

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 457

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO REAL ESTATE CONTINUING EDUCATION; AMENDING SECTION 54-2004,
2 IDAHO CODE, TO DEFINE A TERM AND AMEND A DEFINITION; AMENDING SECTION
3 54-2023, IDAHO CODE, TO PROVIDE CONTINUING EDUCATION REQUIREMENTS FOR
4 REAL ESTATE SALESPERSONS AND BROKERS; AND AMENDING SECTION 54-2032,
5 IDAHO CODE, TO PROVIDE REQUIREMENTS FOR INDIVIDUALS WISHING TO TEACH A
6 BROKER RENEWAL COURSE.
7

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

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

11 54-2004. DEFINITIONS. As used in this chapter:

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

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

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

22 (4) "Associate broker" means an individual who has qualified person-
23 ally as a real estate broker in Idaho under this chapter, but is licensed un-
24 der, associated with and represents a designated broker in the performance
25 of any act described in subsection (3940) of this section.

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

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

35 (7) "Broker renewal course" means a commission-approved or certified
36 course that is specifically oriented toward associate brokers, designated
37 brokers and limited brokers. The course must contain no more than four (4)
38 classroom hours of instruction.

39 (8) "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 (~~89~~) "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 (~~910~~) "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 (~~101~~) "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 (~~112~~) "Business name" means the name in which the brokerage company is
15 licensed by the commission.

16 (~~123~~) "Business opportunity" means and includes an established busi-
17 ness, goodwill of an established business, or any interest therein, or any
18 one (1) or combination thereof, where a sale or transfer of an interest in
19 land including, but not limited to, an assignment of a lease, is involved in
20 the transaction.

21 (~~134~~) "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
25 or homes in a subdivision when that real estate is sold, leased or other-
26 wise conveyed on a unit-by-unit basis, even though the units may be part of
27 a larger building or parcel of real estate containing more than four (4)
28 units. Commercial real estate does not include property used in association
29 with any agricultural operation or agricultural facility as those terms are
30 defined in section 22-4502, Idaho Code, and that is zoned to allow the agri-
31 cultural use.

32 (~~145~~) "Commission" means the Idaho real estate commission, unless the
33 context clearly indicates a different meaning.

34 (~~156~~) "Commission core course" means the annual course covering the
35 twelve (12) month period between July 1 and June 30, which contains curricu-
36 lum identified by the commission that stresses that year's trends in real es-
37 tate practices and changes in laws in real estate-related industries. A core
38 course must contain no more than four (4) classroom hours of instruction.

39 (~~167~~) "Continuing education elective course" means a real estate course
40 offering, other than the commission core course for which continuing educa-
41 tion credit hours may be obtained as provided in section 54-2023, Idaho Code.

42 (~~178~~) "Convicted" means a plea of nolo contendere or guilty, a jury ver-
43 dict of guilty or a court decision of guilt whether or not a judgment or sen-
44 tence has been imposed, withheld or suspended.

45 (~~189~~) "Cooperative sale" means a transaction involving two (2) or more
46 brokers.

47 (~~1920~~) "Council" means the Idaho real estate education council.

48 (~~201~~) "Dealer in options" means any person, firm, partnership, associ-
49 ation or corporation who shall directly or indirectly take, obtain or use
50 options to purchase, exchange, lease option or lease purchase real property

1 or any interest therein for another or others whether or not the options
2 shall be in his or its name and whether or not title to the property shall pass
3 through the name of the person, firm, partnership, association or corpora-
4 tion in connection with the purchase, sale, exchange, lease option or lease
5 purchase of the real property, or interest therein.

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

10 (223) "Distance learning course" means, in relation to a real estate
11 course offering, a real estate course that is delivered not as a live course
12 but through a medium in which the instructor and student are separated by
13 both distance and time.

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

22 (245) "Executive director" means the executive director of the Idaho
23 real estate commission.

24 (256) "Expired license" means the status of a license when the license
25 period has expired and the license is not renewed or provisional license
26 granted, and before the license is terminated.

27 (267) "Fee or commission" means a payment, actual, promised or ex-
28 pected, as compensation for the performance of any act requiring a real
29 estate license.

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

34 (289) "Legal business entity" means and includes any type of corpora-
35 tion, partnership, limited liability company or limited liability partner-
36 ship, a governmental entity, trust or other entity capable of conducting
37 business.

38 (2930) "Licensee" means any person who is licensed in accordance with
39 this chapter to engage in the business or act in the capacity of real estate
40 broker, associate broker or real estate salesperson.

41 (301) "Limited broker" means a broker individually qualified to do
42 business in Idaho, but who may not have associate brokers or salespersons
43 licensed with that broker.

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

49 (323) "Main office" means the principal location where the real estate
50 broker is licensed to transact business.

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

4 (345) "Out-of-state sales associate" means a person who holds the
5 equivalent of an active Idaho salesperson or associate broker license in an-
6 other jurisdiction who is not licensed as a salesperson or associate broker
7 under this chapter.

8 (356) "Person" means and includes an individual, or any legal business
9 entity.

10 (367) "Post license course" means a commission-approved or certified
11 elective course that is specifically oriented toward salespersons in their
12 first ~~two (2) years of Idaho practice~~ six (6) months of Idaho licensure. The
13 course must contain no more than twelve (12) classroom hours of instruction.

14 (378) "Primary Idaho license" means an Idaho real estate license that is
15 not contingent upon continuance of a license in another state or jurisdic-
16 tion.

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

22 (3940) "Real estate broker" means and includes:

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

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

31 (c) Any person who represents to the public that the person is engaged
32 in any of the activities in this subsection;

33 (d) Any person who directly or indirectly engages in, directs, or takes
34 any part in the procuring of prospects or in the negotiating or closing
35 of any transaction which does or is calculated to result in any of the
36 acts in this subsection;

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

38 (401) "Real estate salesperson" or "salesperson" means any person who
39 has qualified and is licensed as a real estate salesperson in Idaho under
40 this chapter and is licensed under, associated with, and represents a desig-
41 nated broker in the performance of any act described in subsection (3940) of
42 this section.

43 (412) "Real estate settlement procedures act" means the real estate
44 settlement procedures act of 1974, as amended, 12 U.S.C. 2601 et seq., and as
45 in effect on January 1, 2008.

46 (423) "Regular employee" means an individual who performs a service for
47 wages or other compensation and whose employer withholds federal employment
48 taxes under a contract of hire, written or oral, express or implied.

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

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

8 (456) "Revoked license" means a license that has been permanently re-
9 voked by the issuing authority.

10 (467) "Sales associate" means a salesperson or an associate broker li-
11 censed under and associated with a designated broker.

12 (478) "State or jurisdiction" means and includes any state or territory
13 of the United States, the District of Columbia and any foreign jurisdiction
14 that issues real estate licenses substantially similar to those provided for
15 in this chapter.

16 (489) "Successfully completed" means, in reference to a real estate
17 course offering, completing all required course hours and, except where the
18 licensee seeks continuing education credit for having regularly attended
19 the live presentation of a course, passing a commission-approved assessment
20 or final examination.

21 (4950) "Surrendered license" means a license that has been voluntarily
22 terminated or surrendered by a licensee who, at the time of the voluntary
23 termination or surrender, was under investigation or named in a formal ad-
24 ministrative complaint.

25 (501) "Suspended license" means a license that has been temporarily
26 suspended by the issuing authority.

27 SECTION 2. That Section 54-2023, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 54-2023. CONTINUING EDUCATION REQUIREMENTS. (1) Each licensee apply-
30 ing to renew an Idaho broker or salesperson license on active status, and
31 each Idaho broker or salesperson applying to change from inactive to active
32 license status after having renewed the license on inactive status, shall
33 successfully complete two (2) commission core courses, plus twelve (12)
34 classroom hours of continuing education credit. ~~If the inactive licensee is~~
35 ~~within the initial licensing period, no continuing education is required to~~
36 ~~change to active license status. Provided that, as provided in this section:~~

37 (a) ~~Salesperson -- First active renewal or activation. To renew an~~
38 ~~Idaho salesperson license on active status for the first time, or to~~
39 ~~change from inactive to active status for the first time after the ex-~~
40 ~~piration of the initial license period, a salesperson shall complete~~
41 ~~two (2) commission core courses, plus the post license course. Initial~~
42 ~~salesperson licensing period. A salesperson shall complete the twelve~~
43 ~~(12) hour post license course within the first six (6) months of licen-~~
44 ~~sure.~~

45 (i) Failure to complete the post license course within the ini-
46 tial six (6) months will result in automatic inactivation of an ac-
47 tive license.

48 (ii) In the first six (6) months of licensure, no continuing edu-
49 cation is required to change to active license status.

1 (iii) To activate a salesperson license after the initial six (6)
 2 months of licensure have passed, the licensee shall have completed
 3 the post license course prior to activation.

4 (iv) To renew an Idaho salesperson license on active status for
 5 the first time or to change from inactive to active status for the
 6 first time after the expiration of the initial license period, a
 7 salesperson shall have completed two (2) commission core courses,
 8 in addition to the post license course.

9 (b) Broker -- Broker renewal course. In addition to meeting the con-
 10 tinuing education requirements in this section, a broker shall complete
 11 two (2) broker renewal courses.

12 (c) Inactive broker activating as a designated broker or branch man-
 13 ager. To activate as a designated broker or branch manager, a broker
 14 on inactive status shall, in addition to meeting the continuing educa-
 15 tion requirements of this subsection, have completed a commission-ap-
 16 proved business conduct and office operations course within three (3)
 17 years immediately prior to the license activation.

18 (2) Credits used to reactivate license. Continuing education credit
 19 hours applied to activate an inactive license are considered "spent" and may
 20 not thereafter be applied toward the continuing education requirements for
 21 subsequent license renewal.

22 (3) No duplicate credit. No licensee may obtain continuing education
 23 credit for completing:

24 (a) Any core or broker renewal course curriculum for which the licensee
 25 has previously received continuing education credit; or

26 (b) Any course curriculum for which the licensee has received continu-
 27 ing education credit in the same license period.

28 (4) Excess credits. The classroom hours shall apply to the license pe-
 29 riod in which such course is completed; hours completed in excess of those
 30 required for the license period shall not accumulate or be credited for the
 31 purposes of subsequent license renewal periods.

32 (5) Commission-ordered education. No licensee shall obtain continuing
 33 education credit for education ordered by the commission as part of a disci-
 34 plinary action.

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

37 (a) Successfully complete a commission-approved continuing education
 38 or post license course;

39 (b) Attend a regularly scheduled meeting of the commission from the
 40 time the meeting is called to order until the meeting is adjourned or
 41 until the licensee is excused by the commission chairperson. A maximum
 42 of four (4) hours for this activity shall be credited for any one (1)
 43 meeting in any one (1) license period;

44 (c) Successfully complete a commission-approved broker prelicense
 45 course. Continuing education credit may be obtained for retaking the
 46 same broker prelicense course only if completed after three (3) years of
 47 completing the previous course; or

48 (d) Provide to the commission a transcript or course completion cer-
 49 tificate of successful completion of any of the following courses

1 without commission preapproval of the curriculum, instructors or
2 providers:

3 (i) Professional designation courses. Any course developed by
4 national professional organizations that is required in order to
5 earn professional designations from a national organization in
6 specialized areas of licensed real estate practice;

7 (ii) Courses accredited by another profession or jurisdiction.
8 Any course approved by and offered in satisfaction of another
9 professional or occupational licensing authority's education re-
10 quirements, if the commission determines that the course is within
11 the approved topic areas established by the commission and if the
12 course otherwise meets commission standards for course certifi-
13 cation including distance learning and minimum classroom hour
14 requirements; or

15 (iii) Courses offered by an accredited college or university. Any
16 course offered in satisfaction of a degree requirement by an ac-
17 credited college or university if the commission determines that
18 the course is within the approved topic areas established by the
19 commission.

20 (e) If a certified course instructor, teach a live course for which con-
21 tinuing education credit may be obtained. Credits shall be granted for
22 the number of classroom hours taught.

23 (7) Licensee duty to keep satisfactory proof. The licensee shall keep
24 satisfactory proof of having completed the continuing education requirement
25 and shall submit such proof at the request of the commission as provided in
26 section 54-2018, Idaho Code.

27 (8) Provisional license -- Extension of time. A three (3) month exten-
28 sion of time for completing the education requirements may be obtained by
29 submitting with the renewal application, or application to activate, sat-
30 isfactory evidence showing that the applicant was unable to comply with such
31 education requirements. Such evidence shall be:

32 (a) Bona fide hardship preventing completion of the reinstatement re-
33 quirements of an inactive license;

34 (b) Health reasons preventing attendance or completion; or

35 (c) Other compelling cause beyond the control of the applicant while
36 engaged in the real estate business.

37 If such an extension is granted, the licensee shall receive a provisional
38 license for a period of time not to exceed three (3) months. No further ex-
39 tension of time may be granted. A license issued or renewed after an exten-
40 sion of time has been granted shall retain the original license expiration
41 date. Failure to satisfy the continuing education requirement within the
42 time granted shall result in the automatic inactivation of the license.

43 SECTION 3. That Section 54-2032, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 54-2032. CERTIFICATION OF INSTRUCTORS. All individuals wishing to
46 teach real estate courses for credit toward prelicense, post license, broker
47 renewal or the commission continuing education core course requirements in
48 Idaho must first be approved or certified by the commission for each course
49 the individual wishes to teach.