



Eric Milstead  
Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators PATRICK, Agenbroad, Ward-Engelking and,  
Representatives DIXON, DeMordaunt, Smith

**FROM:** Matt Drake - Legislative Drafting Attorney

**DATE:** April 23, 2020

**SUBJECT:** Temporary Rule

IDAPA 33.01.01 - Notice of Omnibus Rulemaking (Fee Rule) - Adoption of Temporary Rule - Docket  
No. 33-0101-2000F

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Matt Drake at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

# IDAPA 33 – REAL ESTATE COMMISSION

## DOCKET NO. 33-0101-2000F (FEE RULE)

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule being adopted through this omnibus rulemaking is the adjournment date of the second regular session of the 65th Idaho State Legislature - March 20, 2020.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 54-2097, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking adopts the following chapter under IDAPA 33:

**IDAPA 33**

- 33.01.01, *Rules of the Idaho Real Estate Commission*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee(s) or charge(s) being imposed or increased is justified and necessary to avoid immediate danger and the fee(s) is described herein:

The fees or charges, authorized in Section 54-2020, Idaho Code, are part of the agency’s 2021 budget that relies upon the existence of these fees or charges to meet the state’s obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho’s constitutional requirement that it balance its budget.

The following is a specific description of the fees or charges:

- IDAPA 33.01.01.100:

	Initial License	Renewal	Late Fee	Other
Broker	\$160	\$160	\$25	
Salesperson	\$160	\$160	\$25	
Business Entity	\$50	\$50	\$25	
Branch Office	\$50	\$50	\$25	
Cooperative License	\$100			
Education History				\$10
License Certificate				\$15

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact MiChell Bird (208)334-3285.

DATED this February 21, 2020.

MiChell Bird  
Executive Director  
Idaho Real Estate Commission  
575 E. Parkcenter Blvd. Ste 180  
Boise, ID 83706  
Phone: (208) 334-3285  
Fax: (208)334-2050

# IDAPA 33 – REAL ESTATE COMMISSION

## 33.01.01 – RULES OF THE IDAHO REAL ESTATE COMMISSION

### 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, or Chapter 18, Title 55, Idaho Code, is sufficient cause for disciplinary action as prescribed in Sections 54-2059, 54-2060, or 55-1811, Idaho Code. (3-20-20)T

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 33.01.01, “Rules of the Idaho Real Estate Commission,” IDAPA 33, Title 01, Chapter 01. (3-20-20)T

**02. Scope.** These rules contain the requirements for implementation and enforcement of the Idaho Real Estate License Law, the Idaho Real Estate Brokerage Representation Act, and the Subdivided Lands Disposition Act, contained in Chapter 20, Title 54, or Chapter 18, Title 55, Idaho Code. (3-20-20)T

### 002. – 005. (RESERVED)

### 006. ELECTRONIC SIGNATURES.

Electronic signatures are permissible in accordance with the Uniform Electronic Transactions Act, Title 28, Chapter 50. (3-20-20)T

### 007. -- 099. (RESERVED)

## Rules 100 through 199

## APPLICATION, LICENSURE, AND TERMINATION OF LICENSES

### 100. FEES.

License and other fees:

	Initial License	Renewal	Late Fee	Other
Broker	\$160	\$160	\$25	
Salesperson	\$160	\$160	\$25	
Business Entity	\$50	\$50	\$25	
Branch Office	\$50	\$50	\$25	
Cooperative License	\$100			
Education or License History				\$10
License Certificate				\$15

(3-20-20)T

### 101. – 104. (RESERVED)

### 105. CONDITIONS TO RENEW EXPIRED LICENSE.

The Commission may accept a licensee’s application to renew an expired license upon the following conditions:

(3-20-20)T

**01. Payment of Late Fee.** The applicant must pay the late license renewal fee.

(3-20-20)T

**02. Renewal After Expiration of Active License.** If an active license expires, the licensee must complete and submit with the application an attestation that during the period the license was expired, the licensee either did or did not do or attempt to do any acts described in the definitions of real estate broker or salesperson in

Section 54-2004, Idaho Code.

(3-20-20)T

**03. Investigate or Discipline a Licensee.** Nothing in this Section limits the ability of the Commission to investigate or discipline a licensee for violating Subsection 54-2018(3), Idaho Code, or for violating any other provision of the Real Estate License Law or these rules. (3-20-20)T

**106. -- 116. (RESERVED)**

**117. MANDATORY ERRORS AND OMISSIONS INSURANCE.**

Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho will have in effect and maintain a policy of errors and omissions insurance as required by Section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and will certify such coverage to the Commission in the form and manner prescribed by statute, these rules, and any policy adopted by the Commission. (3-20-20)T

**118. INSURANCE PLAN.**

The Commission will 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. 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. (3-20-20)T

**01. Insurance Carrier.** For the purposes of Section 118: (3-20-20)T

**a.** 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; (3-20-20)T

**b.** 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; and (3-20-20)T

**c.** 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. (3-20-20)T

**02. Approved Policy.** The policy shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, 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. That policy shall provide, at a minimum, the following terms and conditions:

	Limit Liability Coverage for Each Occurrence Not Less Than	Annual Aggregate Limit Not Less Than
Individual License Coverage	\$100,000*	\$300,000*
Firm Coverage	\$500,000*	\$1,000,000*
*Not including costs of investigation and defense		

(3-20-20)T

**a.** A deductible amount of not greater than three thousand five hundred dollars (\$3,500), which includes costs of investigation and defense; (3-20-20)T

**b.** 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; (3-20-20)T

**c.** An extended reporting period per insured of at least ninety (90) days following termination of the

policy period; and (3-20-20)T

d. Prior acts coverage shall be offered to licensees with continuous past coverage. (3-20-20)T

**119. (RESERVED)**

**120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.**

Issuance or renewal of an active license requires certification of compliance that satisfies the requirements of Section 54-2013, Idaho Code. (3-20-20)T

**121. FAILURE TO MAINTAIN INSURANCE.**

Failure of a licensee to obtain and maintain insurance coverage required by Section 54-2013, Idaho Code, regardless whether coverage is later obtained and made retroactive by the carrier, will result in denial or inactivation of any active license and will be deemed insufficient application for licensure under Section 67-5254, Idaho Code. A late insurance renewal is considered failure to maintain insurance. Failure to maintain insurance shall be grounds for disciplinary action. (3-20-20)T

**122. FALSIFICATION OF CERTIFICATES.**

Any licensee who, acting alone or in concert with others, willfully or knowingly causes or allows a certificate of coverage to be filed with, or produced to, the Commission which is false, fraudulent, or misleading, will 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 will entitle such licensee to notice and hearing on the automatic inactivation of license. (3-20-20)T

**123. -- 299. (RESERVED)**

**Rules 300 through 399**  
**BUSINESS CONDUCT**

**300. DISPUTES CONCERNING COMMISSIONS AND FEES.**

The Idaho Real Estate Commission will not be involved in the resolution of disputes between licensees or between licensees and buyers and sellers concerning matters of commissions or fees. (3-20-20)T

**301. (RESERVED)**

**302. TITLE OPINIONS.**

No real estate broker or sales associate will pass judgment upon or give an opinion with respect to the marketability of the title to property in any transaction. (3-20-20)T

**303. LEGAL OPINIONS.**

A broker or sales associate will not discourage any party to a real estate transaction from seeking the advice of an attorney. (3-20-20)T

**304. (RESERVED)**

**305. EDUCATION RECORDS ACCESS.**

As provided for in Section 74-106, Idaho Code, the Commission may enable a designated broker to access and review the education record of any licensee currently licensed with the broker. (3-20-20)T

**306. -- 399. (RESERVED)**

**Rules 400 through 499**  
**CONTINUING EDUCATION**

**400. -- 401. (RESERVED)**

**402. APPROVED TOPICS FOR CONTINUING EDUCATION.**

Continuing education is to assure that licensees possess the knowledge, skills, and competency necessary to function in a manner that protects and serves the public interest, or that promotes the professionalism and business proficiency of the licensee. The knowledge or skills taught in an elective course will enable licensees to better serve real estate consumers. (3-20-20)T

**01. Topics Approved by the Commission.** Topic areas for continuing education, as provided for in Sections 54-2023 and 54-2036, Idaho Code, will be approved by the Commission as they pertain to real estate brokerage practice and actual real estate knowledge. (3-20-20)T

**02. Topics Not Eligible for Continuing Education Credits.** Topics which are specifically exam preparation in nature or not directly related to real estate brokerage practice will not be eligible for approval. (3-20-20)T

**403. -- 499. (RESERVED)**

**Rules 500 through 599**  
**EDUCATION TEACHING STANDARDS**

**500. MINIMUM TEACHING STANDARDS.**

All courses offered for credit by a certified provider will be taught in accordance with the standards and written policies adopted by the Real Estate Commission. Course instructors will conduct themselves in a professional manner when performing instructional duties and will not engage in conduct that criticizes, degrades, or disparages the Commission, any student, other instructor, brokerage, agency, or organization. (3-20-20)T

**01. Certification Requirement.** A course required to be taught by a Commission-certified or Commission-approved instructor will be taught only by an instructor that is currently approved or certified for that course. (3-20-20)T

**02. Outlines and Curriculum.** A course must be taught in accordance with the course outline or curriculum approved by the Commission. (3-20-20)T

**03. Attendance Requirement.** The course instructor will adhere to the Commission's written attendance policy and credit hours will only be submitted for students who have successfully met the attendance requirements for which the course was approved. (3-20-20)T

**04. Maintaining Exam Security.** The instructor will take reasonable steps to protect the security of course examinations and will not allow students to retain copies of final course examinations or the exam answer key. (3-20-20)T

**05. Use of Exam Questions Prohibited.** The instructor will not obtain or use, or attempt to obtain or use, in any manner or form, Idaho real estate licensing examination questions. (3-20-20)T

**501. -- 999. (RESERVED)**