

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 478

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2006, IDAHO CODE,
2 TO REVISE PROVISIONS REGARDING CERTAIN ELECTIONS AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 54-2022, IDAHO CODE, TO REMOVE A REQUIRE-
4 MENT REGARDING THE NUMBER OF CERTAIN COURSES REQUIRED AND TO MAKE A
5 TECHNICAL CORRECTION; AMENDING SECTION 54-2036, IDAHO CODE, TO REMOVE
6 REQUIREMENTS REGARDING PRELICENSE COURSE CLASSROOM HOURS, TO REVISE
7 A REQUIREMENT REGARDING CONTINUING EDUCATION HOURS, AND TO MAKE TECH-
8 NICAL CORRECTIONS; AMENDING SECTION 54-2048, IDAHO CODE, TO REMOVE A
9 REQUIREMENT REGARDING THE MARKING AND DATING OF REJECTED OFFERS AND TO
10 MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-2090, IDAHO CODE, RE-
11 LATING TO WRITTEN OFFICE POLICIES; AND AMENDING SECTION 55-1813, IDAHO
12 CODE, TO REMOVE A REFERENCE TO THE IDAHO ADMINISTRATIVE RULES AND TO
13 MAKE TECHNICAL CORRECTIONS.
14

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

16 SECTION 1. That Section 54-2006, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 54-2006. QUALIFICATIONS OF COMMISSIONERS, -- TERM AND ORGANIZA-
19 TION. (1) Four (4) members of the commission shall be actively licensed Idaho
20 designated real estate brokers or associate brokers who have had at least
21 five (5) years' active license experience as a designated broker or asso-
22 ciate broker in the real estate business in Idaho. One (1) member shall be a
23 member of the public from the state at large with an interest in the rights of
24 consumers of real estate services.

25 (2) Each regular appointment, other than an appointment to fill an un-
26 expired term, shall commence on July 1 of the year of appointment and be for
27 a term of four (4) years. Each commissioner shall hold office until a qual-
28 ified successor is appointed. Upon the death, resignation or removal of any
29 member of the commission, the governor shall appoint a qualified person to
30 fill out the unexpired term.

31 (3) Each year, ~~within thirty (30) days after the appointment of the~~
32 ~~members of the commission,~~ the commission shall call a meeting and elect a
33 chair, a vice chair, and a commissioner to serve on the Idaho real estate
34 education council. Thereafter, the chair may call meetings of the commis-
35 sion whenever he or she deems it advisable, but if the chair refuses to call
36 a meeting upon written demand of ~~the other three (3) members~~ a quorum of the
37 commission, then such members may call the meeting.

38 (34) The commission may hire an executive director and such other as-
39 sistants as it may require from either within or without the commission and
40 shall pay these persons a compensation as determined by the commission. The
41 position of executive director shall be a nonclassified state employee, and
42 such person shall be an at-will employee of the commission.

1 SECTION 2. That Section 54-2022, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 54-2022. REAL ESTATE EDUCATION -- PRELICENSE REQUIREMENTS. (1) Except
4 as provided in section 54-2015, Idaho Code, an applicant seeking a primary
5 Idaho license as a real estate salesperson, broker or associate broker shall
6 furnish satisfactory proof to the commission that the applicant has success-
7 fully completed current commission-approved and accredited courses of real
8 estate study as follows:

9 (a) Salesperson's license. For a salesperson's license, the applicant
10 shall complete a total of ninety (90) classroom hours;

11 (b) Broker's or associate broker's license. Applicants seeking a bro-
12 ker's or associate broker's license shall, in addition to meeting the
13 requirements for a salesperson's license, successfully complete ~~four~~
14 ~~(4)~~ specified courses in advanced real estate study, for a minimum of
15 ninety (90) additional classroom hours.

16 (2) Each applicant shall successfully complete all prelicense real es-
17 tate courses within no more than three (3) years prior to the date of the li-
18 cense application. However, upon written request for special consideration
19 by the license applicant, the commission may waive or modify the three- (3)
20 year requirement at its discretion, based on the applicant's experience or
21 additional education. Each waiver request shall be submitted with a cur-
22 rent certified license history from Idaho or the applicant's other licensing
23 jurisdiction, which history shall indicate all disciplinary actions taken
24 against the applicant's license and the status and standing of such license
25 in such licensing state or jurisdiction, along with sufficient proof of edu-
26 cation completion.

27 (3) To receive credit for prelicense real estate courses, a student
28 must regularly attend and complete the course, and such course must meet all
29 requirements set forth in section 54-2036, Idaho Code.

30 (4) No credit will be given for courses taken for audit.

31 (5) Credit for completion of approved prelicense education coursework
32 will not be granted when the content of a course repeats that for which credit
33 has been previously received.

34 (6) Upon written request from a license applicant, the commission may
35 waive or modify one (1) or more prelicense course requirements based upon
36 the applicant's satisfactory completion of similar real estate courses in
37 Idaho or another state or jurisdiction. The request for waiver shall be ac-
38 companied by an official transcript from the institution that provided the
39 course of instruction, along with a description of the subjects covered in
40 the course and the number of classroom hours involved in the instruction.
41 "Satisfactory completion" means the applicant regularly attended the course
42 and received a final grade of "C" or better.

43 SECTION 3. That Section 54-2036, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real es-
46 tate course offered for prelicense or continuing education credit for an
47 Idaho real estate license shall first be certified and accredited by the
48 Idaho real estate commission.

1 (1) An application for course certification must be submitted in the
 2 form and manner required by the commission, with the required fees, at least
 3 two (2) months prior to the contemplated date of the first course offering.

4 (2) Minimum requirements for course certification:

5 (a) Each course must be certified individually, offered only through
 6 a provider certified or approved in Idaho, and taught by an instructor
 7 certified or approved in Idaho in accordance with this chapter.

8 (b) Each ~~prelicense course must contain at least twenty (20) classroom~~
 9 ~~hours, and each~~ continuing education course must contain at least ~~two~~
 10 one (21) classroom hours.

11 (c) Exam time shall not be included as approved classroom hours of in-
 12 struction.

13 (d) A classroom hour is defined as a period of at least fifty (50) min-
 14 utes of actual instruction.

15 (e) Distance learning courses. The design and delivery of each dis-
 16 tance learning course shall be certified by the association of real
 17 estate license law officials or by another institution whose certifi-
 18 cation standards are deemed equivalent by the commission. The credit
 19 hours for a certified distance learning course shall be based upon the
 20 same number of hours ~~which~~ that would be credited for an equivalent live
 21 course, and must include a commission-approved assessment.

22 (f) Each prelicense course must include a commission-approved final
 23 exam requiring a minimum passing score of seventy percent (70%).

24 (g) Continuing education course exam. A licensee may receive continu-
 25 ing education course credit without having to take or pass an exam if the
 26 licensee personally attends the entire live presentation of an approved
 27 course.

28 (h) Exam retake policy. Each certified course provider may, at its op-
 29 tion, allow students who complete a course and then fail the course exam
 30 one (1) opportunity to retake the approved course exam within the fol-
 31 lowing time periods:

32 (i) Prelicense course exam retakes must occur within one (1)
 33 month of the original course exam;

34 (ii) Continuing education course exam retakes must occur within
 35 that course's certification period;

36 (iii) If a student fails the retake exam for any prelicense or
 37 continuing education course, the student must repeat the entire
 38 course and pass the final exam to receive credit.

39 (i) Challenge exams. Except where the prelicense requirements
 40 have been waived or modified by the commission pursuant to section
 41 54-2022(6), Idaho Code, a student shall not earn credit for any pre-
 42 license course by challenging and passing the course exam without
 43 otherwise completing all course requirements.

44 (3) Approved topics. The commission shall establish specific, ap-
 45 proved topics for course content for prelicense courses and continuing
 46 education courses as it deems appropriate to current real estate practices
 47 and laws.

48 SECTION 4. That Section 54-2048, Idaho Code, be, and the same is hereby
 49 amended to read as follows:

1 54-2048. RESPONSIBLE BROKER FOR THE TRANSACTION -- DUTIES AND RECORD-
2 KEEPING. The "responsible broker," as referred to in this section, shall be
3 responsible to the commission for the transaction, transaction records, the
4 funds and closing in accordance with the requirements of this chapter. The
5 broker who lists and sells any real property shall be deemed the responsible
6 broker in the transaction. In the case of a cooperative sale, the broker who
7 holds entrusted funds in a real estate trust account while the transaction is
8 pending, or who delivers or transfers the funds to the closing agency or any
9 authorized party other than the cooperating broker in the transaction, shall
10 be deemed the broker responsible for the transaction. The responsible bro-
11 ker shall:

12 (1) Ensure the correctness and delivery of detailed closing statements
13 ~~which~~ that accurately reflect all receipts and disbursements for their re-
14 spective accounts to both the buyer and seller in a transaction, even if the
15 closing is completed by a real estate escrow closing agent, title company
16 or other authorized third party and regardless of the responsible broker's
17 agent or nonagent relationship to the buyer or seller.

18 (2) Show proof of delivery of the closing statement to the buyer and
19 seller by their signatures on copies of such closing statements, which shall
20 be retained in the broker's transaction file. When signatures of the parties
21 cannot be obtained, a copy of the closing statement transmittal letter, sent
22 by certified mail, return receipt requested, or a written certification of
23 delivery signed by an officer of the escrow closing agency, shall be retained
24 in the broker's transaction files.

25 (3) Create and maintain, for the retention period required in section
26 54-2049, Idaho Code, a transaction file containing the following documents,
27 as applicable. For all pending, closed or fallen transactions, the original
28 or a true and correct copy of:

29 (a) Signed closing statements, if applicable;

30 (b) Written and signed brokerage representation agreements, if any. A
31 responsible broker who is representing both the seller and the buyer in
32 a transaction shall retain properly executed brokerage representation
33 agreements in the transaction file, and, if appropriate to the trans-
34 action, a properly executed "consent to limited dual representation"
35 statement. A responsible broker who has a signed brokerage representa-
36 tion agreement with only one (1) party to the transaction, either buyer
37 or seller, must ~~only~~ retain only that one (1) agreement in the transac-
38 tion file;

39 (c) All offers accepted, countered or rejected, which must each be re-
40 tained in the manner required in section 54-2049, Idaho Code;

41 (d) ~~All offers presented to the seller and not accepted by that seller~~
42 ~~shall be clearly marked and dated as rejected.~~ The original or a true
43 and correct copy of all rejected offers must be retained in the files of
44 the selling broker for the statutory records retention period in sec-
45 tion 54-2049, Idaho Code.

46 SECTION 5. That Section 54-2090, Idaho Code, be, and the same is hereby
47 repealed.

48 SECTION 6. That Section 55-1813, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 55-1813. INVESTIGATIONS AND PROCEEDINGS. (1) The commission may in-
2 vestigate any subdivision offered for disposition in this state and the ac-
3 tions of any person who makes any offer or disposition of subdivided lands
4 requiring registration under this chapter. In the conduct of the investiga-
5 tion, the commission may:

6 (a) Rely upon any relevant information concerning a subdivision ob-
7 tained from the federal housing administration, the United States
8 department of veterans administration affairs or any other federal
9 agency or any state agency having comparable duties in relation to sub-
10 divisions;

11 (b) Require the applicant to submit reports prepared by competent engi-
12 neers as to any hazard to which any subdivision offered for disposition
13 is subject or any factor that affects the utility of interests within
14 the subdivision, and require evidence of compliance in removing or min-
15 imizing all hazards reflected in engineering reports;

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

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

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

29 (2) For the purpose of any investigation or proceeding under this chap-
30 ter, the commission or any person designated by it may administer oaths or
31 affirmations, and upon its own motion or upon the request of any party the
32 commission or any person designated by it shall have the power to administer
33 oaths, take depositions of witnesses in and out of the state of Idaho in the
34 manner of civil cases, require the attendance of such witnesses and the pro-
35 duction of such books, records and papers as it may desire at any hearing be-
36 fore it or deposition authorized by it, pertaining in any manner to any mat-
37 ters of which it has authority to investigate, and for that purpose the com-
38 mission may issue a subpoena for any witness or a subpoena duces tecum to com-
39 pel the production of any books, records or papers that shall be served and
40 returned in the same manner as a subpoena in a civil case is returned. The
41 fees and mileage of witnesses shall be the same as that allowed in the dis-
42 trict courts in civil cases.

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

48 (4) Except as otherwise provided in this chapter, all proceedings under
49 this chapter shall be in accordance with chapter 52, title 67, Idaho Code,

1 and IDAPA 33.01.02, rules of practice and procedure of the Idaho real estate
2 ~~commission governing contested cases.~~