LEGISLATURE OF THE STATE OF IDAHO
Sixtieth Legislature Second Regular Session - 2010

IN THE SENATE

SENATE BILL NO. 1251

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO THE SUBDIVIDED LANDS DISPOSITION ACT; AMENDING SECTION 55-1801, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-1802, IDAHO CODE, TO REVISE DEFINITIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1803, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-1804, IDAHO CODE, TO REQUIRE THAT A CERTAIN STATEMENT BE DELIVERED TO A PURCHASER, A DATED AND SIGNED RECEIPT BE OBTAINED AND PURCHASER BE GIVEN AN OPPORTUNITY TO EXAMINE THE STATEMENT, TO SPECIFY WHEN AN OFFER IS MADE IN THIS STATE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 18, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-1804A, IDAHO CODE, TO PROVIDE A RIGHT OF RESCISSION AND REQUIREMENTS FOR RESCISSION; AMENDING SECTION 55-1805, IDAHO CODE, TO REMOVE REFERENCE TO THE IDAHO COMMISSIONER OF FINANCE AND THE DIRECTOR OF THE DEPARTMENT OF FINANCE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1806, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO AN APPLICATION FOR REGISTRATION OF SUBDIVIDED LANDS, TO REVISE BONDING REQUIREMENTS NECESSARY TO REGISTER ANY SUBDIVIDED LANDS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1807, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO THE PUBLIC OFFERING STATEMENT, TO REQUIRE THAT CERTAIN ADVERTISING MATERIAL BE SUBMITTED TO THE COMMISSION PRIOR TO ITS USE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1808, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE COMMISSION’S EXAMINATION OF AN APPLICATION FOR REGISTRATION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1809, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REGISTRATION AND RENEWAL FEES, TO INCREASE THE APPLICATION AND REGISTRATION MAXIMUM FEE AMOUNT, TO PROVIDE A REDUCTION IN THE MAXIMUM FEE AMOUNT FOR APPLICANTS WHO USE A CERTAIN WEB-BASED DOCUMENT MANAGEMENT SYSTEM, TO GRANT THE COMMISSION AUTHORITY TO PROMULGATE CERTAIN RULES, TO REVISE PROVISIONS RELATING TO THE REJECTION OF AN APPLICATION FOR REGISTRATION, TO REVISE RENEWAL REQUIREMENTS, TO PROVIDE THAT CERTAIN FACTS DO NOT CONSTITUTE COMMISSION FINDINGS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1810, IDAHO CODE, TO REQUIRE THAT SUBDIVIDERS FILE A RENEWAL REPORT, TO PROVIDE A DUTY TO REPORT CONVICTIONS AND JUDGMENTS, TO PROVIDE A RENEWAL EXAMINATION PROCESS AND TO GRANT THE COMMISSION AUTHORITY TO ISSUE A CEASE AND DESIST ORDER; AMENDING SECTION 55-1811, IDAHO CODE, TO REVISE THE COMMISSION’S GENERAL POWERS AND DUTIES, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1812, IDAHO CODE, TO REMOVE REFERENCE TO THE PURCHASE OF SUBDIVIDED LANDS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1813, IDAHO CODE, TO REVISE PROVISIONS RELATING TO INVESTIGATIONS AND PROCEEDINGS, TO PROVIDE CORRECT TERMINOLOGY
AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1814, IDAHO
CODE, TO REVISE PROVISIONS RELATING TO CEASE AND DESIST ORDERS,
TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS;
AMENDING SECTION 55-1815, IDAHO CODE, TO REVISE PROVISIONS RELATING
TO THE REVOCATION OF A REGISTRATION AND TO MAKE TECHNICAL CORRECTIONS;
AMENDING SECTION 55-1817, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY
AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1818, IDAHO
CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-1819, IDAHO
CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS;
AMENDING CHAPTER 18, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW
SECTION 55-1819A, IDAHO CODE, TO PROVIDE THAT ANY OFFER OR DISPOSITION
MADE IN VIOLATION OF CHAPTER 18, TITLE 55, IDAHO CODE, CONSTITUTES
AN UNFAIR AND DECEPTIVE ACT OR PRACTICE; AMENDING SECTION 55-1820,
IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS HAVE SUBMITTED TO THE
JURISDICTION OF THIS STATE AND OF THE ADMINISTRATIVE JURISDICTION OF
THE COMMISSION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL
CORRECTIONS; AMENDING SECTION 55-1821, IDAHO CODE, TO MAKE TECHNICAL
CORRECTIONS; AMENDING SECTION 55-1822, IDAHO CODE, TO PROVIDE CORRECT
TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
55-1823, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE
TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 55-1801, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1801. TITLE. This act chapter shall be known and may be cited as the
"Subdivided Lands Disposition Act."

SECTION 2. That Section 55-1802, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1802. DEFINITIONS. When used in this act chapter, unless the
context otherwise requires:

(1) "Commission" means the Idaho real estate commission;

(2) "Disposition" includes sale, lease, assignment, award by lottery
or any other transaction concerning a subdivision, if undertaken for gain or
profit;

(3) "Offer" includes any inducement, solicitation or attempt to
encourage a person to acquire an interest in land, if undertaken for gain or
profit;

(4) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust,
partnership, unincorporated association, two (2) or more of any of the
foregoing having a joint or common interest or any other legal or commercial
entity;

(5) "Purchaser" means a person who acquires or attempts to acquire or
succeeds to an interest in land;

(6) "Subdivider" means any owner of subdivided land who offers it for
disposition or the principal agent of an inactive owner;
"Subdivision" and or "subdivided lands" means and includes the following:

(a) any land situated outside the state of Idaho that is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units or interests and also includes any land, whether contiguous or not, if five (5) or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale.

(b) In addition to the definition stated in subsection 7.a. above, "subdivision" and "subdivided lands" mean any time shared property located within or without this state which is offered to purchasers or is proposed to be offered to purchasers.

(6) "Time shared property" means any real property in which the use and occupancy rights are divided or proposed to be divided into more than thirteen (13) units, interests or parcels in accordance with a fixed or variable time schedule on a periodic basis that allocates the use or occupancy among the persons holding similar interests, whether such use or occupancy rights are granted by deed, contract or share certificate.

SECTION 3. That Section 55-1803, Idaho Code, be, and the same is hereby amended to read as follows:

55-1803. ADMINISTRATION OF ACT CHAPTER. This act chapter shall be administered by the Idaho real estate commission.

SECTION 4. That Section 55-1804, Idaho Code, be, and the same is hereby amended to read as follows:

55-1804. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided lands or the transaction is exempt under section 55-1805, Idaho Code, it shall be unlawful for any person to make in this state:

1. Any offer or to dispose disposition of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this act chapter.

2. To dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

3. Any offer or dispose disposition of any interest in a time shared property located within or without this state prior to the time that the time shared property is registered in accordance with this act chapter.

4. Any disposition of any interest in subdivided lands without delivering to the purchaser an effective current public offering statement, obtaining a dated and signed receipt and affording the purchaser a reasonable opportunity to examine the statement.

An offer is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.
SECTION 5. That Chapter 18, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-1804A, Idaho Code, and to read as follows:

55-1804A. RIGHT OF RESCISSION. Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by personally delivering or sending by certified mail, a written notice of cancellation to the subdivider on or before 11:59 p.m. of the fifth calendar day after execution of the contract or agreement of disposition. The contract or agreement of disposition shall state this right and terms in boldface type on the signature page and shall include the address of the subdivider.

SECTION 6. That Section 55-1805, Idaho Code, be, and the same is hereby amended to read as follows:

55-1805. EXEMPTIONS. [1] Unless the method of disposition is adopted for the purpose of evasion of this act chapter, the registration provisions of this act chapter do not apply to offers or dispositions of an interest in land:

   (a) By a purchaser of subdivided lands for his own account in a single or isolated transaction;
   (b) If fewer than five (5) separate lots, parcels, units or interests in subdivided lands are offered by a person in a period of twelve (12) months;
   (c) By any salaried employee in the normal course of his employment for an owner who is not in the business of making real estate sales when the transaction is incidental to the principal activities or business of the owner and where no added incentive such as a bonus or commission or other fee is paid to the employee for the transaction;
   (d) By any person holding a duly executed power of attorney from the owner or principal agent of an inactive owner when the power of attorney is executed for the performance of a specific real estate transaction;  
   (e) To persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage, in the business of construction of buildings for resale;
   (f) Pursuant to court order;
   (g) By any government or government agency; or
   (h) As cemetery lots or interests.

[2] Unless the method of disposition is adopted for the purpose of evasion of this act chapter, the registration provisions of this act chapter do not apply to offerings and dispositions of securities currently registered with the Idaho commissioner of the department of finance, or a subdivision as to which the commission has granted an exemption as provided in section 55-1811.

SECTION 7. That Section 55-1806, Idaho Code, be, and the same is hereby amended to read as follows:
55-1806. APPLICATION FOR REGISTRATION. (1) The application for registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:

(a) An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;

(b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities in existence or under construction, and other off-site improvements, in existence or under construction;

(c) The state or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant’s name, address, and the form, date, and jurisdiction of organization, and the address of each of its offices in this state;

(e) If a corporation, partnership or other legal entity, the name, address, and principal occupation for the past five (5) years of every director, and officer, if the applicant general partner, member, manager or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

(f) A statement indicating whether, within the past ten (10) years, the applicant, its individual directors, officers, general partners, members or managers have been:

(i) Convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States or any other state or foreign country;

(ii) Adjudicated liable and had a civil judgment entered against him for making a false or misleading promotional plan involving land dispositions; or

(iii) Subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.

(g) A statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the commission;

(h) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
(i) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(ii) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(iii) Copies of instruments creating easements, restrictions or other encumbrances affecting the subdivided lands;

(iv) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(v) A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for sewage disposal, water and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion and a statement as to the provisions for improvement maintenance;

(vi) A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(vii) A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person;

(viii) The proposed public offering statement;

(ix) Such current financial statements, certified or otherwise, as the commission may require; and

(x) Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.

(2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(3) The subdivider shall immediately report to the commission any material changes in the information contained in an application for registration.

(4) As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file a bond executed
to the state of Idaho for the use, benefit, and protection of any person and
conditioned for the faithful compliance by the subdivider, his agents, and
his employees with all of the provisions of this act, as amended, chapter and
with all rules, regulations, and orders made pursuant thereto and for the
faithful performance and payment of all obligations of the subdivider, his
agents, and his employees in connection with the registration, including any
order to pay the costs and attorney’s fees incurred by the commission or by
any other agency of this state, in an administrative or judicial proceeding
to enforce the provisions of this chapter or the provisions of chapter 6,
title 48, Idaho Code. The indemnity bond shall be of such type and in such
form and shall be in such amount as the commission shall deem necessary to
protect purchasers when the volume of business of the subdivider and other
relevant factors are taken into consideration, but in no event less than ten
comply with the provisions of this subsection and shall be in the amount of
one hundred thousand dollars ($100,000). Any such bond shall have as surety
thereon a surety company authorized to do business in this state. Such bond
shall remain in effect for one (1) calendar year after the earlier to occur
of the following:

(a) The subdivision is no longer required to be registered pursuant to
this chapter;
(b) The subdivider elects to discontinue offering for disposition
interests in the subdivision and therefor elects not to renew the
registration of the subdivision pursuant to this chapter;
(c) The provisions of this chapter no longer require the subdivider to
post any bond; or
(d) The subdivider deposits sufficient funds in an approved escrow
account or trust fund in lieu of the bond; provided, the bond shall
continue to insure any covered claim filed against the subdivider, and
of which the commission received written notice during the time the bond
was in effect and until the claim has been finally resolved, including
any appeal process.
(5) In lieu of filing a bond, the commission may accept funds deposited
by the subdivider into an escrow depository acceptable to the commission or
into a trust account acceptable to the commission. The deposited funds shall
be maintained for the same purposes and upon the same terms and conditions as
set forth in subsection (4) of this section.

SECTION 8. That Section 55-1807, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1807. PUBLIC OFFERING STATEMENT. (a) A public offering statement
shall disclose fully and accurately the physical characteristics of the
subdivided lands offered and shall make known to prospective purchasers all
unusual and material circumstances or features affecting the subdivided
lands. The proposed public offering statement submitted to the commission
shall be in a form prescribed by it and shall include the following:
(b) The name and principal address of the subdivider;
(c) A general description of the subdivided lands stating the total
number of lots, parcels, units or interests in the offering;
(d) The significant terms of any encumbrances, easements, liens and
restrictions, including zoning and other regulations, affecting the
subdivided lands and each unit or lot, and a statement of all existing
taxes and existing or proposed special taxes or assessments which that
affect the subdivided lands;
(4) A statement of the use for which the property is offered;
(5) Information concerning improvements in existence or under
construction including streets, water supply, levees, drainage
control systems, irrigation systems, sewage disposal facilities
and customary utilities, and the estimated cost, date of completion
and responsibility for construction and maintenance of existing and
proposed improvements which that are referred to in connection with the
offering or disposition of any interest in subdivided lands; and
(6) Such of the information contained in the application for
registration, and any amendments thereto, and such other information
as the commission may require as being necessary or appropriate in the
public interest or for the protection of purchasers.
(2) The public offering statement shall disclose, in a prominent place
and in bold type, the right of rescission as required in section 55-1804A,
Idaho Code.
(3) The public offering statement shall not be used for any promotional
purposes before registration of the subdivided lands and afterwards only
if it is used in its entirety. No person may advertise or represent that
the commission approves or recommends the subdivided lands or disposition
thereof. No portion of the public offering statement may be underscored,
italicized, or printed in larger or heavier or different color type than
the remainder of the statement unless the commission requires it except as
required by statute or rule of the commission.
(4) The commission may require the subdivider to alter or amend
the proposed public offering statement in order to assure full and fair
disclosure to prospective purchasers, and no change in the substance of the
promotional plan or plan of disposition or development of the subdivision
may be made after registration without notifying the commission and without
making appropriate amendment of the public offering statement. A public
offering statement is not current unless all amendments are incorporated.
(5) All advertising material of any nature prepared for use in
connection with the offer and disposition of any interests in subdivided
lands registered under this chapter shall be submitted to the commission
prior to its use.

SECTION 9. That Section 55-1808, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1808. INQUIRY AND EXAMINATION BY COMMISSION OF APPLICATION FOR
REGISTRATION. Upon receipt of an application for registration in proper
form, the commission shall forthwith initiate an examination of the
application for registration to determine that:
(1) The requirements of section 55-1806, Idaho Code, have been
satisfied, the subdivider can convey or cause to be conveyed the interest in
subdivided lands offered for disposition if the purchaser complies with the
terms of the offer and, when appropriate, that release clauses, conveyances
in trust, escrow and impoundage provisions and other safeguards have been
provided;
(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the commission in its rules and regulations and afford full and fair disclosure;

4. The subdivider has not, or if a corporation, its officers, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;

5. There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation, partnership or other legal entity, its individual officers, directors, general partners, members, managers or other such principals are contemplating a fraudulent or misleading sales promotion; and

(4) The public offering statement requirements of this act chapter have been satisfied.

SECTION 10. That Section 55-1809, Idaho Code, be, and the same is hereby amended to read as follows:

55-1809. NOTICE OF FILING -- REGISTRATION -- REJECTION OF APPLICATION FEES. (1) Upon receipt of the application for registration in proper form and of a base registration fee of two hundred fifty dollars ($250), the commission shall issue a notice of filing to the applicant. In addition to the application fee, the following fees are payable prior to issuance of an order of registration; five dollars ($5.00) per lot, parcel, unit or interest numbering fifty (50) to two hundred fifty (250); four dollars ($4.00) per lot, parcel, unit or interest numbering two hundred fifty-one (251) to five hundred (500); three dollars ($3.00) per lot, parcel, unit or interest numbering five hundred one (501) to seven hundred fifty (750); and two dollars and fifty cents ($2.50) for each lot, parcel, unit or interest numbering in excess of seven hundred fifty (750). The maximum application and registration fees is twenty-five hundred shall not exceed a maximum fee of three thousand dollars ($3,000).

(2) If an applicant submits the required filings using the web-based document management system sponsored by the association of real estate license law officials, the fees prescribed in this section, including the maximum fee, shall be reduced by twenty-five percent (25%). The reduction does not apply to late fees. The commission may promulgate rules changing or eliminating the fee reduction.

(3) Within ninety (90) days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(4) If the commission affirmatively determines, upon inquiry and examination, that the requirements of sections 55-1806 through 55-1808,
Idaho Code, have been met, it shall enter an order registering the subdivided
lands and shall designate the form of the public offering statement.

(5) If the commission determines, upon inquiry and examination,
that any of the requirements of sections 55-1806 through 55-1808, Idaho
Code, have not been met, the commission shall notify the applicant that the
application for registration must be corrected in the particulars specified
within ten (10) days or within the time otherwise allowed by the commission.
If the requirements are not met within the time allowed, the commission shall
enter an order rejecting the registration which shall include the findings
of fact upon which the order is based state the basis for the rejection and
advise the applicant of his right to request a hearing before the commission.
The order rejecting the registration shall not become effective for twenty
(20) days after service of the order, during which time the applicant may
petition for reconsideration and shall be entitled to make a written request
for a hearing. If a hearing is not timely requested, the order shall become
the final agency action subject to judicial review under chapter 52, title
57, Idaho Code.

(6) Registration under this act chapter shall be effective as of the
date of the registration order for a period of one (1) year and may be renewed
for additional periods of one (1) year by filing, not later than fifteen (15)
days prior to the expiration of a registration, a renewal application in
such form and containing such information as the commission shall prescribe,
including the renewal report provided in section 55-1810, Idaho Code,
"together with the payment of a base renewal fee of two hundred fifty dollars
($250), plus one dollar ($1.00) for each lot, parcel, unit or interest. The
total fees for a timely renewal application shall not exceed a maximum fee of
three thousand dollars ($3,000). A late renewal fee of twenty-five dollars
($25.00) per day will be charged for each day the renewal application is
late, with a maximum late fee of five hundred dollars ($500). A registration
that is not renewed within twenty (20) days of expiration shall be deemed
"canceled and may not thereafter be renewed under the provisions of this
section. Each amendment to the original registration requires a twenty-five
dollar ($25.00) fee. The initial registration and any renewal fees shall may
not be returned or refunded for any reason.

(7) All fees collected by the commission under this act chapter
shall be deposited at least monthly with the state treasurer and said funds
so deposited shall be deposited to the credit of the special real estate
fund. All funds so deposited are hereby appropriated to the commission
for the purpose of carrying out the provisions of this act chapter. All
expenditures from said fund by the commission under the provisions of this
act 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 purpose
of carrying out the objects of this act chapter and in the exercise of the
powers herein granted, the commission shall have powers to make orders
concerning the disbursement of the moneys in said 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 such other expenses as
deemed necessary.
(8) The fact that an application for registration and public offering statement have been filed, or the fact that an order of registration has been issued, does not constitute a finding by the commission that any document is true, complete and not misleading, nor does either fact mean that the commission has determined in any way the merits, qualifications of or given its approval or recommendation to any person or subdivision. It is unlawful for any person to make, or cause to be made, to any prospective purchaser any representation inconsistent with the provisions of this subsection.

SECTION 11. That Section 55-1810, Idaho Code, be, and the same is hereby amended to read as follows:

55-1810. ANNUAL RENEWAL REPORT -- DUTY TO REPORT CONVICTIONS AND JUDGMENTS. (1) Within thirty (30) days after each annual anniversary date of an order registering subdivided lands, the Subdivider shall file a renewal report in the form prescribed by the commission. The renewal report shall reflect any material changes in information contained in the original application for registration. The renewal report must be filed with the renewal application not later than fifteen (15) days before the registration expiration date.

(2) If at any time after filing an initial or renewal application, a Subdivider or any of its individual directors, officers, general partners, members, managers or other such principals, is convicted, has a judgment entered against it or is found liable in any court or administrative tribunal for any conduct referenced in section 55-1806 or 55-1815, Idaho Code, the Subdivider shall, within thirty (30) days, forward to the commission a copy of the judgment, order or other document evidencing the same.

(3) The commission may initiate a renewal examination of the kind provided in section 55-1808, Idaho Code. If the commission determines that any of the requirements of sections 55-1806 through 55-1808, Idaho Code, have not been met, it shall notify the Subdivider that the deficiency must be corrected within twenty (20) days or such other time as allowed by the commission. If the requirements are not met within the time allowed, the commission may, notwithstanding the provisions of section 55-1814, Idaho Code, issue a cease and desist order according to the emergency procedures of chapter 52, title 67, Idaho Code, barring further sales of the subdivided lands.

SECTION 12. That Section 55-1811, Idaho Code, be, and the same is hereby amended to read as follows:

55-1811. GENERAL POWERS AND DUTIES. (1-7) The commission shall have the authority to promulgate, to amend, and to repeal reasonable rules and regulations for the administration and enforcement of this act and chapter. Such rules and regulations shall may include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for bond, escrow or trust agreements or other means to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land for which they contracted; provisions for operating procedures; and
such other rules and regulations as are necessary or proper to accomplish the
purposes of this act chapter.

(3.) All advertising material of any nature whatsoever prepared for use
in connection with the offer and disposition of any interests in subdivided
lands registered under this act shall be submitted to and approved by the
commission prior to its use. The commission may revoke a registration ordered
under the provisions of this chapter, issue a cease and desist order and
assess costs and attorney’s fees for the cost of any investigation and
administrative or other proceedings against any person who is found to have
violated any section of this chapter, the commission’s administrative rules
or any order of the commission. If any amounts assessed against a subdivider
by final order of the commission become otherwise uncollectible or payment
is in default, and only if all of 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, including an action against any
bond filed or escrow or trust funds deposited pursuant to section 55-1806,
Idaho Code.

(5-) Whenever it appears that a person has engaged or is about to
engage in acts or practices which constitute or will constitute a
violation of the provisions of this act chapter or of a rule or regulation
or order hereunder, the commission, with or without prior administrative
proceedings, may bring an action in any district court to enjoin the acts
or practices and to enforce compliance with this act chapter or any rule
or regulation or order hereunder. Upon a proper showing, a permanent or
temporary injunction or restraining order may be granted.

(4-) The commission may intervene in a suit involving subdivided lands.
In any suit by or against a subdivider involving subdivided lands, the
subdivider promptly shall furnish the commission notice of the suit and
copies of all pleadings.

(5-) The commission may:

(a) Accept registrations filed in other states or with the federal
government;

(b) Contract with the association of real estate license law officials
to use its web-based file management system to accept registrations and
related filings and to reduce the registration fees for applicants who
use the web-based system to file registration documents;

(c) Contract with similar agencies in this state or other jurisdictions
to perform investigative functions.

(6-) The commission shall cooperate with similar agencies in other
jurisdictions to establish uniform filing procedures and forms, uniform
public offering statements, advertising standards, rules, regulations, and
common administrative practices.

7- The commission may exempt a subdivision of ten (10) or fewer lots,
parcels, units, or interests from the provisions of this act if it determines
that the plan of promotion and disposition is primarily directed to persons
in the local community in which the subdivision is located.

SECTION 13. That Section 55-1812, Idaho Code, be, and the same is hereby
amended to read as follows:
55-1812. FRAUDULENT PRACTICES. It shall be a fraudulent practice and it shall be unlawful:

(1) For any person knowingly to subscribe to or make or cause to be made any materially false statement or representation in any application, financial statement or other document or statement required to be filed under any provision of this act chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) For any person, in connection with the offer or disposition or purchase of subdivided lands, directly or indirectly, to employ any device, scheme or artifice to defraud;

(3) For any person, in connection with the offer or disposition or purchase of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) For any person, in connection with the offer or disposition or purchase of subdivided lands, directly or indirectly, to engage in any act, practice or course of business which that operates or would operate as a fraud or deception upon purchasers or the public.

SECTION 14. That Section 55-1813, Idaho Code, be, and the same is hereby amended to read as follows:

55-1813. INVESTIGATIONS AND PROCEEDINGS. (1) The commission shall may investigate any subdivision offered for disposition in this state and the actions of any person who makes any offer or disposition of subdivided lands requiring registration under this chapter. In the conduct of the investigation, the commission may:

(a) Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States veterans administration or any other federal agency or any state agency having comparable duties in relation to subdivisions;

(b) Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor that affects the utility of interests within the subdivision, and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;

(c) Require an on-site inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an on-site inspection shall be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;

(d) Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate the provisions of this act chapter or any rule, regulation or order hereunder, or to aid in the enforcement of this act chapter or in prescribing rules and regulations and forms hereunder; and
Require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.

For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the request of any party the commission or any person designated by it shall have the power to administer oaths, take depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it or deposition authorized by it, pertaining in any manner to any matters of which it has authority to investigate and for that purpose the commission may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a civil case is returned. The fees and mileage of witnesses shall be the same as that allowed in the district courts in civil cases. In any cases of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which such disobedience, neglect or refusal occurs, upon application of the commission, to compel obedience in proceedings for contempt as in the case of disobedience of the requirements of any subpoena issued from such court or for refusal to testify therein. The person accused in such proceeding shall have the same right of subpoena upon making application to the commission as set out in this act.

Prior to the service of any subpoena authorized by this act, the commission or the accused person must secure an order authorizing the service of the subpoena from a district judge. Application to a district judge for authorization to serve a subpoena shall be on ex parte motion supported by an affidavit of a member of the commission, the accused person or his attorney, setting forth the reasons why the person applying for permission to serve the subpoena believes the testimony or evidence to be obtained will be pertinent to the investigation, inquiry or hearing. The order shall be filed with the commission.

The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against said person.

Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with chapter 52, title 67, Idaho Code, and IDAPA 33.01.02, rules of practice and procedure of the Idaho real estate commission governing contested cases.

SECTION 15. That Section 55-1814, Idaho Code, be, and the same is hereby amended to read as follows:
55-1814. CEASE AND DESIST ORDERS. (1) If the commission determines after notice and hearing that a person has:

(a) Violated any provision of this chapter;
(b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands;
(c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;
(d) Disposed of any subdivided lands which have not been registered with the commission; or
(e) Violated any lawful order or rule or regulation of the commission;

it may file an action in the district court for issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the district court will carry out the purposes of this chapter.

(2) If the district court makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, such as in the case of the subdivider’s failure to maintain the statutory requirements for registration, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the district court may require that the commission shall, whenever practicable, by telephone or otherwise, give notice of the proposal to apply petition for a temporary cease and desist order to the person. Every temporary cease and desist order shall be promptly served upon the person ordered and shall include in its terms the reasons for the order and a provision that, upon if requested by the person within twenty (20) days of service, the matter will be scheduled for a hearing, which will be held promptly within a reasonable time to determine whether or not the order becomes permanent.

SECTION 16. That Section 55-1815, Idaho Code, be, and the same is hereby amended to read as follows:

55-1815. REVOCATION. (1) A registration may be revoked by the commission after notice and hearing upon a written finding of fact that the subdivder has:

(a) Failed to maintain the requirements for continued registration;
(b) Failed to comply with the terms of a cease and desist order;
(c) In any court or administrative tribunal, been convicted, or found liable in any court subsequent to the filing of the application for registration of or had a registration revoked for a crime, or tort or other misconduct involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in real estate transactions, land dispositions, including the offering or promotion of land disposition;
(d) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
(e) Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to
reinstate any registration or to approve any promotional plan or
public offering statement; or
Made intentional misrepresentations or concealed material facts
in an application for registration.
Findings of fact, if set forth in statutory language, shall be accompanied
by a concise and explicit statement of the underlying facts supporting the
findings.
If the district court commission finds after notice and hearing
that the subdivider has been guilty of committed a violation for which
revocation could be ordered, it may issue a cease and desist order instead.

SECTION 17. That Section 55-1817, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1817. REAL ESTATE LICENSE REQUIRED. No real estate broker or
salesperson shall offer or dispose of subdivided lands within or from
this state, except in dispositions and transactions exempt under section
55-1805, Idaho Code, unless said real estate broker or salesperson is
licensed pursuant to chapter 20, title 54, Idaho Code.

SECTION 18. That Section 55-1818, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1818. EXTRADITION. In proceedings for extradition of a person
charged with a crime under this chapter, it need not be shown that the
person whose surrender is demanded has fled from justice or at the time of the
commission of the crime was in the demanding or other state.

SECTION 19. That Section 55-1819, Idaho Code, be, and the same is hereby
amended to read as follows:

55-1819. CIVIL REMEDY. Every disposition made in violation of
any of the provisions of this chapter, or of any order issued by the
commission under any of the provisions of this chapter, shall be voidable
at the election of the purchaser. The person making such disposition, and
every director, officer, salesperson or agent of or for such person who
shall have participated or aided in any way in making such disposition, shall
be jointly and severally liable to such purchaser in any action at law in
any court of competent jurisdiction for the consideration paid for the lot,
parcel, unit or interest, together with interest at the rate of six percent
(6%) per year from the date of payment, property taxes and assessments paid,
court costs and reasonable attorney’s fees, less the amount of any income
received from the subdivided lands, upon tender of appropriate instruments
of reconveyance made at any time before the entry of judgment. If the
purchaser no longer owns the lot, parcel, unit or interest in subdivided
lands, he may recover the amount that would be recoverable upon a tender of
a reconveyance less the value of the land when disposed of and less interest
at the rate of six percent (6%) per year on that amount from the date of
disposition.
(2) No action shall be brought under this section for the recovery of the consideration paid after five (5) years from the date of such disposition.

(3) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or regulation or order under it is void.

(4) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

SECTION 20. That Chapter 18, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-1819A, Idaho Code, and to read as follows:

55-1819A. NONCOMPLIANCE -- UNFAIR PRACTICE UNDER THE IDAHO CONSUMER PROTECTION ACT. Any offer or disposition made in violation of this chapter constitutes an unfair and deceptive act or practice pursuant to chapter 6, title 48, Idaho Code.

SECTION 21. That Section 55-1820, Idaho Code, be, and the same is hereby amended to read as follows:

55-1820. JURISDICTION. (1) Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims or causes of action arising under this chapter if:

(a) The subdivider’s principal office is located in this state; or

(b) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

(2) Any person who makes a disposition of subdivided lands in this state, whether or not the subdivided lands are registered in this state, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the commission and shall be subject to all penalties and remedies available under Idaho law for any violation of the provisions of this chapter.

SECTION 22. That Section 55-1821, Idaho Code, be, and the same is hereby amended to read as follows:

55-1821. SERVICE OF PROCESS. In addition to the methods of service provided for in the Idaho rules of civil procedure and Idaho statutes, service may be made on a person who has filed a consent to service of process by delivering a copy of the process to the office of the commission, but it is not effective unless the plaintiff (which may be the commission in a proceeding instituted by it):

(1) Forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address
The plaintiff’s affidavit of compliance with this section is filed in the case on or before the return day of the process, if any or within such further time as the court allows.

SECTION 23. That Section 55-1822, Idaho Code, be, and the same is hereby amended to read as follows:

55-1822. EVIDENTIARY MATTERS. (1) In any action, civil or criminal, where a defense is based upon any exemption provided for in this act chapter, the burden of proving the existence of such exemption shall be upon the party raising such defense.

(2) In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this act chapter shall be admissible in any such action.

SECTION 24. That Section 55-1823, Idaho Code, be, and the same is hereby amended to read as follows:

55-1823. PENALTIES. Any person who shall willfully violate any provision of this act chapter or who willfully violates any rule or regulation or order of the commission made and served upon said person pursuant to the provisions of this act chapter, or who shall willfully engage in any act, practice or transaction declared by any provision of this act chapter to be unlawful shall be guilty of a felony.