State of Idaho
Real Estate Commission

Idaho Real Estate License Law and Rules

July 2008

This Real Estate License Law and Rules booklet is intended for use solely as a desk reference tool and should not be used as a substitute for the Idaho Code and Idaho Administrative Rules.

This Booklet contains the statutes and rules effective on July 1, 2008. For illustrative purposes, the most recent changes and amendments to these laws and rules are indicated by the following text:

Text marked with underline indicates a law or rule has been added;

~~Text marked with strikethrough indicates a law or rule has been removed.~~

Chapter 20
Title 54
Idaho Real Estate License Law

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IDAHO REAL ESTATE LICENSE LAW

Chapter 20, Title 54, Idaho Code, as amended by Chapter and in effect July 1 ,2008.

54-2001. Short Title.

Sections 54-2001 through 54-2081, Idaho Code, shall be known and may be cited as "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.

54-2003. 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;

(c) The sale, exchange, purchase or other disposition of any interest in real property or business opportunity by a duly authorized attorney in fact whose power of attorney is granted for the purpose of consummating a single transaction involving the conveyance of a single or undivided interest in a parcel of real property or in a business opportunity;

(d) The acquisition or other disposition of any interest in real property or business opportunity by the following parties only if such acquisition or disposition is undertaken in the performance of their duties as:

(i) A receiver, trustee in bankruptcy, legal guardian or conservator;

(ii) An administrator, executor or personal representative of an estate;

(iii) Any person selling pursuant to the default provisions of a deed of trust, or any duly authorized agent thereof.

(e) The acquisition or other disposition of any interest in real property or business opportunity by an attorney at law in connection with client representation, and if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson.

(2) Active real estate licensees. An actively licensed real estate broker, associate broker or salesperson must comply with this chapter, regardless of whether the licensee otherwise qualifies for any of the exceptions of subsection (1) of this section.

(3) Transactions involving personal property. An active licensee who, while acting on behalf of another, for compensation or for a promise or expectation of compensation, sells, lists, buys or negotiates, or offers to sell, list, buy or negotiate, the purchase or sale of a mobile home, manufactured home or floating home as defined by Idaho law, shall comply with this chapter regardless of whether such activity would otherwise require an Idaho real estate license.

(4) 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 unlicensed and unlawful practice of real estate.

54-2004. Definitions.

As used in this chapter:

(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.

(2) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(3) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (3~~2~~3) of this section.

(4) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(5)"Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(6) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transactions.

(7) "Business conduct and office operations course" means, in reference to a real estate course offering, the component of the advanced real estate course that is required in order to obtain a broker's license and that teaches business practices and office operations of the brokerage, including recordkeeping, trust account procedures and the laws governing those practices.

(8)"Business day" means and includes each day of the week except Saturday, Sunday or any other legal holiday enumerated in section 73-108, Idaho Code.

(9)"Business name" means the name in which the brokerage company is licensed by the Commission.

(~~9~~10) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(1~~0~~1) "Commission" means the Idaho Real Estate Commission, unless the context clearly indicates a different meaning.

(1~~1~~2) "Commission core course" means, in reference to a real estate course offering, the course containing curriculum, identified by the commission, that stresses current 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.

(1~~2~~3) "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.

(1~~3~~4)"Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(1~~4~~5) "Cooperative sale" means a transaction involving two (2) or more brokers.

(1~~5~~6) "Council" means the Idaho Real Estate Education Council.

(1~~6~~7) "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.

(1~~7~~8) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(1~~8~~9) "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.

(~~19~~20) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sale price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(2~~0~~1) "Executive Director" means the Executive Director of the Idaho Real Estate Commission.

(2~~1~~2) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(2~~2~~3) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(2~~3~~4) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(2~~4~~5) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(2~~5~~6) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(2~~6~~7) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(2~~7~~8) "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.

(2~~8~~9) "Main office" means the principal location where the real estate broker is licensed to transact business.

(~~29~~30) "Person" means and includes an individual, or any legal business entity.

(3~~0~~1) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(3~~1~~2) "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.

(3~~2~~3) "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.

(3~~3~~4) "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 any act described in subsection (3~~2~~3) of this section.

(3~~4~~5) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 200~~7~~8.

(3~~5~~6) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(3~~6~~7) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(3~~7~~8) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(3~~8~~9) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(~~39~~40) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(4~~0~~1) "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 examination.

(4~~1~~2) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(4~~2~~3) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

54-2005. The Idaho Real Estate Commission.

There is hereby created in the department of self-governing agencies the Idaho Real Estate Commission, for the purpose of administering this chapter. The Commission shall consist of four (4) members appointed by the Governor as follows: one (1) from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; and one (1) from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties.

54-2006. Qualifications of Commissioners, Term and Organization.

(1) Each member of the Commission shall be an actively licensed Idaho designated real estate broker or associate broker who has had at least five (5) years active license experience as a designated broker or associate broker in the real estate business in Idaho.

(2) Each regular appointment, other than an appointment to fill an unexpired term, shall commence on July 1 of the year of appointment and be for a term of four (4) years. Each Commissioner shall hold office until a qualified successor is appointed. Upon the death, resignation or removal of any member of the Commission, the Governor shall appoint a qualified licensed real estate broker or associate broker to fill out the unexpired term. The Governor may remove any member from the Commission for neglect of duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

Each year, within thirty (30) days after the appointment of the members of the Commission, the Commission shall call a meeting and elect a Chair, a Vice Chair, and a Commissioner to serve on the Idaho Real Estate Education Council. Thereafter the Chair may call meetings of the Commission whenever he or she deems it advisable, but if the Chair refuses to call a meeting upon written demand of the other three (3) members of the Commission, then such members may call the meeting.

(3) The Commission may hire an Executive Director and such other assistants as it may require from either within or without the Commission, and shall pay these persons a compensation as determined by the Commission. The position of Executive Director shall be a nonclassified state employee, and such person shall be an at-will employee of the Commission.

54-2007. Compensation, Powers and Duties of Commission.

Members shall be compensated as provided by section 59-509 (n), Idaho Code. The Commission is charged with administering and enforcing all provisions of this chapter, and is expressly vested with the power and authority to make and enforce any and all reasonable rules as it deems necessary for administering and enforcing this chapter.

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.

54-2011. Types of Licenses.

The Commission may issue a primary or reciprocal Idaho real estate license to any individual, sole proprietorship or legal business entity in accordance with the requirements of this chapter. An individual may be licensed as a real estate salesperson, an associate broker, or a designated broker acting for a sole proprietorship or legal business entity.

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:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

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

(d) Not have had a real estate or other professional or occupational license revoked, suspended, or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the Commission;

(e) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the Commission;

(f) Not have been convicted of any felony in a state or federal court; provided that after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence of confinement or period of parole, whichever is later, the applicant may make written request to the Commission for an Exemption Review to determine the applicant's suitability for licensure, which the Commission shall determine in accordance with the following:

(i) The Exemption Review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The Commission may, at its discretion, grant an interview of the applicant.

(ii) 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 which may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

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

(h) 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;

(i) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure, and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the Commission as illegible the applicant shall, upon request from the Commission, be fingerprinted again and file the new fingerprints with the Commission;

(j) Sign and file with the Commission an Irrevocable Consent to Service, appointing the Commission's Executive Director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the Executive Director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the Executive Director shall immediately mail a copy of the same by certified mail to the last known address of the licensee. All licensees shall provide the Commission a full and current mailing address and shall notify the Commission in writing of any change in mailing address within ten (10) business days of the change;

(k) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(l) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(m) Provide satisfactory proof of meeting the mandatory Errors and Omissions insurance requirement for real estate licensees, as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the Commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon pre approval by the Commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the Commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The Commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The Commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this subsection shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing and pay associated fees.

54-2013. Errors and Omissions Insurance. (*See also* ***Rules 117-122***.)

(1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain Errors and Omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The Commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for Errors and Omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code. The exact premium shall be set by the Commission by motion.

(3) Any policy obtained by the Commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining Errors and Omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the Commission.

(5) The Commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) A licensee seeking to obtain or renew an active license shall certify to the Commission that he is in compliance with the insurance requirements of this section.

A licensee who elects not to participate in the insurance program administered by the Commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce the certificate for inspection.

(7) If the Commission is unable to obtain Errors and Omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed two hundred dollars ($200) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

(8) The Commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains Errors and Omissions insurance through the Commission contract, which fee shall not exceed ten dollars ($10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection (7) of this section applies only to premium cost and not to any administrative fee charged.

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 dollars ($100).

(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.

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) (g) 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:

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity.

(b) The individual designated broker shall, within ~~five~~ three (~~5~~3) years immediately prior to the designation, satisfactorily complete a commission-approved business conduct and office operations course.

(c) The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation—an officer;

(ii) Partnership or limited partnership—a general partner;

(iii) Limited liability company — a member or manager.

The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity, and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(d) 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 above, 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.

(e) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(f) Satisfactory proof of mandatory Errors and Omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(g) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho Secretary of State.

(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:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho Secretary of State;

(b) Satisfactory proof of mandatory Errors and Omissions insurance shall be provided for the licensed designated broker of a sole proprietorship.

(c) The individual designated broker shall have satisfactorily completed a commission-approved business conduct and office operations course within ~~five~~ three (~~5~~3) years immediately prior to the application for license.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(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:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The designated broker shall designate in the application a branch manager, who shall be an associate broker and who, within ~~five~~ three (~~5~~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. Any salesperson acting as a branch manager on July 1, 2005, shall have until July 1, 2006, to obtain an associate broker's license. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the Commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated broker remains in active status.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

54-2017. Reciprocal Idaho Licenses. ***REPEALED***

All Licensing Agreements between Idaho and another State now are governed by section 54-2015(3), Idaho Code.

54-2018. License Renewals - Inactive Licenses Status - Personal Changes - 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. 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. 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;

(ii) Certification that the applicant has met the mandatory Errors and Omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the Commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the Commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the Commission may accept a later application or payment of the fee, subject to such conditions as the Commission may require including, but not limited to, the assessment of a late fee; provided that between license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the Commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the Commission in the form and manner approved by the Commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may activate an inactive license by meeting each of the following:

(a) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the Commission;

(b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the Commission;

(c) Paying any required fees;

(d) Obtaining and maintaining a policy of Errors and Omissions insurance as required by section 54-2013, Idaho Code, and in accordance with the rules of the Commission and certifying the same; and

(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 or challenge exam, the course certification number, the course provider, the number of classroom hours, the completion date of the course or challenge exam, 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 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.

(9) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the Commission, in the form and manner approved by the Commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and, if an active licensee, he shall have the broker submit the written notice of change to the Commission.

(10) Issuance of the license and effective dates. A real estate license shall be deemed issued, and any requested license changes shall become effective, when the completed application, attachments and any required fee are received at and approved by the Commission. An application that is incomplete or lacking the required fees shall be returned to the applicant and no license shall be issued until a completed application and all required fees are received at and actually approved by the Commission. A brokerage is not required to obtain, display or possess a physical license certificate as evidence of the individual's active licensure; however, the Commission may make license certificates available for a fee as authorized by this chapter. A brokerage shall not display or otherwise make available to the public a license certificate for any individual who does not hold an active license with the brokerage.

(11) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

54-2019. Denial of License Applications.

(1) The Commission may deny any license application, including an application for license renewal, upon the Commission's determination of any of the following:

(a) The applicant does not possess all of the qualifications required for the license sought;

(b) The applicant employed fraud, deception, misrepresentation, misstatement or omission or any unlawful means in applying for a license or taking the exam;

(c) Within the five-year period immediately preceding the application, the applicant committed any act for which a real estate license in Idaho may be revoked or suspended;

(d) Payment of any licensing fee by check that is returned by the banking institution due to insufficient funds, unless the reason for not paying of the check is the fault of the banking institution; or

(e) There exist any other specific facts about the applicant that cause the Commission to reasonably conclude that granting the applicant's request for Idaho licensure is not in the best interests of the citizens of the state of Idaho.

(2) Where any of the facts referenced above warranting denial of the application are not discovered or determined by the Commission until after the license has been issued, such facts may be grounds for the inactivation, expiration, termination, suspension or revocation of the license.

54-2020. Fees. (*See also* ***Rules 100-104***.)

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:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred fifty dollars ($150), the exact fee to be established by administrative rule of the Commission.

(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;

(3) A late license renewal fee in an amount not to exceed twenty-five dollars ($25.00), the exact fee to be established by administrative rule of the Commission;

(4) For the printing of a license certificate, a fee in an amount not to exceed fifteen dollars ($15.00), the exact fee to be established by administrative rule of the Commission;

(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;

(7) For issuance or renewal of a branch office license, a fee in an amount not to exceed fifty dollars ($50.00), 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.

54-2021. Disposition of Funds.

All fees collected by the Commission under the provisions of this chapter, except as designated in section 54-2070, Idaho Code, shall be deposited at least monthly in the state treasury and all moneys so deposited shall be deposited to the credit of the special real estate fund, which fund is hereby created. All moneys so deposited in the special real estate fund are hereby perpetually appropriated for the purpose of carrying out the provisions of this chapter. All expenditures from the fund by the Commission under the provisions of this chapter shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the Commission. Such claims and supporting vouchers shall be examined by the state board of examiners in the same manner as other claims against the state of Idaho. For the purposes of carrying out the objectives of this chapter and in the exercise of the powers herein granted, the Commission shall have power to make orders concerning the disbursement of the moneys in the special real estate fund, including the payment of compensation and expenses of its members, clerks and employees and for the payment of printing and for the training and education of all licensees under this chapter. Moneys in the fund may be expended by the Commission for the promotion and improvement of the real estate profession, the advancement of education and research in the field of real estate including, but not limited to, courses sponsored by the Commission or in conjunction with any university or college in the state and/or contracting for a particular research project in the field of real estate, and the promotion and advertising of the state of Idaho.

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 ~~five~~ three (~~5~~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 ~~five-year~~ 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~~ coursework 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.

54-2023. Continuing Education Requirements. (*See also* ***Rule 305, Rule 402***.)

Each licensee applying to renew an Idaho real estate license on active status, and each Idaho licensee applying to change from inactive to active license status, shall successfully complete a Commission core course, plus the required number of classroom hours of Commission-approved or certified continuing education course work as provided in this section.

(1) Required number of classroom hours. The required number of classroom hours is as follows:

(a) Renewing license on active status. A licensee renewing on active status must successfully complete a Commission core course, plus sixteen (16) classroom hours of continuing education, on or before the current license expiration date.

(b) Change from inactive to active. Unless the licensee is within the initial licensing period, a licensee changing from inactive to active license status shall complete a Commission core course, plus sixteen (16) classroom hours of continuing education, before he can change to active license status. If the inactive licensee is within his initial licensing period, no continuing education is required to change to active license status.

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

(a) Any Core Course curriculum for which he has previously received continuing education credit; or

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

(3) 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.

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

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

(a) Successfully complete a Commission-approved continuing education course;

(b) Successfully complete a Commission-approved continuing education challenge exam;

(c) Attend an entire regularly-scheduled meeting of the Commission. A maximum of four (4) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(d) Successfully complete a Commission-approved broker prelicense course, or a Commission-approved continuing education challenge exam, in advanced real estate study. Continuing education credit may be obtained for retaking the same broker prelicense course or challenge exam only if completed after ~~five~~ three (~~5~~3) years of completing the previous course or challenge exam; or

(e) 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;

(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; or

(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 Commision.

(f) 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.

(6) 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.

(7) 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;

(c) Active duty in the military service with assignment to a permanent duty station outside of the state during the last twelve (12) months of a license period; or

(d) 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.

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.

54-2025. Certification Requirements.

(1) Certification required. Except as otherwise provided in section 54-2023 (5) (e), Idaho Code, 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.

(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 52, title 67, Idaho Code, and the rules of 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 must 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. The designated individual in charge must 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. 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) (j), 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.
(*See also* ***Rule 500***.)

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.

(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.

(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.

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

(a) Records. ~~Maintain f~~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;

(b) Course completion lists. Within five (5) working days after conclusion of each course of instruction, the provider shall submit to the Council or Commission an alphabetical list which shall include the names, addresses, 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;

(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.

(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.

(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 educating licensees.

(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:

(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.

(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.

Each course provider's certification issued by the Commission shall be for a term of two (2) years. The exact expiration date will be shown on the provider certificate.

In order to maintain certification, each provider 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 for Commission 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 courses not yet successfully completed by the expiration date.

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 starting after 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 or the Commission continuing education core course requirements in Idaho must first be approved or certified by the Commission for each course the individual wishes to teach.

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 any real estate courses for credit toward Idaho prelicense requirements,

including the business conduct and office operations course, or the Commision 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 have 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) (j), 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.

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.

54-2035. Term of Instructor Certification and Renewal.

(1) Certification. Each instructor certification issued by the Commission shall be for a term of two (2) years. The exact expiration date will be shown on the instructor certificate.

(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 adequately 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;

2. Direct observation of the instructor's teaching performance by a Commission representative; or

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

(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.

(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.

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.

(1) An application for course certification must be submitted in the form and manner required by the Commission, with the required fees, at least two (2) months prior to contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(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 prelicense course must contain at least twenty (20) classroom hours, and each continuing education course must contain at least two (2) classroom 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 National 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 shall be based upon the same number of hours which would be credited for an equivalent live course, and must include a Commission-approved final exam.

(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.

(i) 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.

(ii) The Commission may substitute all or a portion of the continuing education coursework required when a licensee shows evidence of passing a Commission-approved challenge exam.

(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 a 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.

(iv) A course provider shall not permit a student who takes and fails a challenge exam to retake the exam. A student who fails a challenge exam must take the entire course and pass the final exam to receive credit for the course.

(i) Challenge exams. Except where the prelicense requirements have been waived or modified by the Commission pursuant to section 54-2002 (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.

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.

54-2038. Designated Broker–General Responsibilities. (*See also* ***Rules 304-305***.)

The requirement that each brokerage company be maintained and conducted in compliance with the Idaho real estate license law and the Idaho real estate brokerage representation act is the responsibility of its designated broker. The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company's business or where representation is conducted.

(1) A designated broker is required to:

(a) Supervise and control, in the manner required by law and rule, all office locations, and the activities of all licensees and unlicensed persons associated with that brokerage company or for whom that designated broker is responsible;

(b) Review and approve all real estate agreements including, but not limited to, those related to listing, selling or purchasing property and brokerage representation agreements;

(c) Be reasonably available to manage and supervise the brokerage company during regular business hours. When a broker is a regular full-time employee or is engaged in a full-time activity at a location other than where the broker is licensed to do business, a presumption will be made that the broker is unable to manage and supervise the brokerage company in accordance with these requirements, and no sales associate shall be licensed under the broker until such presumption is overcome by evidence to the contrary, satisfactory to the Commission.

(2) A broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to this section, may be licensed as a "limited broker" in Idaho and shall not have any sales associates licensed under that broker.

(3) A designated broker shall not allow 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. "Properly licensed" means a license or a change in license that has been made effective by the Commission.

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(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

(1) Broker or branch manager absent for more than twenty-one days. A designated broker who is absent from his main office for more than twenty-one (21) consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch office manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the Commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch office manager. If a designated broker is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker is designated to act as broker for the brokerage company, the Commission shall place on inactive status the licenses of the absent broker and of all licensees associated with him, and all brokerage listing agreements and all buyer brokerage agreements shall be terminated.

(3) 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.

(4) Effective date of changes. No change in designated broker shall be effective until written notice is received and approved by the Commission, in the form required.

(5) Failure to comply. Original broker to remain responsible except in the case of revocation. Where a licensed brokerage company fails to comply with this section and its office is closed, or during any period where the

designated broker has left the brokerage company and no new broker has been designated to act for the company, the original designated broker shall remain responsible for trust account funds, pending transactions and records in the manner described in sections 54-2041 through 54-2049, Idaho Code. However, if the license of the original designated broker of the brokerage company is revoked, the license of that brokerage company shall be made inactive and its office closed until the company designates another qualified individual to act as broker.

54-2040. Main Office or Business Location -

(1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the Commission of any change by the broker of the business name, location, or mailing address. No other location may be used as a main office location until proper notice is acknowledged by the Commission. A change of business name or location without notification to the Commission shall automatically inactivate the license previously issued. The broker shall also notify the Commission in writing of any change in the business telephone number. A designated broker is not required to obtain, display or possess a physical license certificate as evidence of the business's licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. The broker shall not display or otherwise make available to the public any license certificate bearing a former business name or former location.

(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name. A broker shall not conduct business under any name other than the one in which the license is issued.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4) and 54-2039(1), Idaho Code.

54-2041. Trust Account and Entrusted Property.

(1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

54-2042. Creation of Noninterest-bearing Trust Accounts– Requirements.

A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository and must be non interest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, or an actively licensed attorney at law.

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A Commission-approved form giving notice of opening a trust account and giving authorization for the Commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the Commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars ($300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the Commission as an escrow depository upon disclosure of the following:

(a) The details of the entity's financial structure;

(b) The amount and terms of Errors and Omissions insurance and any bonding;

(c) A copy of the entity's last audit and financial statement;

(d) A copy of any license or certificate issued to the entity; and

(e) Any other information that may help the Commission make its determination.

54-2043. Interest-Bearing Trust Accounts.

The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

(1) The interest-bearing trust account must be established in accordance with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository.

(2) The deposit shall be made in the name of the broker, as described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

54-2044. Trust Account Record Keeping–Format of Records Required.

In order that the financial interests of the consumers of Idaho be adequately protected, each designated broker is required to create and maintain the following records regarding any real estate trust account, and is required to reconcile and balance each trust account with all ledger records, the check register and the bank statement at least once each month. Any electronic record keeping system is required to have a generally accepted and adequate backup system in use at all times.

(1) Maintenance ledger record. A separate ledger card or record, herein called "ledgers," identified as "trust account maintenance fund" shall be initiated when the broker's or firm's funds are initially deposited into the trust account. These ledgers shall be filed at all times with the broker's current "open" ledgers of pending transactions. Additions or deductions to trust account maintenance funds shall be posted to the ledger records as soon as the broker is given notice of the deposit or deduction. The balance on this maintenance fund ledger shall be kept current at all times.

(2) Individual trust ledger records. An individual trust ledger shall be immediately created whenever a broker, or any licensed or unlicensed person representing the broker, receives earnest money or other consideration, even if the consideration will be deposited with, held by, paid directly to, transferred or delivered to a title company, other approved depository, or any other person, as directed in writing, and signed by both parties to the transaction. Receipt of consideration, for purposes of this chapter, occurs when the broker or any person representing the broker, takes physical possession of the consideration or assumes the responsibility to deliver or deposit it.

(3) When a broker deposits funds with another broker, an approved depository, or directly to the seller or any other person, as directed in writing by both parties to the transaction, a ledger record must be created by the transferring broker, with a transaction number assigned. Upon transfer of funds or consideration, a receipt for such deposit shall be obtained and retained in the transaction files of the transferring broker. The receipt must show the name of the payee and date of transfer.

(4) Additional requirements for creating an individual trust ledger record are set forth in section 54-2045, Idaho Code. Individual trust ledger records must each be assigned a transaction number. In addition, each individual trust account ledger record created must contain:

(a) The next chronological transaction number for each transaction;

(b) The names of both parties to the transaction;

(c) The location of the property;

(d) The date of each deposit and disbursement;

(e) The name of the payor or payee;

(f) The amount and check number of each disbursement;

(g) The amount and nature of the deposit;

(h) The current balance; and

(i) After the transaction is closed, each individual ledger record must show the final disposition of the transaction and funds.

A broker's trust account ledger records must be maintained with one (1) file, electronic or hard copy, for closed, terminated and rejected transactions, and a separate file for transactions pending but not closed. Ledger records shall be kept in alphabetical order or by transaction number. Ledger posting must be kept current at all times.

(5) Trust account checks. The broker shall maintain consecutively numbered checks for each trust account, which checks must:

(a) Contain the broker's licensed business name and current business address; and

(b) Be imprinted with the words "real estate trust account."

(6) Check register or journal. A check register or journal must be posted properly, maintained and kept current by the broker at all times even if funds are held at a title company or other approved depository. The register must itemize deposits and disbursements in consecutive order, and must also clearly show:

(a) The date of the deposit or disbursement;

(b) The payee or payor;

(c) The amount and purpose of any deposits or disbursements;

(d) The check number;

(e) The transaction number; and

(f) The current cash balance remaining in that trust account.

(7) Duplicate bank deposit record. For each trust account, the broker shall maintain, in hard copy, a duplicate bank deposit record, which shall be imprinted with the broker's business name and the words, "real estate trust account." Each deposit record shall state:

(a) The name of the person or firm placing the money with the broker's office;

(b) The date of the deposit; and

(c) The transaction number. The duplicate deposit record shall be retained in the bank deposit records in proper chronological sequence and shall be date stamped by the bank or the bank deposit receipt shall be attached to the duplicate deposit record in the deposit records.

(8) Real estate trust account checks. For each trust account, the broker shall maintain a set of consecutively numbered checks, which shall be imprinted with the broker's business name and address and the words "real estate trust account." Any check drawn on such a trust account shall be identified by a transaction number noted on the face of the check. Any voided trust account check shall be marked "VOID" and retained in numerical sequence with the other checks for the banking month.

54-2045. Trust Account Deposits and Receipt of Consideration.

Except as otherwise provided in this section, all entrusted funds received by a broker in connection with a regulated real estate transaction, including, but not limited to, earnest money, shall be deposited into a real estate trust account maintained by the broker at an approved depository. In addition, all earnest money, option money, promissory notes, tangible personal property and any other consideration received by a broker, regardless of form, must be accounted for upon receipt and in the following manner:

(1) Time of deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in the funds direct the broker to do otherwise.

(2) Checks held in uncashed form. A ledger record must also be created when the broker or associate receives a check to be held for later deposit.

However, such a check must be accompanied by written instructions in the purchase and sale agreement or offer to withhold deposit until a time certain, such as acceptance of the offer by the seller.

(3) Consideration returned before deposit. A ledger record must also be created even if the consideration received by a broker or salesperson is to be returned before it has been deposited or otherwise transferred. A written and dated notation must be placed on both the purchase and sale agreement, offer or other document dealing with the consideration, and on the ledger record. No consideration is to be returned without the knowledge and consent of the broker.

(4) Consideration received by sales associate. All consideration, including cash, checks held in uncashed form and promissory notes, received by a sales associate in connection with a real estate transaction shall be immediately delivered to the broker or the broker's office.

54-2046. Trust Account Disbursements.

The broker who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker to discipline.

(1) Written authorization required. No disbursements shall be made without a written, signed authorization by the parties to the transaction or an order of the court. Written and signed instructions from parties to the transaction may be in the purchase and sale agreement or in a separate document.

(2) Disbursements in advance of closing. No disbursements shall be made in advance of closing or before the happening of a condition set forth in the purchase and sale agreement or other agreement in a regulated real estate transaction to the seller, closing agent or any other person without the required written and signed authorization.

(3) Disbursements to escrow agent. When set forth in the purchase and sale agreement that funds are to be disbursed to the person or company named as the escrow closing agent or agency, such disbursement shall be made to the person, company, agent or agency on or before the day of closing, and receipt for such disbursement shall be retained in the broker's transaction file.

(4) Withdrawal of broker's commission. No disbursement of any portion of the broker's commission shall take place without prior written, signed authorization from the buyer and seller or until copies of the closing statements, signed by the buyer and seller, have been delivered to the broker and until the buyer or seller has been paid the amount due as determined by the closing statement.

(5) Provision for forfeited earnest money. The purchase and sale agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

54-2047. Disputed Earnest Money.

(1) Any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall:

(a) Notify each party, in writing, of the demand of the other party; and

(b) Keep all parties to the transaction informed of any actions by the broker regarding the disputed funds or other consideration, including retention of the funds by the broker until the dispute is properly resolved.

(2) The broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine how to disburse the disputed money and may, at the broker's own discretion, make such disbursement. Discretionary disbursement by the broker based on a reasonable review of the known facts is not a violation of license law, but may subject the broker to civil liability.

(3) If the broker does not believe it is reasonably possible to disburse the disputed funds, the broker may hold the funds until ordered by a court of proper jurisdiction to make a disbursement. The broker shall give all parties written notice of any decision to hold the funds pending a court order for disbursement.

54-2048. Responsible Broker for the Transaction–Duties and Recordkeeping.

The "responsible broker," as referred to in this section, shall be responsible to the Commission for the transaction, transaction records, the funds and closing in accordance with the requirements of this chapter. The broker who lists and sells any real property shall be deemed the responsible broker in the transaction. In the case of a cooperative sale, the broker who holds entrusted funds in a real estate trust account while the transaction is pending, or who delivers or transfers the funds to the closing agency or any authorized party other than the cooperating broker in the transaction, shall be deemed the broker responsible for the transaction. The responsible broker shall:

(1) Ensure the correctness and delivery of detailed closing statements which accurately reflect all receipts and disbursements for their respective accounts to both the buyer and seller in a transaction, even if the closing is completed by a real estate escrow closing agent, title company or other authorized third party and regardless of the responsible broker's agent or nonagent relationship to the buyer or seller.

(2) Show proof of delivery of the closing statement to the buyer and seller by their signatures on copies of such closing statements which shall be retained in the broker's transaction file. When signatures of the parties cannot be obtained, a copy of the closing statement transmittal letter, sent by certified mail, return receipt requested, or a written certification of delivery signed by an officer of the escrow closing agency, shall be retained in the broker's transaction files.

(3) Create and maintain, for the retention period required in section 54-2049, Idaho Code, a transaction file containing the following documents, as applicable. For all pending, closed or fallen transactions, the original or a true and correct copy of:

(a) Signed closing statements, if applicable;

(b) Written and signed brokerage representation agreements, if any. A responsible broker who is representing both the seller and the buyer in a transaction shall retain properly executed brokerage representation agreements in the transaction file, and, if appropriate to the transaction, a properly executed "consent to limited dual representation" statement. A responsible broker who has a signed brokerage representation agreement with only one (1) party to the transaction, either buyer or seller, must only retain that one (1) agreement in the transaction file;

(c) All offers accepted, countered or rejected, which must each be retained in the manner required in section 54-2049, Idaho Code;

(d) All offers presented to the seller and not accepted by that seller shall be clearly marked and dated as rejected. The original or a true and correct copy of all rejected offers must be retained in the files of the selling broker for the statutory records retention period in section 54-2049, Idaho Code.

54-2049. Record Retention Schedules.

All records required in this chapter to be kept and maintained by a real estate broker, including trust account and financial records, transaction files and other records are to be kept in the broker's files according to this section. The following records must be kept by a broker for three (3) calendar years after the year in which the event occurred, the transaction closed, all funds were disbursed, or the agreement and any written extension expired:

(1) The original or true copy of all accepted, countered or rejected offers;

(2) Listing or buyer brokerage representation agreements and "consent to limited dual representation" forms;

(3) Transaction files and the contents required in section 54-2048(3), Idaho Code;

(4) Trust account ledger records; and

(5) All trust account reconciliation records, as defined in this chapter.

54-2050. Brokerage Representation Agreements–Required Elements.

All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) A legally enforceable description of the property;

(c) Price and terms;

(d) All fees or commissions; and

(e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

(2) Buyer representation agreements. Each buyer representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) All financial obligations of the buyer or prospective buyer, if any, including, but not limited to, fees or commissions;

(c) The manner in which any fee or commission will be paid to the broker; and

(d) Appropriate signatures and their dates.

(3) Prohibited provisions and exceptions–Automatic renewal clauses. No buyer or seller representation agreement shall contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement after the definite expiration date, unless the representation agreement states that it is completely nonexclusive and it contains no financial obligation, fee or commission due from the party signing the agreement.

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct.

(5) Electronically generated agreements. To the extent the parties have agreed in writing, brokerage representation agreements with a buyer or seller that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct and enforceable as originals.

54-2051. Offers to Purchase.

(1) 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.

(2) Immediately upon receiving any offer to purchase signed and dated by the buyer and any consideration, a broker or salesperson shall provide a copy of the offer to purchase to the buyer as a receipt.

(3) Upon obtaining a properly signed and dated acceptance of an offer to purchase, the broker or sales associate shall promptly deliver true and legible copies of such accepted offer to both the buyer and the seller.

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

(a) All terms and conditions of the real estate transaction as directed by the buyer or seller;

(b) The actual form and amount of the consideration received as earnest money;

(c) The name of the responsible broker in the transaction, as defined in section 54-2048, Idaho Code;

(d) The "representation confirmation" statement required in section 54-2085(4), Idaho Code, and, only if applicable to the transaction, the "consent to limited dual representation" as required in section 54-2088, Idaho Code;

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

(f) All appropriate signatures; and

(g) A legal description of the property.

(5) All changes made to any offer to purchase or other real estate purchase agreement shall be initialed and dated by the parties to the transaction.

54-2052. Electronically Generated Agreements.

To the extent the parties to the transaction have agreed in writing offers to purchase, counteroffers and acceptances may be electronically generated or transmitted, faxed or delivered in another method shall be deemed as true and correct and enforceable as originals.

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 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 contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which 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.

54-2054. Compensation, Commissions and Fees - Prohibited Conduct.

(1) 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.

(2) 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 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.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall subject the licensee to disciplinary action by the Commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement procedures act. However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing

of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction.

It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, if authorized by the broker, a sales associate may pay all or any portion of the accepted commission, compensation or fee to any other sales associate who is licensed with the same broker. A broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

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.

54-2056. Terminating or Changing Licensed Business Relationships.

(1) Termination of licensed association. A sales associate who terminates his licensed association with a broker shall provide the broker written notice of the termination no later than three (3) business days after the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination no later than three (3) business days after the effective date. A licensee's written notice to the Commission does not relieve him of the duty to provide written notice to the other licensee that he is terminating the licensed assocation.

(2) New association. The broker shall submit a written application, in the form and manner approved by the Commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall, within ten (10) business days of the termination, notify the Commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. Immediately upon closing a branch office, the broker shall provide the Commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall remove from public view any license certificates for the branch office.

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the Commission in writing of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the Commission for three (3) years following the year in which each transaction was closed.

(7) Terminating relationships between a broker and a sole proprietorship owned by a person other than the broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an association with the owner, all records and trust account funds shall become the property of, and be maintained and disbursed by, the terminating broker in accordance with this chapter and applicable rules promulgated thereunder. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have

the responsibility for preservation and disbursement, in accordance with this chapter and applicable rules promulgated thereunder.

54-2057. Death or Incapacity of a Designated Broker.

(1) Legal business entities. Upon the death or incapacity of a designated broker for a legal business entity licensed as a real estate brokerage company in Idaho, the licensed entity shall appoint and designate a qualified individual as designated broker in the manner and within the time required in section 54-2039, Idaho Code, or shall cease to be licensed.

(2) Sole proprietorships. Upon the death or incapacity of a sole proprietor broker, the Commission may issue a limited authorization for an executor, administrator, conservator, personal representative, court-appointed guardian, or some other person or agency to close out the pending transactions on behalf of the deceased or incapacitated broker, and only in accordance with the provisions of this section. The person given temporary authority shall close out the affairs of the deceased or incapacitated sole proprietor broker by taking the following actions:

(a) Termination of listings and buyer brokerage agreements. Termination of all listings and buyer brokerage agreements in which there are not outstanding offers or earnest money receipts.

(b) Completion of negotiations. Completion of all negotiations between buyers and sellers on transactions in which an offer to purchase has been written or received.

(c) Accounting for moneys. Depositing and withdrawing moneys from the real estate trust account in connection with completion of all transactions still pending at the time of death of a sole proprietor broker.

(d) Commissions. Prompt payment of all real estate commissions owing after closing of all transactions, both to the decedent broker's duly appointed personal representative and to sales associates of the deceased broker or participating brokers entitled to commissions resulting from the transactions.

54-2058. Authority to Investigate and Discipline.

(1) General authority to investigate. 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.

(2) 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.

(3) 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.

54-2059. 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.

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(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.

54-2061. Additional Grounds for Disciplinary Action–Court Actions–Licensee to Report to Commission.

(1) 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.

(2) 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.

(3) A licensee who is convicted, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the Commission a copy of the legal document evidencing the same.

54-2062. Additional Grounds for Disciplinary Action–Other Administrative Actions–Licensee to Report to Commission.

(1) 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 of 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.

(2) A licensee against whom a final administrative action has been taken as described in subsection (1) of this section, shall, within twenty (20) days of such action, forward to the Commission a copy of the legal document evidencing the same.

54-2063. Disciplinary Procedure and Review of Agency Action.

All disciplinary actions under this chapter and all rights of review or appeal are governed by chapter 52, title 67, Idaho Code, and the rules of practice and procedure of the Idaho Real Estate Commission.

54-2064. Proof of Complaint–Prosecution by County Prosecuting Attorney.

The Commission may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county in the state to prosecute all violations of the provisions of this chapter in their respective counties in which the violations occur.

54-2065. Penalty for Acting as a Broker or Salesperson Without License.

Any person acting as a real estate broker or real estate salesperson within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, if a natural person, be punished by a fine of not to exceed five thousand dollars ($5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court or if a limited liability company or corporation, by a fine of not to exceed ten thousand dollars ($10,000). Additionally, the court may assess a civil penalty against a natural person in an amount not to exceed five thousand dollars ($5,000), and against a limited liability company or corporation, in an amount not to exceed ten thousand dollars ($10,000). All civil penalties shall be credited to the special real estate fund.

54-2066. Injunctive Relief.

The Commission is hereby authorized to institute injunction proceedings in the district court of competent jurisdiction, pursuant to the Idaho rules of civil procedure, for cause shown, to restrain any person or persons from violating any provision of this chapter regardless of whether or not there exists an adequate remedy at law.

54-2067. Cease and Desist Orders.

The Commission is authorized to order that any person violating any provision of this chapter cease and desist such activity immediately.

Violation of the cease and desist order shall be a violation of this chapter and shall subject the person to any and all remedies available to the Commission in this or other chapters of the Idaho Code.

54-2068. Witnesses–Depositions–Fees–Subpoenas.

(1) The Commission, or any member thereof, the Executive Director of the Commission, or such other person so designated by the Commission by rule, shall have power to administer oaths, certify to all official acts, issue subpoenas for attendance of witnesses and the production of books and papers, take the testimony of any person by deposition in the manner prescribed for in the rules of procedure of the district court of this state, in civil cases, in any investigation or hearing in any part of the state.

(2) Each witness who appears pursuant to a subpoena shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the district court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

(3) If a witness, who has not been required to attend at the request of any party, is subpoenaed by the Commission or Executive Director, his fees and mileage shall be paid from funds appropriated for the use of the Commission in the same manner as other expenses of the Commission are paid.

54-2069. Real Estate Recovery Fund Established.

There is hereby created in the state treasury the real estate recovery fund. A balance of not more than twenty thousand dollars ($20,000) shall be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in sections 54-2069 through 54-2078, Idaho Code. Any balance over twenty thousand dollars ($20,000) shall be deposited in the special real estate fund and be subject to appropriation by the legislature for the use of the Commission to carry out the provisions of this chapter.

54-2070. Augmentation of Fund.

Upon the original application or renewal of every real estate broker's, associate broker's and salesperson's license for a two-year period, the licensee shall pay, in addition to the original or renewal license fee, a fee of twenty dollars ($20.00). Such additional fees and all education fees charged and collected for tuition or registration, course materials and such other fees involved with the Commission education programs shall be paid into the state treasury and credited to the special real estate fund as provided in section 54-2021, Idaho Code, except for such funds as are required to maintain a balance of twenty thousand dollars ($20,000) in the real estate recovery fund as provided for in section 54-2069, Idaho Code.

54-2071. Recovery from Fund–Procedure–Grounds–Amount–Hearing.

(1) When any person obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a

license is required under this chapter, such person may, upon termination of all proceedings, including appeals in connection with any judgment, file a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery fund in the amount of actual damages included in the judgment and unpaid, but not more than ten thousand dollars ($10,000) per licensee per calendar year. The recovery fund's liability for all claims arising from the acts or omissions of any one (1) licensee in any calendar year shall be limited to a payment of not more than ten thousand dollars ($10,000), regardless of the number of persons damaged by the acts or omissions of a licensee, or the total amount of damage caused by such licensee, in any one (1) calendar year. If a claim is made against the fund and the Commission has actual knowledge of any other claims against the recovery fund which have been filed or asserted against the same licensee and arise from acts or omissions of the licensee in the same calendar year, then the Commission shall file an interpleader action in accordance with the applicable statutes and the Idaho rules of civil procedure against all known parties who may claim a right to payment from the fund. Unless the Commission has actual knowledge of other potential claims, as stated above, and so files the interpleader action, the first person who obtains a final judgment against a licensee shall be entitled to the payment of that amount equal to the lesser of the judgment or ten thousand dollars ($10,000), providing the claimant meets the other criteria set forth herein.

(2) A copy of the petition shall be served upon the Commission and an affidavit of such service shall be filed with the court.

(3) The court shall act upon such petition within thirty (30) days after such service and, upon the hearing thereof, the petitioner shall be required to show that:

(a) He is not the spouse of the debtor, or the personal representative of such spouse;

(b) He has complied with all the requirements of sections 54-2069 through 54-2078, Idaho Code;

(c) He has obtained a judgment of the kind described in subsection (1) of this section, stating the amount thereof and the amount owing thereon at the date of the petition;

(d) He has caused to be issued a writ of execution upon the judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;

(e) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and

(f) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain

of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(4) Whenever the aggrieved person satisfies the court that it is not practicable to comply with one (1) or more of the requirements enumerated in subsections (3) (d), (e) and (f) of this section, and that the aggrieved person has taken all reasonable steps to collect that amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may in its discretion dispense with the necessity for complying with such requirements.

54-2072. Commission May Answer Petition–Compromise of Claims.

(1) Whenever the court proceeds upon a petition as provided in section 54-2071, Idaho Code, the Commission may answer and defend any such action against the recovery fund on behalf of the recovery fund and in the name of the defendant and may use any appropriate method of review on behalf of the recovery account.

(2) The judgment set forth in the petition shall be considered as prima facie evidence only, and the findings of fact therein shall not be conclusive for the purposes of sections 54-2069 through 54-2078, Idaho Code.

(3) The Commission may, subject to court approval, compromise a claim based upon the application of a petitioner.

54-2073. Court Order Requiring Payment from Recovery Fund.

If the court finds, after hearing that the claim should be levied against the portion of the recovery fund allocated for the purpose of carrying out the provisions of sections 54-2069 through 54-2078, Idaho Code, the court shall enter an order directed to the Commission requiring payment from the recovery fund of whatever sum it finds to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in section 54-2071, Idaho Code.

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.

54-2075. Order of Payment of Claims If Recovery Fund Balance Insufficient–Interest.

If, at any time, the money deposited in the recovery fund and allotted for satisfying claims against licensees is insufficient to satisfy any authorized claim or portion thereof, the Commission shall, when sufficient money has been deposited in the recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of eleven percent (11%) per annum.

54-2076. Commission's Right to Subrogation.

When the Commission has paid from the recovery fund any sum to the judgment creditor, the Commission has subrogated all other rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited to the recovery fund.

54-2077. Waiver of Rights.

The failure of a person to comply with all of the provisions of sections 54-2069 through 54-2071, Idaho Code, shall constitute a waiver of any rights hereunder.

54-2078. Disciplinary Action Against Licensees Not Restricted for Violations of Law or Rules.

Nothing contained in sections 54-2069 through 54-2078, Idaho Code, limits the authority of the Commission to take disciplinary action against a licensee for a violation of any of the provisions of the chapter, or of the rules of the Commission, nor shall the repayment in full of all obligations to the recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter or the rules promulgated thereunder.

54-2079. Termination of Sales Associate for Violation of Disciplinary Provisions - Statement to be filed with Commission.

Whenever a real estate broker terminates a sales associate for a violation of any of the provisions of sections 54-2060 through 54-2062, Idaho Code, the broker shall promptly file a written statement of the facts in reference thereto with the Commission.

54-2080. Records–Disclosure to Public.

Records kept in the office of the Commission under authority of this chapter and chapter 18, title 55, Idaho Code, shall be open to public inspection as provided in chapter 3, title 9, Idaho Code.

54-2081. (Reserved).

54-2082. Short Title.

Sections 54-2082 through 54-2097, Idaho Code, shall be known and may be cited as "The Idaho Real Estate Brokerage Representation Act."

54-2083. Definitions.

As used in sections 54-2082 through 54-2097, Idaho Code:

(1) "Adverse material fact" means a fact that would significantly affect the desirability or value of the property to a reasonable person or which establishes a reasonable belief that a party to the transaction is not able to or does not intend to complete that party's obligations under a real estate contract.

(2) "Agency representation" or "representation" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties defined in section 54-2087, Idaho Code, are applicable. See also "representation."

(3) "Assigned agent" means, where a brokerage is representing more than one (1) party to the transaction as a limited dual agent as provided in section 54-2088, Idaho Code, the sales associate assigned by the brokerage to act on behalf of one (1) client and to represent solely that client consistent with the applicable duties set forth in section 54-2087, Idaho Code. The designated broker shall not act as an assigned agent of the brokerage.

(4) "Brokerage" means a licensed designated broker, the licensed real estate business represented by that broker and its associated licensees.

(5) "Client" means a buyer or seller, or a prospective buyer or seller, or both who have entered into an express written contract or agreement with a brokerage for agency representation in a regulated real estate transaction.

(6) "Confidential client information" means information gained from or about a client that:

(a) Is not a matter of public record;

(b) The client has not disclosed or authorized to be disclosed to third parties;

(c) If disclosed, would be detrimental to the client; and

(d) The client would not be personally obligated to disclose to another party to the transaction. Information which is required to be disclosed by statute or rule or where the failure to disclose would constitute fraudulent misrepresentation is not confidential client information within the provisions of sections 54-2082 through 54-2097, Idaho Code. Information generally disseminated in the marketplace~~, including "sold" prices of property,~~ is ~~also~~ not confidential client information within the provisions of such sections. A "sold" price of real property is also not confidential client information within the provisions of such sections.

(7) "Customer" means a buyer or seller, or prospective buyer or seller, who is not represented in an agency relationship in a regulated real estate transaction.

(8) "Customer services agreement" or "compensation agreement" means an agreement between a real estate brokerage and a customer for the provision of any real estate services for which the brokerage has the right to be compensated by the customer.

(9)"Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities

of any associated licensees in accordance with this chapter.

(10) "Idaho real estate license law and rules" means chapter 20, title 54, Idaho Code, and all administrative rules promulgated thereunder.

(11) "Limited dual agent" means a brokerage that is representing both a buyer and a seller as clients in a regulated real estate transaction, as provided in section 54-2088, Idaho Code.

(12) "Ministerial acts" means reasonably necessary and customary acts typically performed by real estate licensees in assisting a transaction to its closing or conclusion.

(13) "Nonagent" means a brokerage and its licensees working with or assisting a buyer or seller as a customer to which the duties provided in section 54-2086, Idaho Code, are applicable.

(14) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(15) "Representation" or "brokerage representation" or "represented" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties provided in section 54-2087, Idaho Code, are applicable.

(16) "Representation agreement" or "contract for representation" means a written agreement between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction. A representation agreement under this chapter can only be made in writing, and cannot be made orally or by assumption or implication.

(17)"Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

54-2084. Brokerage Agency Relationships–Creation.

(1) A buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in a separate written document, to such representation. No type of agency representation may be assumed by a brokerage, buyer or seller or created orally or by implication.

(2) Types of brokerage relationships. The following types of brokerage relationships are recognized:

(a) Nonagency;
(b) Agency representation;
(c) Limited dual agency representation;
(d) Limited dual agency with assigned agents.

54-2085. Disclosure and Writing Requirements–Agency Disclosure Brochure and Representation Confirmation.

(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.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer or seller as an agent, nonagent, limited dual agent, or limited dual agent with assigned agents must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(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:

REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

A. ☐ The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).

B. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.

C. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).

D. ☐ The brokerage working with the BUYER(S) is acting as a NON AGENT for the BUYER(S).

Section 2:

A. ☐ The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).

B. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.

C. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).

D. ☐ The brokerage working with the SELLER(S) is acting as a NON AGENT for the SELLER(S).

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.

(6) Neither the Commission brochure nor the representation confirmation shall create a brokerage relationship. A separate, signed, written agreement is required for that purpose.

54-2086. Duties to a Customer.

(1) If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations:

(a) To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate;

(b) To perform these acts with honesty, good faith, reasonable skill and care;

(c) To properly account for moneys or property placed in the care and responsibility of the brokerage;

(d) To disclose to the buyer/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(e) To disclose to the seller/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(2) If a customer has entered into a compensation agreement or customer services agreement with the brokerage, the brokerage shall have the obligation to be available to the customer to receive and timely present all written offers and counteroffers.

(3) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(4) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the customer in the transaction.

(5) A nonagent brokerage and its licensees owe no duty to a buyer/customer to conduct an independent inspection of the property for the benefit of that buyer/customer and owe no duty to independently verify the accuracy or completeness of any statement or representation made by the seller or any source reasonably believed by the licensee to be reliable.

(6) A nonagent brokerage and its licensees owe no duty to a seller/customer to conduct an independent investigation of the buyer's financial condition for the benefit of that seller/customer and owe no duty to independently verify

the accuracy or completeness of statements made by the buyer or any source reasonably believed by the licensee to be reliable.

54-2087. Duties to a Client.

If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

(1) To perform the terms of the written agreement with the client;

(2) To exercise reasonable skill and care;

(3) To be available to the client to receive and timely present all written offers and counteroffers;

(4) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:

(a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;

(b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or

(c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;

(d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;

(e) For the benefit of a client/seller: upon written request by the client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.

(5) To properly account for moneys or property placed in the care and responsibility of the brokerage; and

(6) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:

(a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its associated licensees;

(b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential

client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(7) Unless otherwise agreed to in writing, a brokerage and its licensee owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

(8) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(9) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the client in the transaction.

54-2088. Limited Dual Agency And Assigned Agency Permitted.

(1) A brokerage may represent both the buyer and the seller in the same transaction only as a limited dual agent and only with the express written consent of all other clients involved in the transaction.

(2) A brokerage acting as a limited dual agent may, at the option of the brokerage and with the express written consent of the other clients involved in the transaction, assign separate sales associates to each client to act on behalf of and represent that client solely. The designated broker shall not act as an assigned agent of the brokerage.

(3) The express written consent to limited dual agency shall contain separate signatures of all clients involved in the transaction and shall contain the following language:

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY

The undersigned have received, read and understand the Agency Disclosure Brochure. The undersigned understand that the brokerage involved in this transaction may be providing agency representation to both the buyer and the seller. The undersigned each understands that, as an agent for both buyer/client and seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the buyer/client to buy or the seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by section 54-2085, Idaho Code. The undersigned each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(4) All duties and obligations owed to a buyer/client or a seller/client under section 54-2087, Idaho Code, apply to limited dual agency relationships to the extent they do not unreasonably conflict with duties and obligations owed to the other client, except that:

(a) A limited dual agent shall not disclose any of the following without express written consent of the client to whom the information pertains:

(i) That a buyer is willing to pay more than the listing price of the property;

(ii) That a seller is willing to accept less than the listing price for the property;

(iii) The factors motivating the buyer to buy or the seller to sell;

(iv) That a buyer or seller will agree to a price or financing terms other than those offered.

(b) A limited dual agent does not have a duty of undivided loyalty to either buyer/client or seller/client, and by consenting to limited dual agency, the buyer and seller agree to those limitations.

(5) The following apply whenever a brokerage acting as a limited dual agent assigns separate sales associates to act on behalf of the separate clients:

(a) Designated broker. The designated broker continues to act as limited dual agent of each client with the duty to:

(i) Supervise the assigned agents in the fulfillment of their duties to their respective clients;

(ii) Refrain from advocating on behalf of any one client over another; and

(iii) Refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(b) Imputed knowledge. Knowledge of any fact known to the brokerage, its designated broker, or any other licensee associated with the brokerage shall not be imputed to an assigned agent of the brokerage so as to create an impermissible confilict of interest. Nothing in this subsection shall diminish a licensee's duty with respect to facts actually known or that reasonably should have been known to the licensee.

(6) If a designated broker determines that confidential information of a client has been disclosed to another client in the transaction in violation of

this section, the designated broker shall promptly provide written notice of the disclosure to the affected client.

(7) No cause of action for any buyer or seller shall arise against a limited dual agent for making any required or permitted disclosure under this act, nor does making such disclosure terminate the limited dual agency.

(8) Receipt of the agency disclosure brochure required by section 54-2085, Idaho Code, and the signed consent to dual representation by buyer and seller agreeing to limited dual agency representation shall be sufficient informed legal consent to dual representation under this act. A consent by the buyer and seller to possible dual representation in the future, such as may be contained in a written marketing or representation agreement between a brokerage and client, shall also be considered effective and informed legal consent to dual representation.

54-2089. Broker Compensation.

Payment of compensation or a written agreement only for payment of compensation to a brokerage shall not constitute an agreement for agency representation or otherwise create an agency relationship.

54-2090. Written Office Policy Required.

Each designated broker shall be responsible to adopt and maintain in each office, including branch offices, a written policy which identifies and describes the types of representation in which that brokerage and its associated licensees may engage with any buyer or seller, or both, as a part of that office's real estate brokerage services.

54-2091. Duration of Agency Relationship.

(1) A brokerage's agency relationship and corresponding representation duties under sections 54-2082 through 54-2097, Idaho Code, shall commence on the date indicated on the written agreement between the brokerage and a buyer/client or seller/client and shall end at the earliest of:

(a) Performance or completion of the representation;

(b) Agreement by the parties;

(c) Expiration of the agency relationship agreement.

(2) Nothing in sections 54-2082 through 54-2097, Idaho Code, shall prohibit the brokerage and the buyer or seller from changing the legal nature of their relationship or representation in accordance with such sections during the course of the real estate transaction. However, the brokerage is not relieved thereby from meeting the disclosure requirements and obtaining the written agreements, consents or confirmations required by sections 54-2082 through 54-2097, Idaho Code.

54-2092. Duties and Obligations Owed after Termination of Representation.

Except as otherwise agreed in writing, a brokerage owes no further duty or obligation to a client after termination of the agreed representation except:

(1) Accounting for all moneys and property received by the brokerage during the representation; and

(2) Maintaining the confidentiality of all information defined as confidential client information by this act.

54-2093. Vicarious Liability Abolished.

(1) A client, as defined in this act, whether buyer or seller, shall not be liable for a wrongful act, error, omission or misrepresentation of his broker, his broker's licensees, or subagent unless the client had actual knowledge of or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(2) A licensee or brokerage engaged in representation of a client shall be entitled to rely upon representations made by a client and shall not be liable for a wrongful act, error, omission or misrepresentation made by the client or made by any subagent unless the licensee or brokerage had actual knowledge or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(3) Nothing in this section shall be construed to diminish or limit any of the broker's or licensee's responsibilities under chapter 20, title 54, Idaho Code, or the rules promulgated thereunder.

54-2094. Representation Not Fiduciary in Nature.

While this act is intended to abrogate the common law of agency as it applies to regulated real estate transactions, nothing in this act shall prohibit a brokerage from entering into a written agreement with a buyer or seller which creates an agency relationship in which the duties and obligations are greater than those provided in this act. However, unless greater duties are specifically agreed to in writing between the brokerage and a represented client, the duties and obligations owed to a represented client in a regulated real estate transaction are not fiduciary in nature and are not subject to equitable remedies for breach of fiduciary duty.

54-2095. Conflicts with Other Law.

If the provisions of this act are found to be in conflict with any other provision of Idaho law, the provisions of this act shall control.

54-2096. Severability.

The provisions of this chapter are severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

54-2097. Rulemaking Authority of the Commission.

The Idaho Real Estate Commission shall have authority to promulgate rules in accordance with the provisions of Chapter 52, Title 67, Idaho Code, to implement the provisions of this chapter.

Chapter 41, Title 54, Sections 54-4103 and 54-4105. Unlawful Practice of Appraisal.

54-4103. Unlawful Practice of Appraisal.

[. . .] It shall be unlawful for any person to appraise, practice appraisal, assume to act as, or hold themselves out to the public as an appraiser, or carry on the calling of an appraiser within the state, or to perform an appraisal of real estate located in this state unless the person has first been licensed or certified by the board under the provisions of this chapter.

54-4105. Exceptions.

[. . .] (2) The provisions of this chapter shall not apply to 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.

(3) The provisions of this chapter shall not prohibit 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 interested 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;

(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 [Regulated] transaction.[. . .]

Chapter 5, Title 9, Section 9-508. Real Estate Commission Contracts to be in Writing.

No contract for the payment of any sum of money or thing of value, as and for a Commission or reward for the finding or procuring by one person of a purchaser of real estate of another shall be valid unless the same shall be in writing, signed by the owner of such real estate, or his legal, appointed and duly qualified representative.

Chapter 31, Title 26, Section 26-3103. Exemptions to the Residential Mortgage Practices Act.

Effective July 1, 2003, the exemption for persons licensed under the Idaho real estate license law has been ELIMINATED.

IDAHO REAL ESTATE LICENSE LAW

IDAPA 33, TITLE 01, Chapter 01

Rules of the Idaho Real Estate Commission

(The Rules in this Booklet are current as of July 1, 2008. Rule changes may be adopted and effective after that date. The current Rules of the Commission are published in the Idaho Administrative Code, which may be viewed on line at: http://adm.idaho.gov/admin-rules/rules/idapa33/0101.pdf)

000. LEGAL AUTHORITY.

The Rules of the Idaho Real Estate Commission contained herein have been adopted pursuant to section 54-2007, Idaho Code. Any violation of these rules, or of any provision of Chapter 20, Title 54, shall be sufficient cause for disciplinary action as prescribed in sections 54-2059 and 54-2060, Idaho Code.

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 33.01.01, "Rules of the Idaho Real Estate Commission," IDAPA 33, Title 01, Chapter 01.

02. Scope. These rules contain the requirements for implementation and enforcement of the Real Estate Licensing Law and the Real Estate Brokerage and Representation Act, contained in Chapter 20, Title 54, Idaho Code.

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19) (b) (iv), this agency has written statements which pertain to the interpretation of the rules of this chapter, or to documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Idaho Real Estate Commission, 633 North 4th Street, Boise, Idaho, 83702.

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by IDAPA 33.01.02.000 et seq., "Rules of Practice and Procedure of the Idaho Real Estate Commission."

004. INCORPORATION BY REFERENCE.

There are no materials incorporated by reference.

005. OFFICE HOURS, MAILING AND PHYSICAL ADDRESS, PHONE NUMBERS.

The office hours for Real Estate Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting state holidays. The Real Estate Commission is located at 633 North 4th Street, Boise, Idaho, 83702. The mailing address is P.O. Box 83720, Boise, Idaho, 83720-0077. The telephone number is (208) 334-3285.

006. ELECTRONIC SIGNATURES.

A person's entry of the identification number assigned by the Commission, or approved for the person's use by the Commission, shall constitute the person's signature when transmitted as part of or in connection with an electronic document or procedure in the course of business with the Commission. Any identification number assigned or approved by the Commission shall be unique to the person using it, capable of verification, and conform all applicable rules, guidelines and policies established by the Commission.

007.—099. (RESERVED).

RULES 100 THROUGH 199–APPLICATION, LICENSURE AND TERMINATION OF LICENSES

100. LICENSING FEES.

License fees are established as follows:

01. Fees for Licensed Individuals. The fees for an initial or renewing license for broker, associate broker or salesperson shall be one hundred sixty dollars ($160) per license period, which fees include the twenty dollar ($20) fee prescribed in section 54-2070, Idaho Code.

02. Fees for Licensed Legal Business Entities. The fee for an initial or renewing license for each legal business entity shall be Fifty dollars ($50) per license period.

101. LATE LICENSE RENEWAL FEES.

When a license renewal application is submitted after the license period has elapsed, there shall be, in addition to the fees for renewing the license, a late fee in the amount of twenty five dollars ($25.00).

102. FEE TO PRINT LICENSE CERTIFICATE.

The fee for having the commission print a license certificate shall be fifteen dollars ($15.00) for each certificate.

103. FEE TO COMPILE EDUCATION OR LICENSE HISTORY.

The fee for having the commission compile and certify a licensee's education history or license history shall be ten dollars ($10) for each compilation.

104. FEE FOR BRANCH OFFICE LICENSE.

The fee for an initial or renewing license for each branch office shall be fifty dollars ($50.00) per license period.

105.—116. (RESERVED).

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho, including nonresident and reciprocal licensees, shall have in effect and maintain a policy of Errors and Omissions insurance when required by section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules.

01. Certification Of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in section 118 of these rules, shall be deemed to have satisfied the certification requirement of section 117. The effective date of coverage, however, shall be the day of final license approval.

02. Certification Of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in section 119 of these rules, shall obtain a Certificate of Coverage, signed by an authorized agent or employee of the insurance carrier, which certificate shall be in a form approved by the Commission, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce for inspection the Certificate of Insurance.

118. GROUP INSURANCE PLAN.

The Commission shall make available to all active licensees, subject to terms and availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan obtained by the Commission.

01. Qualified Insurance Carrier Defined. For the purposes of this section, a "qualified insurance carrier" shall mean an insurance carrier.

a. Which, for the entire term of its contract shall provide the Group Plan of Errors and Omissions insurance contemplated by these rules, maintains an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher;

b. Which is and will remain for the policy term duly authorized by the Idaho Department of Insurance to do business in the state of Idaho as an insurance carrier.

c. Which is and will remain for the policy term qualified and authorized by the Idaho Department of Insurance to write policies of Errors and Omissions insurance in Idaho of the type contemplated by these rules.

d . Which, after competitive bidding, has been notified by the Commission that it is the successful bidder for the Group Plan to provide the Errors and Omissions insurance contemplated by these rules; and

e. Which has entered into a contract to provide said group Errors and Omissions plan in conformity with said contract, these rules and the Idaho Real Estate License Law.

02. Right To Cancel. The group policy obtained by the Commission under these rules shall be available to all active licensees with no right on the part of the carrier to cancel any licensee.

03. Approved Policy. The group policy obtained by the Commission shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, shall be subject to such terms and conditions as are customary in the insurance industry for policies of Errors and Omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Insurance Department, and which are contained in a policy of insurance which has been approved by the Department of Insurance; provided, however, that said Group Plan shall provide, at a minimum, the following terms and conditions:

a. Not less than one hundred thousand dollars ($100,000) limit liability coverage for each occurrence, not including costs of investigation and defense.

b. An annual aggregate limit of not less than three hundred thousand dollars ($300,000), not including costs of investigation and defense.

c. The minimum coverage requirements of this Subsection shall apply to each individual licensee;

d. A deductible amount of not greater than three thousand five hundred dollars ($3,500), which shall include costs of investigation and defense;

e. A reasonable premium not to exceed the maximum premium set forth in section 54-2013, Idaho Code;

f. A policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent, or, if an annually renewable policy, a statement of the policy period, and in either case, the policy shall provide for continuous coverage during the policy period.

g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period;

h. Prior acts coverage shall be offered to licensees with continuous past coverage.

04. Standard Of Group Policy Determined. For the purposes of these rules and the fulfillment of the Commission's obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of any group policy of Errors and Omissions insurance to be issued to the state of Idaho pursuant to these rules shall be conclusive proof that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Idaho law and the rules of the Idaho Insurance Department with respect to such policies of insurance.

119. INDEPENDENTLY OBTAINED ERRORS AND OMISSIONS INSURANCE.

Licensees may obtain Errors and Omissions insurance independently of the Group Policy available through the Commission, subject, however, to the terms and conditions set forth in these rules.

01. "Independently Obtained" Insurance Defined. The term "independently obtained" insurance shall mean a policy of Errors and Omissions insurance issued to each individual licensee or issued to the firm with which the licensee is affiliated and which shall provide, at a minimum, all of the following terms and conditions:

a. Covers all activities contemplated under Chapter 20, Title 54, Idaho Code, under such terms and conditions as are customary in the insurance industry for policies of Errors and Omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Department of Insurance, and which are contained in a policy of Errors and Omissions insurance which has been approved by the Idaho Department of Insurance;

b. If an "individual" policy specifies not less than one hundred thousand dollars ($100,000) limit liability coverage for each occurrence, not including costs of investigation and defense;

c. If a "firm" policy specifies not less than five hundred thousand dollars ($500,000) limit liability coverage for each occurrence, not including costs of investigation and defense;

d. If an "individual" policy, an annual aggregate limit of not less than three hundred thousand dollars ($300,000), not including costs of investigation and defense;

e. If a "firm" policy, an annual aggregate limit of not less than one million dollars ($1,000,000), not including costs of investigation and defense;

f. If an "individual" policy, the minimum coverage limits specified in Subsection 119.01 shall be available to each licensee;

g. If a "firm" policy, the minimum coverage limits specified in Subsection 119.01 shall apply to the firm;

h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period;

i. No policy of Errors and Omissions insurance shall be deemed "independently obtained" for purposes of this rule unless the insurance company specifically agrees in writing that it will not terminate, cancel, lapse, fail or refuse to renew or modify such policy without the company first providing the Commission and the licensee with thirty (30) days' written notice;

j. Contains a period equal to each licensee's two (2) year license renewal date or the prorated equivalent and which provided for continuous coverage during said policy period, or, if an annually renewable policy, a statement of the policy period and, in either case, the agreement of the insurance carrier that it will not modify, terminate, cancel, lapse or not renew the policy without first providing the Commission and licensee thirty (30) days written notice; and

k. Prior acts coverage shall be offered to licensees with continuous past coverage.

02. Approval By Department of Insurance. For the purposes of these rules and the fulfillment of the licensees' obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of a policy of independently obtained Errors and Omissions insurance covering the licensee shall create a presumption that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of the law and rules of the Idaho Department of Insurance with respect to such policies of insurance. Approval by the Department of Insurance, however, does not create any presumption of equivalency in coverage as required by Idaho Real Estate License Law and these rules.

03. Carrier Issuing Independent Policy. A carrier issuing an independent policy shall meet all of the requirements of a qualified carrier set forth in Subsections 118.01.a. through 118.01.c. and shall maintain an A.M. Best Company rating of B+ or better and an A.M. Best Financial Size Category of Class VI or higher.

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

No applicant for an original active license or for renewal of an active license shall be issued such active license unless the applicant has certified to the Commission, in the form and manner approved by the Commission, that he is in compliance with the insurance requirements of this chapter. This certification of compliance by the applicant shall satisfy the filing requirement of section 54-2013, Idaho Code.

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance required by subsection 117.02 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license.

Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under section 67-5254, Idaho Code.

01. Notice Of Noncompliance. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by ~~certified~~ first class mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding Errors and Omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated.

02. Reactivation. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees.

03. Failure To Maintain Insurance. Failure of a licensee to maintain Errors and Omissions insurance or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by section 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate salesperson, as defined in sections 54-2002 and 54-2004, Idaho Code, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines.

122. FALSIFICATION OF CERTIFICATES.

Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a certificate of coverage to be filed with, or produced to, the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic inactivation of license provided for in Subsection 121.01.

123.—199. (RESERVED)

RULES 200 THROUGH 299–OFFICE OPERATIONS

200. — 299. (RESERVED).

RULES 300 THROUGH 399–BUSINESS CONDUCT

300. DISPUTES CONCERNING COMMISSIONS AND FEES.

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.

301. PRICE FIXING.

The Idaho Real Estate Commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction by licensed real estate brokers.

302. TITLE OPINIONS.

No real estate broker or sales associate shall pass judgment upon or give an opinion with respect to the merchantability of the title to property in any transaction.

303. LEGAL OPINIONS.

A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney.

304. OFFICE OPERATIONS AND BROKER SUPERVISION.

A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he is responsible. The following factors will be among those used to determine adequacy of supervision; however, the Commission is not limited to making a determination on these factors alone, but will examine all pertinent evidence.

01. Designated Broker Physically Available to Supervise. Was the designated broker physically available to supervise?

02. Experience Level of the Licensed Associate. What was the experience level of the licensed associate?

03. Designated Broker Contracted to Avoid Supervisory Responsibility. Has the designated broker contracted to avoid supervisory responsibility?

04. Types of Activity. What types of activity were licensed sales associates or unlicensed personnel engaged in?

05. Established Written or Oral Policies and Procedures. Had the designated broker established written or oral policies and procedures?

06. Determine that Policies and Procedures are being Properly Implemented. Does the designated broker hold regular staff meetings and follow-up meetings to determine that policies and procedures are being properly implemented?

07. Corrective or Remedial Action. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered?

305. DESIGNATED BROKER PERMITTED TO ACCESS EDUCATION RECORDS OF THE BROKERS'S LICENSED SALES ASSOCIATES.

As provided for in Section 9-340C, Idaho Code, the Commission may establish a mechanism to enable a designated broker to access and review the electronically-kept continuing education record of any licensee currently licensed with the broker. Such records are otherwise exempt from the disclosure requirements of the Public Records Act, Chapter 3, Title 9, Idaho Code. Access to records shall be through the means made available by the Commission by motion.

306.—399. (RESERVED).

RULES 400 THROUGH 499-CONTINUING EDUCATION

400. — 401. (RESERVED)

402. APPROVED TOPICS FOR CONTINUING EDUCATION.

01. Topics Approved By The Commission. Approved topic areas for continuing education, as provided for in sections 54-2023 and 54-2036, Idaho Code, include the following:

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;

k. Real estate marketing procedures related specifically to actual real estate knowledge;

l. Real estate inspections;

m. Property management;

n. Timeshares, condominiums and cooperatives;

o. Real estate environmental issues and hazards, including lead-based paint, underground storage tanks, radon, etc., and how they affect the practice of real estate;

p. Water rights;

q. Brokerage office management and supervision; and

r. Use of calculators or computers as applied to the practice of real estate.

s. Use of technology as to the practice of real estate;

t. Licensee safety;
u. Commercial real estate topics;
v. Tenants in common;
w. Mobile/manufactured homes;
x. Green market;
y. Senior market;
z. Negotiation skills;
aa. Communications skills;
bb. Resort and recreation;
cc. Farm and ranch;
dd. timber and mining;
ee. Professionalism; and
ff. Business Success;

02. Other Topics. Upon written request, the Commission may also approve any other topic that directly relates to real estate brokerage practice and that directly contributes to the accomplishment of the primary purpose of continuing education, which 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. The knowledge or skills taught in an elective course must enable licensees to better serve real estate consumers.

03. Topics Not Eligible For Continuing Education Credits. The following activities shall not be eligible for approval for compliance with the continuing education requirement:

a. Those which are specifically exam preparation in nature;

b. Those which are held in conjunction with a brokerage firm's sales promotion or sales meetings; or

c. Those which are held by trade organizations for licensee's orientation.

403. – 499. (RESERVED)

RULES 500 THROUGH 599 – EDUCATION TEACHING STANDARDS

500. MINIMUM TEACHING STANDARDS OF THE COMMISSION.

All courses offered for credit by a certified provider shall be taught in accordance with the following standards of the Real Estate Commission:

01. Certification requirement. A course required to be taught by a Commission-certified or Commission-approved instructor shall 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 shall adhere to the Commission's written attendance policy and shall submit credit hours only for students who have successfully met the attendance requirements

for which the course was approved.

04. Product Promotion and Recruitment. The course instructor shall adhere to the Commission's written policies restricting product promotion and recruitment activities in the classroom;

05. Professional mannerism. The course instructor shall conduct himself or herself in a professional manner when performing instructional duties, and shall not engage in any form of harassment based on the gender, national origin, race, religion, age or physical or mental disability of any student, and shall not engage in conduct that degrades or disparages any student or other instructor.

06 .Subject matter knowledge. The instructor shall conduct the class in a manner that demonstrates knowledge of the subject matter being taught;

07. Competent teaching skills. The instructor shall conduct the class in a manner that demonstrates competency in the following basic teaching skills:

a. The ability to effectively communicate through speech;

b. The ability to present instruction in an accurate, logical, orderly and understandable manner and to respond appropriately to questions from students;

c. The ability to utilize varied instructional techniques in addition to lecture, such as class discussion, role playing or other techniques in a manner that enhances learning;

d. The ability to utilize instructional aids and modern technology in a manner that enhances learning;

e. The ability to maintain an appropriate learning environment and effective control of a class;

f. The ability to interact with adult students in a manner that encourages students to learn, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, including fellow peer instructors, any agency or any organization.

~~08. Prohibited conduct. The course instructor shall not display any images or use language, including jokes and stories, that are vulgar, that contain racial, sexual, or religious slurs, or that otherwise is intended to disparage or degrade any student or peer instructor. Excessive reference to personal history, or the sharing of information of an intimate or highly personal nature concerning the instructor or any other person, is not permitted.~~

08. Maintaining exam security. The instructor shall take reasonable steps to protect the security of course examinations and shall not allow students to retain copies of final course examinations or the exam answer key.

09. Use of exam questions prohibited. The instructor shall not obtain or use, or attempt to obtain or use, in any manner or form, Idaho real estate licensing examination questions.

10. Instructor evaluations. The instructor must maintain, for the course, an annual average of 4.0 (based on 1-5 scale) on the standard Commission evaluations for the instructor's overall average category.

501. – 999. (RESERVED)

AGENCY 33
TITLE 01
Chapter 02

Rules of Practice and Procedure
of the Idaho
Real Estate Commission
(IDAPA 33.01.02)

Title 01, Chapter 02, Rules of Practice and Procedure of the Idaho Real Estate Commission, were properly promulgated and adopted by the Commission and made effective on July 1, 1993, and amended August 15, 2002. These rules are generally applicable to both contested case and rulemaking proceedings before the Idaho Real Estate Commission as governed by Title 52, Chapter 67, Idaho Code.

Copies of these Rules of Practice and Procedure are available upon request from the Commission Office at 633 N. 4th, Boise, Idaho. Mailing address: P.O. Box 83720, Boise, Idaho 83720-0077. Copies of these rules may also be obtained through the Office of Administrative Rules, Department of Administration, Joe R. Williams Building, 700 W. State Street, 4th floor, P.O. Box 83720, Boise, Idaho 83720-0011.

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