legislature of the state of Idaho

sixty-fifth legislature second regular session - 2020

in the house of representatives

house bill no. 476

by business committee

an act

relating to idaho real estate license law; amending section 54-2038, idaho code, to revise provisions regarding broker availability responsibilities and to make technical corrections; amending section 54-2039, idaho code, to remove provisions regarding broker and branch manager absences; and amending section 54-2040, idaho code, to remove a code reference.

be it enacted by the legislature of the state of idaho:

section 1. That section 54-2038, Idaho Code, be, and the same is hereby amended to read as follows:

54-2038. DESIGNATED BROKER -- GENERAL RESPONSIBILITIES -- BROKER PRICE OPINIONS. The requirement that each brokerage company be maintained and conducted in compliance with the Idaho real estate license law and the Idaho real estate brokerage representation act is the responsibility of its designated broker. The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company's business or where representation is conducted.

1. A designated broker is required to:

(a) Supervise and control, in the manner required by law and rule, all office locations, and the activities of all licensees and unlicensed persons associated with that brokerage company or for whom that designated broker is responsible;

(b) Review and approve all real estate agreements including, but not limited to, those related to listing, selling or purchasing property and brokerage representation agreements;

(c) Be reasonably available to manage and supervise the brokerage company during regular business hours. When a broker is a regular full-time employee or is engaged in a full-time activity at a location other than where the broker is licensed to do business, a presumption will be made that the broker is unable to manage and supervise the brokerage company in accordance with these requirements, and no sales associate shall be licensed under the broker until such presumption is overcome by evidence to the contrary, satisfactory to the commission, and will maintain adequate, reasonable, and regular contact with sales associates engaged in real estate transactions so as to prevent or curtail practices by a licensee that would violate any provision of this chapter; and

(d) Be reasonably available to the public during business hours in order to discuss or resolve complaints and disputes that arise during the course of real estate transactions in which the designated broker or his sales associate is involved.
(2) A broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to this section, may be licensed as a "limited broker" in Idaho and shall not have any sales associates licensed under that broker.

(3) An actively licensed salesperson or broker may, in the ordinary course of business, give an opinion of the price of real estate for the purpose of a prospective listing or sale. Only an actively licensed broker or associate broker may prepare and render a broker price opinion, as defined in this chapter. An associate broker who prepares and renders a broker price opinion shall notify the designated broker and the associate broker may not accept any fee except through the designated broker. Any licensee who renders a price opinion that does not comply with this subsection or with the requirements of section 54-4105, Idaho Code, is subject to discipline by the commission.

(4) A designated broker shall not allow any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license. "Properly licensed" means a license or a change in license that has been made effective by the commission.

SECTION 2. That Section 54-2039, Idaho Code, be, and the same is hereby amended to read as follows:

54-2039. BROKER AND BRANCH MANAGER ABSENCES AND CHANGES. (1) Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch manager.

(2) Broker or branch manager absent for more than twenty-one (21) days. A designated broker who is absent from his main office for more than twenty-one (21) consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty (60) days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch manager. If a designated broker or branch manager is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker or branch manager is appointed to act as broker or
branch manager, the commission shall place on inactive status the licenses of the absent broker or branch manager and all licensees associated with him, and in the case of a brokerage company, all brokerage listing agreements and all buyer brokerage agreements shall be terminated.

(42) Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(43) Effective date of changes. No change in designated broker shall be effective until written notice is received and approved by the commission, in the form required.

(54) Failure to comply -- Original broker to remain responsible except in the case of revocation. Where a licensed brokerage company fails to comply with this section and its office is closed, or during any period where the designated broker has left the brokerage company and no new broker has been designated to act for the company, the original designated broker shall remain responsible for trust account funds, pending transactions and records in the manner described in sections 54-2041 through 54-2049, Idaho Code. However, if the license of the original designated broker of the brokerage company is revoked, the license of that brokerage company shall be made inactive and its office closed until the company designates another qualified individual to act as broker.

SECTION 3. That Section 54-2040, Idaho Code, be, and the same is hereby amended to read as follows:

54-2040. MAIN OFFICE OR BUSINESS LOCATION. (1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the commission of any change by the broker of the business name, location, or mailing address. No other location may be used as a main office location until proper notice is acknowledged by the commission. A change of business name or location without notification to the commission shall automatically inactivate the license previously issued. The broker shall also notify the commission in writing of any change in the business telephone number. A designated broker is not required to obtain, display or possess a physical license certificate as evidence of the business's licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. The broker shall not display or otherwise make available to the public any license certificate bearing a former business name or former location.
(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name. A broker shall not conduct business under any name other than the one in which the license is issued.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4) and 54-2039(1), Idaho Code.