

TITLE 55
PROPERTY IN GENERAL

CHAPTER 18
SALE OR DISPOSITION OF LAND LOCATED OUTSIDE THE STATE

55-1801. TITLE. This chapter shall be known and may be cited as the "Subdivided Lands Disposition Act."

[55-1801, added 1972, ch. 276, sec. 1, p. 667; am. 2010, ch. 214, sec. 1, p. 468.]

55-1802. DEFINITIONS. When used in this chapter, unless the context otherwise requires:

- (1) "Commission" means the Idaho real estate commission.
- (2) "Disposition" includes sale, lease, assignment, award by lottery or any other transaction concerning a subdivision, if undertaken for gain or profit.
- (3) "Offer" includes any inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.
- (4) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two (2) or more of any of the foregoing having a joint or common interest or any other legal or commercial entity.
- (5) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.
- (6) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.
- (7) "Subdivision" or "subdivided lands" means and includes the following:
 - (a) Any land situated outside the state of Idaho that is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units or interests and also includes any land, whether contiguous or not, if five (5) or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale;
 - (b) Any time shared property located within or without this state that is offered to purchasers or is proposed to be offered to purchasers.
- (8) "Time shared property" means any real property in which the use and occupancy rights are divided or proposed to be divided into more than thirteen (13) units, interests or parcels in accordance with a fixed or variable time schedule on a periodic basis that allocates the use or occupancy among the persons holding similar interests, whether such use or occupancy rights are granted by deed, contract or share certificate.

[55-1802, added 1972, ch. 276, sec. 2, p. 667; am. 1984, ch. 61, sec. 1, p. 110; am. 2010, ch. 214, sec. 2, p. 468.]

55-1803. ADMINISTRATION OF CHAPTER. This chapter shall be administered by the Idaho real estate commission.

[55-1803, added 1972, ch. 276, sec. 3, p. 667; am. 2010, ch. 214, sec. 3, p. 469.]

55-1804. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided lands or the transaction is exempt under section [55-1805](#), Idaho Code, it shall be unlawful for any person to make in this state:

(1) Any offer or disposition of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this chapter.

(2) Any offer or disposition of any interest in a time shared property located within or without this state prior to the time that the time shared property is registered in accordance with this chapter.

(3) Any disposition of any interest in subdivided lands without delivering to the purchaser an effective current public offering statement, obtaining a dated and signed receipt and affording the purchaser a reasonable opportunity to examine the statement.

An offer is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

[55-1804, added 1972, ch. 276, sec. 4, p. 667; am. 1984, ch. 61, sec. 2, p. 110; am. 2010, ch. 214, sec. 4, p. 469.]

55-1804A. RIGHT OF RESCISSION. Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by personally delivering or sending by certified mail, a written notice of cancellation to the subdivider on or before 11:59 p.m. of the fifth calendar day after execution of the contract or agreement of disposition. The contract or agreement of disposition shall state this right and terms in boldface type on the signature page and shall include the address of the subdivider.

[55-1804A, added 2010, ch. 214, sec. 5, p. 469.]

55-1805. EXEMPTIONS. (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or dispositions of an interest in land:

(a) By a purchaser of subdivided lands for his own account in a single or isolated transaction;

(b) If fewer than five (5) separate lots, parcels, units or interests in subdivided lands are offered by a person in a period of twelve (12) months;

(c) By any salaried employee in the normal course of his employment for an owner who is not in the business of making real estate sales when the transaction is incidental to the principal activities or business of the owner and where no added incentive such as a bonus or commission or other fee is paid to the employee for the transaction;

(d) By any person holding a duly executed power of attorney from the owner or principal agent of an inactive owner when the power of attorney is executed for the performance of a specific real estate transaction;

(e) To persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage, in the business of construction of buildings for resale;

(f) Pursuant to court order;

- (g) By any government or government agency; or
- (h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers and dispositions of securities currently registered with the Idaho department of finance.

[55-1805, added 1972, ch. 276, sec. 5, p. 667; am. 2010, ch. 214, sec. 6, p. 470.]

55-1806. APPLICATION FOR REGISTRATION. (1) The application for registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:

- (a) An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
- (b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities in existence or under construction and other off-site improvements, in existence or under construction;
- (c) The state or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (d) The applicant's name, address, and the form, date and jurisdiction of organization and the address of each of its offices in this state;
- (e) If a corporation, partnership or other legal entity, the name, address and principal occupation for the past five (5) years of every director, officer, general partner, member, manager or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;
- (f) A statement indicating whether, within the past ten (10) years, the applicant, its individual directors, officers, general partners, members or managers have been:
 - (i) Convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States or any other state or foreign country;
 - (ii) Adjudicated liable and had a civil judgment entered against him for making a false or misleading promotional plan involving land dispositions; or
 - (iii) Subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.
- (g) A statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the commission;

(h) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements that a purchaser will be required to agree to or sign;

(i) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(j) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(k) Copies of instruments creating easements, restrictions or other encumbrances affecting the subdivided lands;

(l) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments that affect the subdivided lands;

(m) A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for sewage disposal, water and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion and a statement as to the provisions for improvement maintenance;

(n) A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material that has been prepared for public distribution by any means of communication;

(o) A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person;

(p) The proposed public offering statement;

(q) Such current financial statements, certified or otherwise, as the commission may require; and

(r) Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.

(2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(3) The subdivider shall immediately report to the commission any material changes in the information contained in an application for registration.

(4) As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file a bond executed to the state of Idaho for the protection of any person and conditioned for the faithful compliance by the subdivider, his agents and his employees

with all of the provisions of this chapter and with all rules and orders made pursuant thereto and for the faithful performance and payment of all obligations of the subdivider, his agents and his employees in connection with the registration, including any order to pay the costs and attorney's fees incurred by the commission or by any other agency of this state, in an administrative or judicial proceeding to enforce the provisions of this chapter or the provisions of [chapter 6, title 48](#), Idaho Code. The bond shall be of such type and in such form as the commission shall deem necessary to comply with the provisions of this subsection and shall be in the amount of one hundred thousand dollars (\$100,000). Any such bond shall have as surety thereon a surety company authorized to do business in this state. Such bond shall remain in effect for one (1) calendar year after the earlier to occur of the following:

(a) The subdivision is no longer required to be registered pursuant to this chapter;

(b) The subdivider elects to discontinue offering for disposition interests in the subdivision and therefor elects not to renew the registration of the subdivision pursuant to this chapter;

(c) The provisions of this chapter no longer require the subdivider to post any bond; or

(d) The subdivider deposits sufficient funds in an approved escrow account or trust fund in lieu of the bond; provided, the bond shall continue to insure any covered claim filed against the subdivider, and of which the commission received written notice during the time the bond was in effect and until the claim has been finally resolved, including any appeal process.

(5) In lieu of filing a bond, the commission may accept funds deposited by the subdivider into an escrow depository acceptable to the commission or into a trust account acceptable to the commission. The deposited funds shall be maintained for the same purposes and upon the same terms and conditions as set forth in subsection (4) of this section.

[55-1806, added 1972, ch. 276, sec. 6, p. 667; am. 2010, ch. 214, sec. 7, p. 470.]

55-1807. PUBLIC OFFERING STATEMENT. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the commission shall be in a form prescribed by it and shall include the following:

(a) The name and principal address of the subdivider;

(b) A general description of the subdivided lands stating the total number of lots, parcels, units or interests in the offering;

(c) The significant terms of any encumbrances, easements, liens and restrictions, including zoning and other regulations, affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments that affect the subdivided lands;

(d) A statement of the use for which the property is offered;

(e) Information concerning improvements in existence or under construction including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and respon-

sibility for construction and maintenance of existing and proposed improvements that are referred to in connection with the offering or disposition of any interest in subdivided lands; and

(f) Such of the information contained in the application for registration, and any amendments thereto, and such other information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers.

(2) The public offering statement shall disclose, in a prominent place and in bold type, the right of rescission as required in section [55-1804A](#), Idaho Code.

(3) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement except as required by statute or rule of the commission.

(4) The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

(5) All advertising material of any nature prepared for use in connection with the offer and disposition of any interests in subdivided lands registered under this chapter shall be submitted to the commission prior to its use.

[55-1807, added 1972, ch. 276, sec. 7, p. 667; am. 2010, ch. 214, sec. 8, p. 472.]

55-1808. EXAMINATION BY COMMISSION OF APPLICATION FOR REGISTRATION. Upon receipt of an application for registration in proper form, the commission shall forthwith initiate an examination of the application for registration to determine that:

(1) The requirements of section [55-1806](#), Idaho Code, have been satisfied, the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, escrow and impoundage provisions and other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation, partnership or other legal entity, its individual officers, directors, general partners, members, managers or other such principals are contemplating a fraudulent or misleading sales promotion; and

(4) The public offering statement requirements of this chapter have been satisfied.

[55-1808, added 1972, ch. 276, sec. 8, p. 667; am. 2010, ch. 214, sec. 9, p. 473.]

55-1809. NOTICE OF FILING -- REGISTRATION -- REJECTION OF APPLICATION -- FEES. (1) Upon receipt of the application for registration in proper form and of a base registration fee of two hundred fifty dollars (\$250), the commission shall issue a notice of filing to the applicant. In addition to the base registration fee, the following fees are payable prior to issuance of an order of registration; five dollars (\$5.00) per lot, parcel, unit or interest numbering fifty (50) to two hundred fifty (250); four dollars (\$4.00) per lot, parcel, unit or interest numbering two hundred fifty-one (251) to five hundred (500); three dollars (\$3.00) per lot, parcel, unit or interest numbering five hundred one (501) to seven hundred fifty (750); and two dollars and fifty cents (\$2.50) for each lot, parcel, unit or interest numbering in excess of seven hundred fifty (750). The application and registration fees shall not exceed a maximum fee of three thousand dollars (\$3,000).

(2) If an applicant submits the required filings using the web-based document management system sponsored by the association of real estate license law officials, the fees prescribed in this section, including the maximum fee, shall be reduced by twenty-five percent (25%). The reduction does not apply to late fees. The commission may promulgate rules changing or eliminating the fee reduction.

(3) Within ninety (90) days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(4) If the commission determines that the requirements of sections [55-1806](#) through [55-1808](#), Idaho Code, have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(5) If the commission determines that any of the requirements of sections [55-1806](#) through [55-1808](#), Idaho Code, have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days or within the time otherwise allowed by the commission. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall state the basis for the rejection and advise the applicant of his right to request a hearing before the commission. The order rejecting the registration shall not become effective for twenty (20) days after service of the order, during which time the applicant may make a written request for a hearing. If a hearing is not timely requested, the order shall become the final agency action subject to judicial review under [chapter 52, title 67](#), Idaho Code.

(6) Registration under this chapter shall be effective as of the date of the registration order for a period of one (1) year and may be renewed for additional periods of one (1) year by filing, not later than fifteen (15) days prior to the expiration of a registration, a renewal application in such form and containing such information as the commission shall prescribe, including the renewal report provided in section [55-1810](#), Idaho Code, together with the payment of a base renewal fee of two hundred fifty dollars (\$250), plus one dollar (\$1.00) for each lot, parcel, unit or interest. The total fees for a timely renewal application shall not exceed a maximum fee of

three thousand dollars (\$3,000). A late renewal fee of twenty-five dollars (\$25.00) per day will be charged for each day the renewal application is late, with a maximum late fee of five hundred dollars (\$500). A registration that is not renewed within twenty (20) days of expiration shall be deemed canceled and may not thereafter be renewed under the provisions of this section. Each amendment to the original registration requires a twenty-five dollar (\$25.00) fee. The initial registration and any renewal fees may not be returned or refunded for any reason.

(7) All fees collected by the commission under this chapter shall be deposited at least monthly with the state treasurer and said funds so deposited shall be deposited to the credit of the special real estate fund. All funds so deposited are hereby appropriated to the commission for the purpose of carrying out the provisions of this chapter. All expenditures from said fund by the commission under the provisions of this chapter shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the commission. Such claims and supporting vouchers shall be examined by the state board of examiners in the same manner as other claims against the state of Idaho. For the purpose of carrying out the objects of this chapter and in the exercise of the powers herein granted, the commission shall have powers to make orders concerning the disbursement of the moneys in said special real estate fund, including the payment of compensation and expenses of its members, clerks and employees and for the payment of printing and for such other expenses as deemed necessary.

(8) The fact that an application for registration and public offering statement have been filed, or the fact that an order of registration has been issued, does not constitute a finding by the commission that any document is true, complete and not misleading, nor does either fact mean that the commission has determined in any way the merits, qualifications of or given its approval or recommendation to any person or subdivision. It is unlawful for any person to make, or cause to be made, to any prospective purchaser any representation inconsistent with the provisions of this subsection.

[55-1809, added 1972, ch. 276, sec. 9, p. 667; am. 1983, ch. 109, sec. 6, p. 235; am. 1994, ch. 180, sec. 106, p. 497; am. 2010, ch. 214, sec. 10, p. 474.]

55-1810. RENEWAL REPORT -- DUTY TO REPORT CONVICTIONS AND JUDGMENTS. (1) The subdivider shall file a renewal report in the form prescribed by the commission. The renewal report shall reflect any material changes in information contained in the original application for registration. The renewal report must be filed with the renewal application not later than fifteen (15) days before the registration expiration date.

(2) If at any time after filing an initial or renewal application, a subdivider or any of its individual directors, officers, general partners, members, managers or other such principals, is convicted, has a judgment entered against it or is found liable in any court or administrative tribunal for any conduct referenced in section [55-1806](#) or [55-1815](#), Idaho Code, the subdivider shall, within thirty (30) days, forward to the commission a copy of the judgment, order or other document evidencing the same.

(3) The commission may initiate a renewal examination of the kind provided in section [55-1808](#), Idaho Code. If the commission determines that any of the requirements of sections [55-1806](#) through [55-1808](#), Idaho Code, have not been met, it shall notify the subdivider that the deficiency must be corrected within twenty (20) days or such other time as allowed by the commis-

sion. If the requirements are not met within the time allowed, the commission may, notwithstanding the provisions of section [55-1814](#), Idaho Code, issue a cease and desist order according to the emergency procedures of [chapter 52, title 67](#), Idaho Code, barring further sales of the subdivided lands.

[55-1810, added 1972, ch. 276, sec. 10, p. 667; am. 2010, ch. 214, sec. 11, p. 475.]

55-1811. GENERAL POWERS AND DUTIES. (1) The commission shall have the authority to promulgate, to amend and to repeal reasonable rules for the administration and enforcement of this chapter. Such rules may include provisions for advertising standards to assure full and fair disclosure; provisions for bond, escrow or trust agreements or other means to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land for which they contracted; provisions for operating procedures; and such other rules as are necessary or proper to accomplish the purposes of this chapter.

(2) The commission may revoke a registration ordered under the provisions of this chapter, issue a cease and desist order and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found to have violated any section of this chapter, the commission's administrative rules or any order of the commission. If any amounts assessed against a subdivider by final order of the commission become otherwise uncollectible or payment is in default, and only if all of the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution, including an action against any bond filed or escrow or trust funds deposited pursuant to section [55-1806](#), Idaho Code.

(3) Whenever it appears that a person has engaged or is about to engage in acts or practices that constitute or will constitute a violation of the provisions of this chapter or of a rule or order hereunder, the commission, with or without prior administrative proceedings, may bring an action in any district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order may be granted.

(4) The commission may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the commission notice of the suit and copies of all pleadings.

(5) The commission may:

(a) Accept registrations filed in other states or with the federal government;

(b) Contract with the association of real estate license law officials to use its web-based file management system to accept registrations and related filings and to reduce the registration fees for applicants who use the web-based system to file registration documents;

(c) Contract with similar agencies in this state or other jurisdictions to perform investigative functions.

(6) The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

[55-1811, added 1972, ch. 276, sec. 11, p. 667; am. 2010, ch. 214, sec. 12, p. 476.]

55-1812. FRAUDULENT PRACTICES. It shall be a fraudulent practice and it shall be unlawful:

(1) For any person knowingly to subscribe to or make or cause to be made any materially false statement or representation in any application, financial statement or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement that is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to employ any device, scheme or artifice to defraud;

(3) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to engage in any act, practice or course of business that operates or would operate as a fraud or deception upon purchasers or the public.

[55-1812, added 1972, ch. 276, sec. 12, p. 667; am. 2010, ch. 214, sec. 13, p. 477.]

55-1813. INVESTIGATIONS AND PROCEEDINGS. (1) The commission may investigate any subdivision offered for disposition in this state and the actions of any person who makes any offer or disposition of subdivided lands requiring registration under this chapter. In the conduct of the investigation, the commission may:

(a) Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States department of veterans affairs or any other federal agency or any state agency having comparable duties in relation to subdivisions;

(b) Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor that affects the utility of interests within the subdivision and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;

(c) Require an on-site inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an on-site inspection shall be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;

(d) Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate the provisions of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in prescribing rules and forms hereunder; and

(e) Require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the request of any party the commission or any person designated by it shall have the power to administer oaths, take depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it or deposition authorized by it pertaining in any manner to any matters of which it has authority to investigate, and for that purpose the commission may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers that shall be served and returned in the same manner as a subpoena in a civil case is returned. The fees and mileage of witnesses shall be the same as that allowed in the district courts in civil cases.

(3) The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules or letters of censure or warning, whether formal or informal, may be entered against said person.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with [chapter 52, title 67](#), Idaho Code.

[55-1813, added 1972, ch. 276, sec. 13, p. 667; am. 2010, ch. 214, sec. 14, p. 477; am. 2020, ch. 87, sec. 6, p. 236.]

55-1814. CEASE AND DESIST ORDERS. (1) If the commission determines after notice and hearing that a person has:

- (a) Violated any provision of this chapter;
- (b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands;
- (c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;
- (d) Disposed of any subdivided lands that have not been registered with the commission; or
- (e) Violated any lawful order or rule of the commission;

it may issue an order requiring the person to cease and desist from the unlawful practice and may take such other action as authorized by this chapter.

(2) If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, such as in the case of the subdivider's failure to maintain the statutory requirements for registration, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission shall, whenever practicable, by telephone or otherwise, give notice of the petition for a temporary cease and desist order to the person. Every temporary cease and desist order issued shall be promptly served upon the person ordered and shall include the reasons for the order and a provision that, if requested by the person within twenty (20) days of service, the matter will be scheduled for a hearing, which will be held within a reasonable time to determine whether or not the order becomes permanent.

[55-1814, added 1972, ch. 276, sec. 14, p. 667; am. 2010, ch. 214, sec. 15, p. 479.]

55-1815. REVOCATION. (1) A registration may be revoked by the commission after notice and hearing upon a written finding of fact that the subdivider has:

- (a) Failed to maintain the requirements for continued registration;
- (b) Failed to comply with the terms of a cease and desist order;
- (c) In any court or administrative tribunal, been convicted, found liable or had a registration revoked for a crime, tort or other misconduct involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in land dispositions, including the offering or promotion of land disposition;
- (d) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (e) Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration or to approve any promotional plan or public offering statement; or
- (f) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the commission finds after notice and hearing that the subdivider has committed a violation for which revocation could be ordered, it may issue a cease and desist order instead.

[55-1815, added 1972, ch. 276, sec. 15, p. 667; am. 2010, ch. 214, sec. 16, p. 479.]

55-1816. JUDICIAL REVIEW. A person who has exhausted all administrative remedies available within the commission and who is aggrieved by any final decision of the commission is entitled to judicial review in accordance with [chapter 52, title 67](#), Idaho Code.

[55-1816, added 1972, ch. 276, sec. 16, p. 667.]

55-1817. REAL ESTATE LICENSE REQUIRED. No real estate broker or salesperson shall offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section [55-1805](#), Idaho Code, unless said real estate broker or salesperson is licensed pursuant to [chapter 20, title 54](#), Idaho Code.

[55-1817, added 1972, ch. 276, sec. 17, p. 667; am. 2010, ch. 214, sec. 17, p. 480.]

55-1818. EXTRADITION. In proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

[55-1818, added 1972, ch. 276, sec. 18, p. 667; am. 2010, ch. 214, sec. 18, p. 480.]

55-1819. CIVIL REMEDY. (1) Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, shall be voidable at the election of the purchaser. The person making such disposition, and every director, officer, salesperson or agent of or for such person who shall have participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit or interest, together with interest at the rate of six percent (6%) per year from the date of payment, property taxes and assessments paid, court costs and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent (6%) per year on that amount from the date of disposition.

(2) No action shall be brought under this section for the recovery of the consideration paid after five (5) years from the date of such disposition.

(3) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

(4) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

[55-1819, added 1972, ch. 276, sec. 19, p. 667; am. 2010, ch. 214, sec. 19, p. 480.]

55-1819A. NONCOMPLIANCE -- UNFAIR PRACTICE UNDER THE IDAHO CONSUMER PROTECTION ACT. Any offer or disposition made in violation of this chapter constitutes an unfair and deceptive act or practice pursuant to [chapter 6, title 48](#), Idaho Code.

[55-1819A, added 2010, ch. 214, sec. 20, p. 480.]

55-1820. JURISDICTION. (1) Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims or causes of action arising under this chapter if:

- (a) The subdivider's principal office is located in this state; or
- (b) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

(2) Any person who makes a disposition of subdivided lands in this state, whether or not the subdivided lands are registered in this state, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the commission and shall be subject to all penalties and remedies available under Idaho law for any violation of the provisions of this chapter.

[55-1820, added 1972, ch. 276, sec. 20, p. 667; am. 2010, ch. 214, sec. 21, p. 481.]

55-1821. SERVICE OF PROCESS. In addition to the methods of service provided for in the Idaho rules of civil procedure and Idaho statutes, service may be made on a person who has filed a consent to service of process by delivering a copy of the process to the office of the commission, but it is not effective unless the plaintiff (which may be the commission in a proceeding instituted by it):

(1) Forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any or within such further time as the court allows.

[55-1821, added 1972, ch. 276, sec. 21, p. 667; am. 2010, ch. 214, sec. 22, p. 481.]

55-1822. EVIDENTIARY MATTERS. (1) In any action, civil or criminal, where a defense is based upon any exemption provided for in this chapter, the burden of proving the existence of such exemption shall be upon the party raising such defense.

(2) In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this chapter shall be admissible in any such action.

[55-1822, added 1972, ch. 276, sec. 22, p. 667; am. 2010, ch. 214, sec. 23, p. 481.]

55-1823. PENALTIES. Any person who shall willfully violate any provision of this chapter or who willfully violates any rule or order of the commission made and served upon said person pursuant to the provisions of this chapter, or who shall willfully engage in any act, practice or transaction declared by any provision of this chapter to be unlawful shall be guilty of a felony.

[55-1823, added 1972, ch. 276, sec. 23, p. 667; am. 1972, ch. 387, sec. 1, p. 1118; am. 2010, ch. 214, sec. 24, p. 481.]