to Discipline**

**DISCIPLINARY POWERS -- REVOCATION, SUSPENSION OR OTHER DISCIPLINARY ACTION.** (1) 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.

The Commission may 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 person who is found, through a court or administrative proceeding, to have acted without a license in violation of section 54-2002, Idaho Code. The civil penalty provisions of this section are in addition to and not in lieu of any other actions or criminal penalties for acting as a broker or salesperson without a license which might be imposed by other sections of this chapter or Idaho law.

The Commission may also accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

(2) If the Commission suspends or revokes a license, or imposes a civil penalty, or assesses costs and attorney's fees, the Commission may withhold execution of the suspension, revocation or civil penalty, or costs and attorney's fees on such terms and for such time as it may prescribe.

(3) If any amounts assessed against a defendant by Final Order of the Commission become otherwise uncollectible or payment is in default, and only if all the defendant's rights to appeal have passed, the Commission may then proceed to district court and seek to enforce collection through judgment and execution.

(4) All civil penalties, costs, and attorney's fees collected by the Commission under this chapter shall be deposited in the state treasury to the credit of the special real estate fund established by section 54-2021, Idaho Code. Any amounts of civil penalties so collected, deposited and credited shall be expended for exclusive use in developing and delivering real estate education to benefit Idaho real estate licensees. (Section 54-2059, Idaho Code)

### **Grounds for Disciplinary Action**

The Commission may discipline a licensee for the following misconduct:

- (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(5), Idaho Code;

(9) Seeking or receiving a "kickback" or rebate prohibited in section 54-2054(6), 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;

(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 (Section 54-2060(1) through (12), Idaho Code).

### **Additional Grounds for Disciplinary Action**

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 (Sections 54-2061(1)(a),(b), and (c), Idaho Code).

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

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

(2) Has a real estate or other professional license, 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. (Section 54-2062(1) and (2), Idaho Code).

## **Complaint and Investigative Process**

Consumer complaints alleging licensee misconduct must be submitted in writing to the Commission. Complaint allegations that, if true, would constitute a violation of the License Laws, will be investigated by Commission Staff (“Staff”). The Staff may also initiate an investigation upon information received by the Executive Director. The fact that Staff is conducting an investigation does not mean that Staff is seeking to take action against a licensee. The Staff will pursue disciplinary action only if warranted by the facts revealed through the completed investigation, and even then only after the Commission members have determined that such facts are sufficient to support the filing of an Administrative Complaint. In the event the facts are determined to be insufficient, the Staff will issue a letter of “no action” and matter will be closed.

In general, the Staff employs the following procedures when conducting an investigation:

At the onset of the investigation, the Commission investigator writes to the licensee being investigated, informing him or her of the complaint or information received, and requesting that the licensee respond to the allegations in writing. In addition, the licensee may be asked to provide a written response to specific questions posed by the investigator, or to provide documents or other information. After receiving the licensee’s written responses, the investigator may request a meeting with the licensee and may direct the licensee to bring additional documents. Typically, the documents requested are those related to a real estate transaction and are normally kept in the licensee’s office. In some instances it may be necessary for the investigator to remove original documents to another location for copying. Where this

occurs, the licensee may request a receipt describing the originals taken and indicating when they will be returned.

Once the investigation is completed, the results and any recommendations are forwarded to the Executive Director for a decision on how to proceed. Based upon the results of the investigation, the Executive Director may decide to (1) conclude the matter at that point, by either closing the case and issuing a “no action” letter, or by issuing an informal Staff letter of reprimand; (2) request additional information; or (3) pursue disciplinary action against the licensee. Prior to pursuing disciplinary action, the Executive Director will submit to the Commission (i.e., the four members comprising the agency head) a written report containing a summary of the relevant facts determined through the investigation, and a summary of the alleged violations of law. This report will not contain the parties’ names, locations or other identifying information.

The Commission will review the report to determine whether the facts are sufficient to pursue an action against the licensee. If the Commission determines that the facts are insufficient, no disciplinary action will be taken. The complainant and the responding licensee will be notified in writing of this “no action” determination.

If, however, the Commission determines the facts in the report are sufficient to proceed with a formal disciplinary action, the Commission will authorize the Staff to pursue formal disciplinary proceedings. In that event, the licensee will receive a written notice from the Staff summarizing the facts revealed by the investigation and the violations that the Staff believes occurred and that it can prove. Within the letter the Staff will provide the licensee the option to informally resolve the matter through stipulation, without the commencement of formal administrative proceedings. The letter will also describe the licensee’s right to formal hearing. The licensee will be given a set period of time within which to advise the Staff on how he or she desires to proceed.

At any time during the investigation or hearing process of the Commission, a licensee may seek legal advice from an attorney. The Commission strongly recommends that a licensee consult with an attorney upon receipt of any notice indicating that disciplinary action is being pursued.

We hope the foregoing assists licensees and the public to more fully understand the investigative and disciplinary procedures followed by the Idaho Real Estate Commission. The disciplinary proceedings are governed by the *Rules of Practice and Procedure* of the Idaho Real Estate Commission. A copy of these rules may be obtained by accessing the Commission's website, or upon request from the Commission.

*Please advise the Commission office of any persons with disabilities needing accommodations*

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