

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Division of Occupational and Professional Licenses - Real Estate Commission, Idaho:
IDAPA 24.37.01 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No.
24-3701-2000F).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/05/2020. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/03/2020.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Legislative Drafting Attorney - Matt Drake

DATE: October 19, 2020

SUBJECT: Division of Occupational and Professional Licenses - Real Estate Commission, Idaho

IDAPA 24.37.01 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No. 24-3701-2000F)

Summary and Stated Reasons for the Rule

The Division of Occupational and Professional Licenses submits notice of proposed fee rule. According to the Division, the rulemaking republishes the temporary rule chapter that was previously submitted under IDAPA 33.01.01, now indexed as IDAPA 24.37.01, rules of the Idaho Real Estate Commission. The Division states that the fee rules do not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Legislature in the prior rules.

Negotiated Rulemaking/Fiscal Impact

The Division notes that negotiated rulemaking was not conducted because engaging in negotiated rulemaking for all previously existing rules would inhibit the Division's ability to serve the citizens of Idaho and to protect their health, safety, and welfare. The Division also confirms that the rulemaking is not anticipated to have any fiscal impact on the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to Section 54-2097, Idaho Code.

cc: Division of Occupational and Professional Licenses - Real Estate Commission, Idaho
Russ Barron

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.37.01 – RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 24-3701-2000F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2097, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 33.01.01, now indexed as IDAPA 24.37.01, rules of the Idaho Real Estate Commission:

IDAPA 24.37

- 24.37.01, *Rules of the Idaho Real Estate Commission.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

The following is a specific description of the fees or charges, authorized in Section 54-2020, Idaho Code:

- IDAPA 24.37.01.100:

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact MiChell Bird, (208) 955-8468.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

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

24.37.01 – RULES OF THE IDAHO REAL ESTATE COMMISSION

000. LEGAL AUTHORITY.

The Rules of the Idaho Real Estate Commission contained herein have been adopted pursuant to Section 54-2007, Idaho Code. Any violation of these rules, or of any provision of Chapter 20, Title 54, or Chapter 18, Title 55, Idaho Code, is sufficient cause for disciplinary action as prescribed in Sections 54-2059, 54-2060, or 55-1811, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 24.37.01, “Rules of the Idaho Real Estate Commission,” IDAPA 24, Title 37, Chapter 01. ()

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

002. – 005. (RESERVED)

006. ELECTRONIC SIGNATURES.

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

007. -- 099. (RESERVED)

**APPLICATION, LICENSURE, AND TERMINATION OF LICENSES
Rules 100 through 199**

100. FEES.

License and other fees:

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

()

101. – 104. (RESERVED)

105. CONDITIONS TO RENEW EXPIRED LICENSE.

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

()

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

02. Renewal After Expiration of Active License. If an active license expires, the licensee must complete and submit with the application an attestation that during the period the license was expired, the licensee either did or did not do or attempt to do any acts described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code. ()

03. Investigate or Discipline a Licensee. Nothing in this Section limits the ability of the Commission

to investigate or discipline a licensee for violating Subsection 54-2018(3), Idaho Code, or for violating any other provision of the Real Estate License Law or these rules. ()

106. -- 116. (RESERVED)

117. MANDATORY ERRORS AND OMISSIONS INSURANCE.

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

118. INSURANCE PLAN.

The Commission will make available to all active licensees, subject to terms and availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan obtained by the Commission. Licensees may obtain errors and omissions insurance independently of the Group Policy available through the Commission, subject, however, to the terms and conditions set forth in these rules. ()

01. Insurance Carrier. For the purposes of Section 118: ()

a. Shall maintain an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher; ()

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

c. Is and will remain for the policy term qualified and authorized by the Idaho Department of Insurance to write policies of errors and omissions insurance in Idaho of the type contemplated by these rules. ()

02. Approved Policy. The policy shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, be subject to such terms and conditions as are customary in the insurance industry for policies of errors and omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Insurance Department, and which are contained in a policy of insurance which has been approved by the Department of Insurance. That policy shall provide, at a minimum, the following terms and conditions:

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

()

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

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

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

d. Prior acts coverage shall be offered to licensees with continuous past coverage. ()

119. (RESERVED)

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

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

121. FAILURE TO MAINTAIN INSURANCE.

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

122. FALSIFICATION OF CERTIFICATES.

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

123. -- 299. (RESERVED)

BUSINESS CONDUCT
Rules 300 through 399

300. DISPUTES CONCERNING COMMISSIONS AND FEES.

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

301. (RESERVED)

302. TITLE OPINIONS.

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

303. LEGAL OPINIONS.

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

304. (RESERVED)

305. EDUCATION RECORDS ACCESS.

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

306. -- 399. (RESERVED)

CONTINUING EDUCATION
Rules 400 through 499

400. -- 401. (RESERVED)

402. APPROVED TOPICS FOR CONTINUING EDUCATION.

Continuing education is to assure that licensees possess the knowledge, skills, and competency necessary to function in a manner that protects and serves the public interest, or that promotes the professionalism and business proficiency

of the licensee. The knowledge or skills taught in an elective course will enable licensees to better serve real estate consumers. ()

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

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

403. -- 499. (RESERVED)

EDUCATION TEACHING STANDARDS
Rules 500 through 599

500. MINIMUM TEACHING STANDARDS.

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

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

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

03. Attendance Requirement. The course instructor will adhere to the Commission's written attendance policy and credit hours will only be submitted for students who have successfully met the attendance requirements for which the course was approved. ()

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

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

501. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Real Estate Commission _____

Agency Contact: MiChell Bird _____ **Phone:** (208)334-3285

Date: 8/18/20 _____

IDAPA, Chapter and Title Number and Chapter Name:

[IDAPA 24.37.01](#) Rules of the Division of Occupational and Professional Licensing _____

Fee Rule Status: **Proposed** _____ **Temporary**

Rulemaking Docket Number: 24-3701-2000F _____

STATEMENT OF ECONOMIC IMPACT:

This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

24.37.01

100. FEES:

- (\$160) - Fee for Broker initial license and renewal
- (\$160) - Fee for Salesperson initial license and renewal
- (\$50) - Fee for Business Entity initial license and renewal
- (\$50) - Fee for Branch Office initial license and renewal
- (\$100) - Fee for Cooperative License
- (\$25) - Fee for Late Renewal
- (\$10) - Fee for Education History or License History
- (\$15) - Fee for License Certificate