

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 99

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO REAL ESTATE LICENSES; AMENDING SECTION 54-2004, IDAHO CODE,
2 TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 54-2011, IDAHO CODE, TO AUTHORIZE THE COMMISSION TO ISSUE A COOPERATIVE
4 LICENSE TO AN OUT-OF-STATE BROKER UNDER CERTAIN CONDITIONS; AMEND-
5 ING CHAPTER 20, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
6 54-2017, IDAHO CODE, TO PROVIDE TERMS AND CONDITIONS UNDER WHICH A COOP-
7 ERATIVE LICENSE MAY BE ISSUED FOR A COMMERCIAL REAL ESTATE TRANSACTION;
8 AND AMENDING SECTION 54-2020, IDAHO CODE, TO AUTHORIZE THE COMMISSION
9 TO ESTABLISH A COOPERATIVE LICENSE FEE AND TO MAKE A TECHNICAL CORREC-
10 TION.
11

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

13 SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 54-2004. DEFINITIONS. As used in this chapter:

16 (1) "Accredited college or university" means an institution accredited
17 by the regional accrediting associations, as reported in the most current
18 publication of the accredited institutions of postsecondary education.

19 (2) "Acting in this state" means and includes dealing with any inter-
20 est in real property, or a business opportunity involving an interest in real
21 property, that is situated in the state of Idaho, or conducting or attempt-
22 ing to conduct or solicit real estate business with residents of the state of
23 Idaho.

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

26 (4) "Associate broker" means an individual who has qualified person-
27 ally as a real estate broker in Idaho under this chapter, but is licensed un-
28 der, associated with and represents a designated broker in the performance
29 of any act described in subsection (369) of this section.

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

34 (6) "Broker price opinion" means a written price opinion of the esti-
35 mated price for identified real property prepared or rendered by an actively
36 licensed broker or associate broker, for a purpose other than a prospective
37 listing or sale, and that complies or purports to comply with the require-
38 ments and content provision of section 54-4105, Idaho Code.

39 (7) "Brokerage company" means a real estate business, whether a sole
40 proprietorship, a legal entity, or any other licensed person engaged in acts
41 requiring a real estate license in Idaho, that is conducting or holding it-

1 self out as conducting the business of real estate through a designated bro-
2 ker.

3 (8) "Brokerage representation agreement" means a written contract be-
4 tween a buyer, seller, or both, and a real estate brokerage for agency repre-
5 sentation in a regulated real estate transaction.

6 (9) "Business conduct and office operations course" means the compo-
7 nent of the advanced real estate course that is required in order to obtain
8 a broker license and that teaches business practices and office operations
9 of the brokerage, including recordkeeping, trust account procedures and the
10 laws governing those practices.

11 (10) "Business day" means and includes each day of the week except Sat-
12 urday, Sunday or any other legal holiday enumerated in section 73-108, Idaho
13 Code.

14 (11) "Business name" means the name in which the brokerage company is
15 licensed by the commission.

16 (12) "Business opportunity" means and includes an established busi-
17 ness, ~~good will~~ goodwill of an established business, or any interest
18 therein, or any one (1) or combination thereof, where a sale or transfer of
19 an interest in land including, but not limited to, an assignment of a lease,
20 is involved in the transaction.

21 (13) "Commercial real estate" means a business opportunity as defined
22 in this section, or any real estate other than real property improved by one
23 (1) to four (4) residential dwelling units. Commercial real estate does
24 not include residential dwelling units such as condominiums, townhouses or
25 homes in a subdivision when that real estate is sold, leased or otherwise
26 conveyed on a unit-by-unit basis, even though the units may be part of a
27 larger building or parcel of real estate containing more than four (4) units.

28 (14) "Commission" means the Idaho real estate commission, unless the
29 context clearly indicates a different meaning.

30 (145) "Commission core course" means the annual course covering the
31 twelve (12) month period between July 1 and June 30, which contains curricu-
32 lum identified by the commission that stresses that year's trends in real es-
33 tate practices and changes in laws in real estate-related industries. A core
34 course must contain no more than four (4) classroom hours of instruction.

35 (156) "Continuing education elective course" means a real estate course
36 offering, other than the commission core course for which continuing educa-
37 tion credit hours may be obtained as provided in section 54-2023, Idaho Code.

38 (167) "Convicted" means a plea of nolo contendere or guilty, a jury ver-
39 dict of guilty or a court decision of guilt whether or not a judgment or sen-
40 tence has been imposed, withheld or suspended.

41 (178) "Cooperative sale" means a transaction involving two (2) or more
42 brokers.

43 (189) "Council" means the Idaho real estate education council.

44 (1920) "Dealer in options" means any person, firm, partnership, asso-
45 ciation or corporation who shall directly or indirectly take, obtain or use
46 options to purchase, exchange, lease option or lease purchase real property
47 or any interest therein for another or others whether or not the options
48 shall be in his or its name and whether or not title to the property shall pass
49 through the name of the person, firm, partnership, association or corpora-

1 tion in connection with the purchase, sale, exchange, lease option or lease
2 purchase of the real property, or interest therein.

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

7 (212) "Distance learning course" means, in relation to a real estate
8 course offering, a real estate course that is delivered, not as a live
9 course, but through a medium in which the instructor and student are sepa-
10 rated by both distance and time.

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

19 (234) "Executive director" means the executive director of the Idaho
20 real estate commission.

21 (245) "Expired license" means the status of a license when the license
22 period has expired and the license is not renewed or provisional license
23 granted, and before the license is terminated.

24 (256) "Fee or commission" means a payment, actual, promised or ex-
25 pected, as compensation for the performance of any act requiring a real
26 estate license.

27 (267) "Inactive license" means the status of a license that is not ex-
28 pired, terminated, suspended or revoked, and during which inactive period
29 the license holder is not authorized to act as or associate with a designated
30 broker.

31 (278) "Legal business entity" means and includes any type of corpora-
32 tion, partnership, limited liability company or limited liability partner-
33 ship, a governmental entity, trust or other entity capable of conducting
34 business.

35 (289) "Licensee" means any person who is licensed in accordance with
36 this chapter to engage in the business or act in the capacity of real estate
37 broker, associate broker or real estate salesperson.

38 (2930) "Limited broker" means a broker individually qualified to do
39 business in Idaho, but who may not have associate brokers or salespersons
40 licensed with that broker.

41 (301) "Live presentation" means, in reference to a real estate course
42 offering, a real estate course that is personally presented by the instruc-
43 tor and personally attended by the student at the same facility, or, if sepa-
44 rated by distance, the instructor and student are connected by contemporane-
45 ous, two-way audio and visual communication.

46 (312) "Main office" means the principal location where the real estate
47 broker is licensed to transact business.

48 (33) "Out-of-state broker" means a person who holds the equivalent of
49 an active Idaho designated broker license in another jurisdiction who is not
50 licensed as a real estate broker under this chapter.

1 (34) "Out-of-state sales associate" means a person who holds the equiv-
2 alent of an active Idaho salesperson or associate broker license in another
3 jurisdiction who is not licensed as a salesperson or associate broker under
4 this chapter.

5 (325) "Person" means and includes an individual, or any legal business
6 entity.

7 (336) "Post license course" means a commission-approved or certified
8 elective course that is specifically oriented toward salespersons in their
9 first two (2) years of Idaho practice. The course must contain no more than
10 twelve (12) classroom hours of instruction.

11 (347) "Primary Idaho license" means an Idaho real estate license that is
12 not contingent upon continuance of a license in another state or jurisdic-
13 tion.

14 (358) "Provisional license" means an extension of the period of active
15 licensure, beyond the licensee's expiration date, granted by the commission
16 for the purpose of allowing the licensee to complete the continuing educa-
17 tion requirements set forth in section 54-2023, Idaho Code, or for any other
18 purpose allowed by this chapter.

19 (369) "Real estate broker" means and includes:

20 (a) Any person other than a real estate salesperson, who, directly or
21 indirectly, while acting for another, for compensation or a promise or
22 an expectation thereof, engages in any of the following: sells, lists,
23 buys, or negotiates, or offers to sell, list, buy or negotiate the pur-
24 chase, sale, option or exchange of real estate or any interest therein
25 or business opportunity or interest therein for others;

26 (b) Any actively licensed broker while, directly or indirectly, acting
27 on the broker's own behalf;

28 (c) Any person who represents to the public that the person is engaged
29 in any of the ~~above~~ activities in this subsection;

30 (d) Any person who directly or indirectly engages in, directs, or takes
31 any part in the procuring of prospects, or in the negotiating or closing
32 of any transaction which does or is calculated to result in any of the
33 acts ~~above set forth~~ in this subsection;

34 (e) A dealer in options as defined in this section.

35 (3740) "Real estate salesperson" or "salesperson" means any person who
36 has qualified and is licensed as a real estate salesperson in Idaho under
37 this chapter, and is licensed under, associated with, and represents a des-
38 ignated broker in the performance of any act described in subsection (369) of
39 this section.

40 (3841) "Real estate settlement procedures act" means the real estate
41 settlement procedures act of 1974, as amended, 12 U.S.C. ~~section~~ 2601 et
42 seq., and as in effect on January 1, 2008.

43 (3942) "Regular employee" means an individual who performs a service
44 for wages or other compensation and whose employer withholds federal employ-
45 ment taxes under a contract of hire, written or oral, express or implied.

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

49 (414) "Responsible broker" means the designated broker in the regulated
50 real estate transaction who is responsible for the accounting and transac-

1 tion files for the transaction, in the manner described in section 54-2048,
2 Idaho Code.

3 (425) "Revoked license" means a license that has been permanently re-
4 voked by the issuing authority.

5 (436) "Sales associate" means a salesperson or an associate broker li-
6 censed under and associated with a designated broker.

7 (447) "State or jurisdiction" means and includes any state or territory
8 of the United States, the District of Columbia and any foreign jurisdiction
9 that issues real estate licenses substantially similar to those provided for
10 in this chapter.

11 (458) "Successfully completed" means, in reference to a real estate
12 course offering, completing all required course hours and, except where the
13 licensee seeks continuing education credit for having regularly attended
14 the live presentation of a course, passing a commission-approved assessment
15 or final examination.

16 (469) "Surrendered license" means a license that has been voluntarily
17 terminated or surrendered by a licensee who, at the time of the voluntary
18 termination or surrender, was under investigation or named in a formal ad-
19 ministrative complaint.

20 (4750) "Suspended license" means a license that has been temporarily
21 suspended by the issuing authority.

22 SECTION 2. That Section 54-2011, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 54-2011. TYPES OF LICENSES. (1) The commission may issue a primary
25 Idaho real estate license to any individual, sole proprietorship or legal
26 business entity in accordance with the requirements of this chapter. An
27 individual may be licensed as a real estate salesperson, an associate broker
28 or a designated broker acting for a sole proprietorship or legal business
29 entity.

30 (2) The commission may issue a nontransferable cooperative license to
31 any out-of-state broker. The cooperative license shall authorize the out-
32 of-state broker to work in cooperation with an actively licensed Idaho real
33 estate designated broker for the purpose of one (1) Idaho commercial real es-
34 tate transaction.

35 SECTION 3. That Chapter 20, Title 54, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 54-2017, Idaho Code, and to read as follows:

38 54-2017. COOPERATIVE LICENSES. (1) An individual who is currently and
39 actively licensed as a real estate broker in another jurisdiction and wishes
40 to work in cooperation with an Idaho real estate broker must submit an appli-
41 cation on a form approved by the commission. The application must include:

42 (a) The name, physical and mailing addresses and telephone number of
43 the out-of-state broker and any out-of-state sales associate employed
44 by the out-of-state broker who will conduct the Idaho transaction;

45 (b) A current certified license history from the primary state of li-
46 censure for each out-of-state broker and out-of-state sales associate
47 named in the application, which history shall indicate any disciplinary

1 action taken against the applicant's license by the other licensing ju-
2 risdiction, and the status and standing of the applicant's license in
3 the other jurisdiction;

4 (c) The name, license number, physical address and verified statement
5 of consent and signature of the Idaho broker with whom the applicant
6 wishes to cooperate;

7 (d) An irrevocable consent to service from each out-of-state broker and
8 out-of-state sales associate named in the application, appointing the
9 commission's executive director to act as the out-of-state licensee's
10 agent upon whom all judicial and other process or legal notices di-
11 rected to the licensee that are related to the Idaho transaction may
12 be served, and consenting that any lawful process against the licensee
13 that is served upon the executive director shall be of the same legal
14 force and validity as if served upon the licensee and that the authority
15 shall continue in force as long as any liability remains outstanding in
16 this state. Upon receipt of any such process or notice, the executive
17 director shall immediately mail a copy of the same by certified mail to
18 the last known address of the out-of-state broker or out-of-state sales
19 associate;

20 (e) Proof of current errors and omissions insurance that complies with
21 the minimum requirements established by the commission, covering all
22 out-of-state licensees for all licensed activities under the provi-
23 sions of this chapter; and

24 (f) Applicable license fee, which fee shall be nonrefundable.

25 (2) A cooperative license is valid for twelve (12) months from the date
26 of issuance, or until the license of the out-of-state broker expires or is
27 inactivated, surrendered, suspended or revoked, whichever occurs first, and
28 may not be renewed. In the event a transaction is not completed within the
29 twelve (12) month period, a new cooperative license application may be sub-
30 mitted.

31 (3) It is a prerequisite to conducting a cooperative Idaho commercial
32 real estate transaction that out-of-state licenses be maintained on active
33 status. If the license of the out-of-state broker or any out-of-state sales
34 associate named in the cooperative license application expires or is inacti-
35 vated, surrendered, suspended or revoked, the out-of-state broker shall im-
36 mediately give written notice to the commission.

37 (4) An out-of-state broker holding a cooperative license shall notify
38 the commission in writing of any change of physical or mailing address for
39 any out-of-state licensee named in the cooperative license application
40 within ten (10) business days of the change.

41 (5) If at any time the out-of-state broker or the Idaho broker wishes to
42 terminate the cooperative relationship, written notice of the termination
43 shall be provided to the commission within ten (10) business days of the ter-
44 mination.

45 (6) When acting under a cooperative license, an out-of-state broker
46 or out-of-state sales associate shall work through the cooperating Idaho
47 broker. The Idaho broker must be in charge of the transaction from begin-
48 ning to end. Any entrusted moneys received in a cooperative transaction may
49 be handled only by the cooperating Idaho broker in accordance with section
50 54-2041, Idaho Code.

1 (7) Each out-of-state broker or out-of-state sales associate, while
2 cooperating with an Idaho broker, is governed by the provisions of this chap-
3 ter. Any violation of a provision of this chapter by the out-of-state broker
4 or out-of-state sales associate subjects the out-of-state licensee and the
5 Idaho broker to disciplinary action in accordance with this chapter.

6 (8) An out-of-state broker may cooperate with only one (1) Idaho bro-
7 ker and an Idaho broker may cooperate with only one (1) out-of-state broker
8 per commercial real estate transaction. However, an out-of-state broker may
9 obtain a cooperative license for more than one (1) commercial real estate
10 transaction at a time.

11 (9) The commission may deny an application for a cooperative license
12 for any reason that is sufficient to deny an application for a license pur-
13 suant to this chapter.

14 SECTION 4. That Section 54-2020, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 54-2020. FEES. The Idaho real estate commission shall establish fees
17 ~~which that~~, in its discretion, are sufficient, when added to the other fees
18 authorized by this chapter, or any other law or rule, to raise that revenue
19 required to administer the provisions of this chapter.

20 The commission shall assess the following fees, in addition to any other
21 fees established in this chapter or by rule, provided that all fees estab-
22 lished by administrative rule of the commission shall remain effective from
23 year to year unless changed through the rulemaking process prescribed in
24 chapter 52, title 67, Idaho Code:

25 (1) For each year or portion thereof for which an active or inactive li-
26 cense or cooperative license is issued or renewed, a license fee in an amount
27 not to exceed one hundred fifty dollars (\$150), the exact fee to be estab-
28 lished by administrative rule of the commission;

29 (2) A tuition or registration fee for real estate education courses,
30 course materials and any course exam fee. These fees shall be established
31 based upon the total annual costs involved in the provision of all real es-
32 tate education courses, course materials and course exam fees;

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

36 (4) For the printing of a license certificate, a fee in an amount not to
37 exceed fifteen dollars (\$15.00), the exact fee to be established by adminis-
38 trative rule of the commission;

39 (5) A fee in the amount allowed by law for insufficient funds checks or
40 other types of insufficient payment;

41 (6) For the compilation of each certified copy of a licensee's educa-
42 tion history or license history, a fee in an amount not to exceed ten dollars
43 (\$10.00), the exact fee to be established by administrative rule of the com-
44 mission;

45 (7) For issuance or renewal of a branch office license, a fee in an
46 amount not to exceed fifty dollars (\$50.00), the exact fee to be established
47 by administrative rule of the commission;

48 (8) An application fee for the certification and recertification of
49 each real estate education provider, instructor or course as follows:

1 (a) For providers, an application fee in the amount of seventy-five
2 dollars (\$75.00) for initial certification and fifty dollars (\$50.00)
3 for recertification;

4 (b) For instructors, an application fee in the amount of fifty dollars
5 (\$50.00) for initial certification and twenty-five dollars (\$25.00)
6 for recertification;

7 (c) For courses, an application fee in the amount of fifty dollars
8 (\$50.00) for initial certification and twenty-five dollars (\$25.00)
9 for recertification.

10 Provided however, that lower fee amounts may be established by administra-
11 tive rule of the commission.