

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1065

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 54-2038, IDAHO CODE, TO PROVIDE THAT CERTAIN LICENSEES MAY GIVE AN OPINION OF THE PRICE OF REAL ESTATE FOR THE PURPOSE OF A PROSPECTIVE LISTING OR SALE, TO PROVIDE THAT ONLY AN ACTIVELY LICENSED BROKER MAY PREPARE AND RENDER A BROKER PRICE OPINION AND TO PROVIDE REQUIREMENTS RELATING TO A BROKER PRICE OPINION PREPARED OR RENDERED BY AN ASSOCIATE BROKER; AND AMENDING SECTION 54-2058, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO A PERSON ACTING WITHIN THE STATE OF IDAHO AND TO MAKE A TECHNICAL CORRECTION.

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

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

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

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

(2) "Acting in this state" means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

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

(34) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (335) of this section.

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

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

(57) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

1       (68) "Brokerage representation agreement" means a written contract be-  
 2 tween a buyer, seller, or both, and a real estate brokerage for agency repre-  
 3 sentation in a regulated real estate transaction.

4       (79) "Business conduct and office operations course" means, in refer-  
 5 ence to a real estate course offering, the component of the advanced real  
 6 estate course that is required in order to obtain a broker license and that  
 7 teaches business practices and office operations of the brokerage, includ-  
 8 ing recordkeeping, trust account procedures and the laws governing those  
 9 practices.

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

13       (911) "Business name" means the name in which the brokerage company is  
 14 licensed by the commission.

15       (102) "Business opportunity" means and includes an established busi-  
 16 ness, good will of an established business, or any interest therein, or any  
 17 one (1) or combination thereof, where a sale or transfer of an interest in  
 18 land including, but not limited to, an assignment of a lease, is involved in  
 19 the transaction.

20       (113) "Commission" means the Idaho real estate commission, unless the  
 21 context clearly indicates a different meaning.

22       (124) "Commission core course" means, in reference to a real estate  
 23 course offering, the course containing curriculum, identified by the com-  
 24 mission, that stresses current trends in real estate practices and changes  
 25 in laws in real estate related industries. A core course must contain no more  
 26 than four (4) classroom hours of instruction.

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

30       (146) "Convicted" means a plea of nolo contendere or guilty, a jury ver-  
 31 dict of guilty or a court decision of guilt whether or not a judgment or sen-  
 32 tence has been imposed, withheld or suspended.

33       (157) "Cooperative sale" means a transaction involving two (2) or more  
 34 brokers.

35       (168) "Council" means the Idaho real estate education council.

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

44       (1820) "Designated broker" means an individual who is licensed as a real  
 45 estate broker in Idaho and who is designated by the brokerage company to be  
 46 responsible for the supervision of the brokerage company and the activities  
 47 of any associated licensees in accordance with this chapter.

48       (1921) "Distance learning course" means, in relation to a real es-  
 49 tate course offering, a real estate course that is delivered, not as a live

1 course, but through a medium in which the instructor and student are sepa-  
 2 rated by both distance and time.

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

11 (213) "Executive director" means the executive director of the Idaho  
 12 real estate commission.

13 (224) "Expired license" means the status of a license when the license  
 14 period has expired and the license is not renewed or provisional license  
 15 granted, and before the license is terminated.

16 (235) "Fee or commission" means a payment, actual, promised or ex-  
 17 pected, as compensation for the performance of any act requiring a real  
 18 estate license.

19 (246) "Inactive license" means the status of a license that is not ex-  
 20 pired, terminated, suspended or revoked, and during which inactive period  
 21 the license holder is not authorized to act as or associate with a designated  
 22 broker.

23 (257) "Legal business entity" means and includes any type of corpora-  
 24 tion, partnership, limited liability company or limited liability partner-  
 25 ship, a governmental entity, trust or other entity capable of conducting  
 26 business.

27 (268) "Licensee" means any person who is licensed in accordance with  
 28 this chapter to engage in the business or act in the capacity of real estate  
 29 broker, associate broker or real estate salesperson.

30 (279) "Limited broker" means a broker individually qualified to do  
 31 business in Idaho, but who may not have associate brokers or salespersons  
 32 licensed with that broker.

33 (2830) "Live presentation" means, in reference to a real estate course  
 34 offering, a real estate course that is personally presented by the instruc-  
 35 tor and personally attended by the student at the same facility, or, if sepa-  
 36 rated by distance, the instructor and student are connected by contemporane-  
 37 ous, two-way audio and visual communication.

38 (2931) "Main office" means the principal location where the real estate  
 39 broker is licensed to transact business.

40 (302) "Person" means and includes an individual, or any legal business  
 41 entity.

42 (313) "Primary Idaho license" means an Idaho real estate license that is  
 43 not contingent upon continuance of a license in another state or jurisdic-  
 44 tion.

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

50 (335) "Real estate broker" means and includes:

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

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

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

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

(346) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (334) of this section.

(357) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

(368) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(379) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(3840) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(3941) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(402) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

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

(424) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(435) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

SECTION 2. That Section 54-2038, Idaho Code, be, and the same is hereby amended to read as follows:

1        54-2038. DESIGNATED BROKER -- GENERAL RESPONSIBILITIES -- BROKER  
 2 PRICE OPINIONS. The requirement that each brokerage company be maintained  
 3 and conducted in compliance with the Idaho real estate license law and the  
 4 Idaho real estate brokerage representation act is the responsibility of its  
 5 designated broker. The designated broker is responsible for the actions of  
 6 its licensees and associated unlicensed persons performed within the course  
 7 and scope of their employment or agency, regardless of the location of the  
 8 company's business or where representation is conducted.

9        (1) A designated broker is required to:

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

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

17        (c) Be reasonably available to manage and supervise the brokerage  
 18 company during regular business hours. When a broker is a regular  
 19 full-time employee or is engaged in a full-time activity at a location  
 20 other than where the broker is licensed to do business, a presumption  
 21 will be made that the broker is unable to manage and supervise the bro-  
 22 kerage company in accordance with these requirements, and no sales  
 23 associate shall be licensed under the broker until such presumption is  
 24 overcome by evidence to the contrary, satisfactory to the commission.

25        (2) A broker who is otherwise qualified to do business in Idaho, but is  
 26 not able to manage and supervise according to this section, may be licensed  
 27 as a "limited broker" in Idaho and shall not have any sales associates li-  
 28 censed under that broker.

29        (3) An actively licensed salesperson or broker may, in the ordinary  
 30 course of business, give an opinion of the price of real estate for the pur-  
 31 pose of a prospective listing or sale. Only an actively licensed broker may  
 32 prepare and render a broker price opinion, as defined in this chapter. A  
 33 broker price opinion prepared or rendered by an associate broker shall be  
 34 submitted through the designated broker, and the associate broker may not  
 35 accept any fee except through the designated broker. Any licensee who ren-  
 36 ders a price opinion that does not comply with this subsection or with the  
 37 requirements of section 54-4105, Idaho Code, is subject to discipline by the  
 38 commission.

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

44        SECTION 3. That Section 54-2058, Idaho Code, be, and the same is hereby  
 45 amended to read as follows:

46        54-2058. AUTHORITY TO INVESTIGATE AND DISCIPLINE. (1) General author-  
 47 ity to investigate. The commission may investigate the action of any per-  
 48 son engaged in the business or acting in the capacity of real estate broker  
 49 or salesperson ~~within the this state of Idaho~~, or any person believed to have

1 acted as a real estate broker or salesperson without a license in violation  
2 of section 54-2002, Idaho Code. Upon receipt of a written complaint from  
3 anyone who claims to have been injured or defrauded as a result of such ac-  
4 tion, or upon information received by the executive director, the executive  
5 director shall perform an investigation of the facts alleged against such  
6 real estate broker or salesperson or such unlicensed person. Prior to the  
7 initiation of any proceedings for the revocation or suspension of a license,  
8 or for such other disciplinary actions as set forth in section 54-2059, Idaho  
9 Code, the executive director shall transmit to the commission a report, in  
10 writing, signed by the executive director, setting forth the facts alleged  
11 against such real estate broker or salesperson or unlicensed person. Upon  
12 receiving such report, the commission shall make an examination of all the  
13 facts and circumstances connected with such report. If the facts set forth  
14 in the report are deemed insufficient by the commission, no further action  
15 shall be taken, unless the executive director resubmits the report with ad-  
16 ditional facts supporting the filing of an administrative complaint. Should  
17 the commission deem that the facts set forth in the report are sufficient to  
18 proceed with a formal action, the commission shall authorize the filing of an  
19 administrative complaint against such person.

20 ~~A person is acting "within the state of Idaho" if that person is dealing~~  
21 ~~with any interest in real property or a business opportunity involving an in-~~  
22 ~~terest in real property, which is situated in this state, or is conducting or~~  
23 ~~attempting to conduct or solicit real estate business with residents of the~~  
24 ~~state of Idaho.~~

25 (2) Audits. The commission or its duly authorized representative is  
26 vested with the authority to conduct periodic inspections, surveys and au-  
27 dits of the transaction records and real estate trust accounts of all Idaho  
28 licensed designated brokers. Any transaction records or real estate trust  
29 account records located outside the state of Idaho shall promptly be made  
30 available to the commission upon request at the licensee's own cost and at  
31 the location or in the manner requested by the commission. If the analysis  
32 of a broker's real estate trust account indicates a deficiency or any ir-  
33 regularity which cannot be resolved between the commission and the broker,  
34 the commission may order a complete audit of the trust account by a certified  
35 public accountant at the broker's expense.

36 (3) The commission also has the authority to investigate the action of  
37 any Idaho licensee as provided in this section. The licensee or broker shall  
38 answer all reasonable investigative questions of the commission, and must  
39 make available, promptly upon request, any and all records to the commission  
40 at the licensee's own cost and at the location or in the manner requested by  
41 the commission.