

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 102, As Amended in the Senate

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO
2 CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE A TECHNICAL CORRECTION;
3 AND AMENDING SECTION 54-2085, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE
4 AND TO MAKE TECHNICAL CORRECTIONS.
5

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

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

9 54-2004. DEFINITIONS. As used in this chapter:

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

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

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

20 (4) "Associate broker" means an individual who has qualified person-
21 ally as a real estate broker in Idaho under this chapter, but is licensed un-
22 der, associated with and represents a designated broker in the performance
23 of any act described in subsection (39) of this section.

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

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

33 (7) "Brokerage company" means a real estate business, whether a sole
34 proprietorship, a legal entity, or any other licensed person engaged in acts
35 requiring a real estate license in Idaho, that is conducting or holding it-
36 self out as conducting the business of real estate through a designated bro-
37 ker.

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

41 (9) "Business conduct and office operations course" means the compo-
42 nent of the advanced real estate course that is required in order to obtain

1 a broker license and that teaches business practices and office operations
2 of the brokerage, including recordkeeping, trust account procedures and the
3 laws governing those practices.

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

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

9 (12) "Business opportunity" means and includes an established busi-
10 ness, goodwill of an established business, or any interest therein, other
11 than a lease, or any one (1) or combination thereof, where a sale or trans-
12 fer of an interest in land including, but not limited to, an assignment of a
13 lease, real property is involved in the transaction.

14 (13) "Commercial real estate" means a business opportunity as defined
15 in this section, or any real estate other than real property improved by one
16 (1) to four (4) residential dwelling units. Commercial real estate does
17 not include residential dwelling units such as condominiums, townhouses
18 or homes in a subdivision when that real estate is sold, leased or other-
19 wise conveyed on a unit-by-unit basis, even though the units may be part of
20 a larger building or parcel of real estate containing more than four (4)
21 units. Commercial real estate does not include property used in association
22 with any agricultural operation or agricultural facility as those terms are
23 defined in section 22-4502, Idaho Code, and that is zoned to allow the agri-
24 cultural use.

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

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

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

35 (17) "Convicted" means a plea of nolo contendere or guilty, a jury ver-
36 dict of guilty or a court decision of guilt whether or not a judgment or sen-
37 tence has been imposed, withheld or suspended.

38 (18) "Cooperative sale" means a transaction involving two (2) or more
39 brokers.

40 (19) "Council" means the Idaho real estate education council.

41 (20) "Dealer in options" means any person, firm, partnership, associ-
42 ation or corporation who shall directly or indirectly take, obtain or use
43 options to purchase, exchange, lease option or lease purchase real property
44 or any interest therein for another or others whether or not the options
45 shall be in his or its name and whether or not title to the property shall pass
46 through the name of the person, firm, partnership, association or corpora-
47 tion in connection with the purchase, sale, exchange, lease option or lease
48 purchase of the real property, or interest therein.

49 (21) "Designated broker" means an individual who is licensed as a real
50 estate broker in Idaho and who is designated by the brokerage company to be

1 responsible for the supervision of the brokerage company and the activities
2 of any associated licensees in accordance with this chapter.

3 (22) "Distance learning course" means, in relation to a real estate
4 course offering, a real estate course that is delivered not as a live course
5 but through a medium in which the instructor and student are separated by
6 both distance and time.

7 (23) "Double contract" means two (2) or more written or unwritten con-
8 tracts of sale, purchase and sale agreements, loan applications, or any
9 other agreements, one (1) of which is not made known to the prospective loan
10 underwriter or the loan guarantor, to enable the buyer to obtain a larger
11 loan than the true sales price would allow, or to enable the buyer to qual-
12 ify for a loan that he or she otherwise could not obtain. An agreement or
13 loan application is not made known unless it is disclosed in writing to the
14 prospective loan underwriter or loan guarantor.

15 (24) "Executive director" means the executive director of the Idaho
16 real estate commission.

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

20 (26) "Fee or commission" means a payment, actual, promised or expected,
21 as compensation for the performance of any act requiring a real estate li-
22 cense.

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

27 (28) "Legal business entity" means and includes any type of corpora-
28 tion, partnership, limited liability company or limited liability partner-
29 ship, a governmental entity, trust or other entity capable of conducting
30 business.

31 (29) "Licensee" means any person who is licensed in accordance with this
32 chapter to engage in the business or act in the capacity of real estate bro-
33 ker, associate broker or real estate salesperson.

34 (30) "Limited broker" means a broker individually qualified to do busi-
35 ness in Idaho, but who may not have associate brokers or salespersons li-
36 censed with that broker.

37 (31) "Live presentation" means, in reference to a real estate course of-
38 fering, a real estate course that is personally presented by the instructor
39 and personally attended by the student at the same facility, or, if separated
40 by distance, the instructor and student are connected by contemporaneous,
41 two-way audio and visual communication.

42 (32) "Main office" means the principal location where the real estate
43 broker is licensed to transact business.

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

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

1 (35) "Person" means and includes an individual, or any legal business
2 entity.

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

7 (37) "Primary Idaho license" means an Idaho real estate license that is
8 not contingent upon continuance of a license in another state or jurisdic-
9 tion.

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

15 (39) "Real estate broker" means and includes:

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

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

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

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

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

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

36 (41) "Real estate settlement procedures act" means the real estate set-
37 tlement procedures act of 1974, as amended, 12 U.S.C. 2601 et seq., and as in
38 effect on January 1, 2008.

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

42 (43) "Regulated real estate transaction" means those real estate trans-
43 actions for which a real estate license is required under chapter 20, title
44 54, Idaho Code.

45 (44) "Responsible broker" means the designated broker in the regulated
46 real estate transaction who is responsible for the accounting and transac-
47 tion files for the transaction, in the manner described in section 54-2048,
48 Idaho Code.

49 (45) "Revoked license" means a license that has been permanently re-
50 voked by the issuing authority.

1 (46) "Sales associate" means a salesperson or an associate broker li-
2 censed under and associated with a designated broker.

3 (47) "State or jurisdiction" means and includes any state or territory
4 of the United States, the District of Columbia and any foreign jurisdiction
5 that issues real estate licenses substantially similar to those provided for
6 in this chapter.

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

12 (49) "Surrendered license" means a license that has been voluntarily
13 terminated or surrendered by a licensee who, at the time of the voluntary
14 termination or surrender, was under investigation or named in a formal ad-
15 ministrative complaint.

16 (50) "Suspended license" means a license that has been temporarily sus-
17 pended by the issuing authority.

18 SECTION 2. That Section 54-2085, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 54-2085. DISCLOSURE AND WRITING REQUIREMENTS -- AGENCY DISCLOSURE
21 BROCHURE AND REPRESENTATION CONFIRMATION. (1) A licensee shall give to a
22 prospective buyer or seller at the first substantial business contact the
23 agency disclosure brochure adopted or approved by the Idaho real estate com-
24 mission. The commission by motion shall establish the form and contents of
25 the brochure in accordance with the provisions of this chapter. Each broker-
26 age shall keep a signed and dated record of a buyer or seller's receipt of the
27 agency disclosure brochure.

28 (2) The agency disclosure brochure shall list the types of representa-
29 tion available to a buyer or seller in a regulated real estate transaction,
30 the legal duties and obligations owed to the buyer or seller in each type of
31 representation, and a conspicuous notice that no representation will exist
32 absent a written agreement between the buyer or seller and the brokerage.

33 (3) A brokerage's relationship with a buyer or seller as an agent, nona-
34 gent, limited dual agent, or limited dual agent with assigned agents, must be
35 determined and all necessary agreements executed no later than the prepara-
36 tion of a purchase and sale agreement. A brokerage must disclose its rela-
37 tionship to both buyer and seller in any transaction no later than the prepa-
38 ration or presentation of a purchase and sale agreement.

39 (4) In addition, a purchase and sale agreement, an attachment thereto,
40 or other document drafted in connection with a regulated real estate trans-
41 action shall contain the following confirmation of the relationship,
42 whether it involved representation or not, between the buyer, seller and
43 licensees involved:

44 REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE

45 Check one (1) box in Section 1 below and one (1) box in Sec-
46 tion 2 below to confirm that in this transaction, the brokerage(s)
47 involved had the following relationship(s) with the BUYER(S) and
48 SELLER(S).

1 Section 1:

- 2 A. The brokerage working with the BUYER(S) is acting as an
3 AGENT for the BUYER(S).
- 4 B. The brokerage working with the BUYER(S) is acting as
5 a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED
6 AGENT.
- 7 C. The brokerage working with the BUYER(S) is acting as a
8 LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT
9 acting solely on behalf of the BUYER(S).
- 10 D. The brokerage working with the BUYER(S) is acting as a
11 NONAGENT for the BUYER(S).

12 Section 2:

- 13 A. The brokerage working with the SELLER(S) is acting as an
14 AGENT for the SELLER(S).
- 15 B. The brokerage working with the SELLER(S) is acting as
16 a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED
17 AGENT.
- 18 C. The brokerage working with the SELLER(S) is acting as
19 a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED
20 AGENT acting solely on behalf of the SELLER(S).
- 21 D. The brokerage working with the SELLER(S) is acting as a
22 NONAGENT for the SELLER(S).

23 Each party signing this document confirms that he has received,
24 read and understood the Agency Disclosure Brochure adopted or ap-
25 proved by the Idaho real estate commission and has consented to
26 the relationship confirmed above. ~~In addition, each party con-~~
27 ~~firms that the brokerage's agency office policy was made available~~
28 ~~for inspection and review.~~ EACH PARTY UNDERSTANDS THAT HE IS A
29 "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A
30 SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

31 (5) The failure of a licensee to timely give a buyer or seller the agency
32 disclosure brochure or the failure of a licensee to properly and timely ob-
33 tain any written agreement or confirmation required by this chapter shall be
34 a violation of the Idaho real estate license law and may subject the licensee
35 to disciplinary action according to the provisions of sections 54-2058
36 through 54-2078, Idaho Code.

37 (6) Neither the commission brochure nor the representation confirma-
38 tion shall create a brokerage relationship. A separate, signed, written
39 agreement is required for that purpose.