

## **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 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” but 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.”

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

Example #1:

Investor locates distressed property and obtains from Seller an option to purchase the property for a sales price of \$300,000, which is less than the \$350,000 Seller owes bank. Investor negotiates with bank to accept \$300,000 to release lien. Investor then exercises his option and purchases the property from Seller for \$300,000. The market value for the property is \$350,000, and Investor has \$50,000 equity in the property.

If Investor had no agreement with any Other Buyer to purchase the property at the time Investor exercised his option and purchased the property, it would appear that Investor used the option to purchase the property “for his own account or use.” As such, Investor’s transaction is exempt from the licensing requirement.

## 2. Dealer in Options – Use of Options “to Purchase Property for Another or Others.”

Example #2:

Investor locates distressed property and obtains from Seller option to purchase Property for a sales price of \$300,000; which is less than the \$350,000 Seller owes bank. Investor negotiates with bank to accept \$300,000 to release lien, *and then finds Another Buyer who agrees to pay \$350,000 for Seller’s property.* Investor then exercises his option and structures a transaction (or sequential transactions) by which the Other Buyer ultimately purchases the property for \$350,000, with Investor making \$50,000 profit. (Note: under the statute, it does not matter whether title passes through the investor first if the option was used to purchase property for another.)

Because Investor had an agreement from Another Buyer to purchase the property before Investor exercised his option, Investor has used the option “to purchase property for another” and not on his own behalf. Investor is acting as “dealer in options” and must be licensed.

In summary, an Investor using options is acting as a “dealer in options” if, before the Investor exercises his option to purchase, he contracts with another buyer to purchase the property.

### 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 or 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 procure an ultimate Buyer for that property, the Investor is engaging in brokering and must have a license.

### Question 1: Is the Investor required to be licensed if he hires a Licensee to list the Properties?

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?

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?

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.

## Relevant Statutes

**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.

### **54-2003.EXCEPTIONS TO LICENSURE -- ACTIVE LICENSEES -- TRANSACTIONS INVOLVING PERSONAL PROPERTY.**

(1) Exceptions to licensure. Except as otherwise stated below, an Idaho real estate license is not required for the following:

- (a) The purchase, option, exchange or sale of any interest in real property, or business opportunity for a person's own account or use;
- (b) The acquisition, exchange or other disposition of any interest in real property or business opportunity by its owner or a regular employee of the owner, acting within the scope of his or her employment;

### **54-2004. DEFINITIONS. As used in this chapter:**

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(17) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

### **(33) "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;

(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.

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