

IN THE SENATE

SENATE BILL NO. 1250

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2011, IDAHO
2 CODE, TO REMOVE REFERENCE TO A RECIPROCAL IDAHO REAL ESTATE LICENSE AND
3 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2016, IDAHO CODE,
4 TO REMOVE OBSOLETE LANGUAGE RELATING TO SALESPERSONS ACTING AS BRANCH
5 MANAGERS ON JULY 1, 2005, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
6 SECTION 54-2027, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO COURSE
7 COMPLETION LISTS SUBMITTED TO THE COUNCIL OR COMMISSION BY A COURSE
8 PROVIDER; AMENDING SECTION 54-2036, IDAHO CODE, TO REMOVE REFERENCE TO
9 A NATIONAL ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS AND TO MAKE
10 A TECHNICAL CORRECTION; AND AMENDING SECTION 54-2093, IDAHO CODE, TO
11 REMOVE REFERENCE TO A SUBAGENT AND TO PROVIDE CORRECT TERMINOLOGY.
12

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

14 SECTION 1. That Section 54-2011, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 54-2011. TYPES OF LICENSES. The commission may issue a primary ~~or~~
17 ~~reciprocal~~ Idaho real estate license to any individual, sole proprietorship
18 or legal business entity in accordance with the requirements of this
19 chapter. An individual may be licensed as a real estate salesperson, an
20 associate broker, or a designated broker acting for a sole proprietorship or
21 legal business entity.

22 SECTION 2. That Section 54-2016, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE
25 PROPRIETORSHIPS AND BRANCH OFFICES -- ADDITIONAL REQUIREMENTS. (1) Legal
26 business entities. Each legal business entity, as defined in section
27 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission
28 to engage in the real estate business in Idaho and shall make proper
29 application, pay all required fees, and meet all requirements listed below.

30 (a) Each legal business entity shall have a properly licensed
31 individual designated broker, who shall be held responsible for the
32 activities of the licensed entity.

33 (b) The individual designated broker shall, within three (3) years
34 immediately prior to the designation, satisfactorily complete a
35 commission-approved business conduct and office operations course.

36 (c) The individual designated broker shall also hold the following
37 legal position within the licensed entity:

38 (i) Corporation -- an officer;

39 (ii) Partnership or limited partnership -- a general partner;

40 (iii) Limited liability company -- a member or manager.

1 The individual designated broker for any business entity shall have
2 full authority to act on behalf of the licensed business entity,
3 and shall submit sufficient and satisfactory proof thereof with the
4 application for license. Such proof shall include a list of the
5 entity's officers, directors, members or managers, as reflected in the
6 minutes, resolutions or other similar business documents of the entity.
7 All acts of that individual as designated broker shall be considered
8 acts of the licensed business entity. Nothing in this section is
9 intended to create liability to a legal business entity for illegal or
10 fraudulent acts by the individual broker performed solely on his own
11 account.

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

23 (e) One (1) individual may act as designated broker for more than one
24 (1) licensed business entity, however, all entities shall have their
25 main offices in the same physical location.

26 (f) Satisfactory proof of mandatory errors and omissions insurance
27 shall be provided for both the individual designated broker and the
28 licensed business entity.

29 (g) A legal business entity doing business under an assumed name shall
30 provide satisfactory proof of having legally filed a certificate of
31 assumed name with the Idaho secretary of state.

32 (2) Sole proprietorships. An individual designated broker not
33 licensed with a legal business entity, as defined in section 54-2004, Idaho
34 Code, shall be licensed as a sole proprietor. Each sole proprietorship
35 seeking a real estate license shall meet all of the following requirements:

36 (a) A licensed sole proprietor doing business under an assumed business
37 name shall provide satisfactory proof of having legally filed a
38 certificate of assumed name with the Idaho secretary of state;

39 (b) Satisfactory proof of mandatory errors and omissions insurance
40 shall be provided for the licensed designated broker of a sole
41 proprietorship;

42 (c) The individual designated broker shall have satisfactorily
43 completed a commission-approved business conduct and office operations
44 course within three (3) years immediately prior to the application for
45 license.

46 (3) Multiple business names prohibited. A legal business entity or
47 sole proprietorship shall be licensed under only one (1) business name.

48 (4) Branch offices. Each branch office in which trust funds and
49 original transaction files are maintained shall be separately licensed in
50 accordance with the following:

1 (a) The designated broker establishing the branch office shall submit
2 an application, along with the required fee for the issuance or renewal
3 of the branch office license.

4 (b) The designated broker shall designate in the application a branch
5 manager, who shall be an associate broker and who, within three (3)
6 years immediately prior to the designation, shall have completed a
7 commission-approved business conduct and office operations course, to
8 regularly occupy and be responsible for the supervision of the branch
9 office. ~~Any salesperson acting as a branch manager on July 1, 2005,~~
10 ~~shall have until July 1, 2006, to obtain an associate broker's license.~~
11 When a branch manager is a regular full-time employee or is engaged in
12 a full-time activity at a location other than the place he is licensed
13 to do business, a presumption will be made that the branch manager
14 is unable to responsibly supervise the branch; provided however, the
15 presumption may be overcome by evidence to the contrary which the
16 commission determines to be satisfactory.

17 (c) A branch manager shall not be licensed to manage more than one (1)
18 branch office at a time.

19 (d) A license issued to a branch office is valid and in effect only as
20 long as the license of the designated broker remains in active status.

21 (e) No separate branch office license or manager is required for
22 business locations other than the main office unless trust funds or
23 original transaction records are kept at the branch.

24 (f) If a separate real estate trust account is maintained for a
25 branch office, all records and related files for that account shall be
26 maintained at the branch office.

27 (g) Each branch office or business location, whether separately
28 licensed or not, shall conduct business only in the licensed name of the
29 legal entity or sole proprietor.

30 SECTION 3. That Section 54-2027, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 54-2027. DUTIES AND REQUIREMENTS OF ALL CERTIFIED COURSE
33 PROVIDERS. Failure of a certified course provider to comply with the
34 following duties and requirements shall be grounds for the commission to
35 withdraw or cancel the provider's certification for cause.

36 (1) Discrimination prohibited. Each certified course provider
37 shall at all times be in compliance with state and federal laws, rules and
38 regulations regarding all aspects of equal opportunity and protection of
39 civil rights. No course provider shall engage in discriminatory practices,
40 nor allow their course instructor, or method of delivery to violate laws
41 prohibiting discrimination. Each course provider will fully comply with any
42 requirements of the Americans with disabilities act regarding access to and
43 delivery of its courses, including the provision of accessible facilities
44 and reasonable accommodations for students.

45 (2) Open access to course offerings. Registration and attendance at
46 all certified courses offered for credit toward the education requirements
47 of this chapter shall be open to all persons meeting normal course
48 prerequisites; provided however, a certified course provider located in or
49 affiliated with a licensed real estate brokerage company or professional

1 association may refuse access to any licensee or unlicensed person based
2 on that licensee's or unlicensed person's affiliation with another
3 organization or brokerage company, or the licensee's or unlicensed person's
4 membership status in any professional organization unless such course
5 provider has received financial support from the commission for its
6 particular course offering. Nothing in this section shall restrict a course
7 provider from charging a separate and reasonable course fee to nonaffiliated
8 or nonmember licensees or unlicensed persons.

9 (3) Disclosure of fees. All fees charged to a student by a course
10 provider shall be specified separately in writing. If additional fees are
11 charged for supplies, materials or books required for coursework, such
12 fees shall be itemized by the provider and, upon payment of such fees, the
13 supplies, materials or books shall become the property of the student. All
14 fees and the manner in which they are to be paid shall be stated in a student
15 contract, in a form approved by the commission. The student contract shall
16 expressly include the provider's policy regarding the return of fees in the
17 instance where the student is dismissed or voluntarily withdraws from the
18 course.

19 (4) Facilities and supportive personnel. The provider shall provide
20 the facilities and all supportive qualified personnel or approved proctors
21 necessary to adequately implement its real estate program.

22 (5) Student records and other requirements. Each Idaho certified
23 course provider shall comply with the following requirements:

24 (a) Records. For each individual student, create and retain for a
25 period of five (5) years, a complete, accurate and detailed record which
26 shall include the total number of hours of instruction undertaken and
27 satisfactorily or unsatisfactorily completed in the area of study;

28 (b) Course completion lists. Within five (5) working days after
29 conclusion of each course of instruction, the provider shall submit
30 to the council or commission, in the form and manner designated by
31 the commission, an alphabetical list which shall include the names,
32 ~~addresses,~~ and social security numbers or, if licensed, the license
33 numbers, of the students completing the course of instruction, the name
34 of the course, the name of the instructor, the number of hours included
35 in the course, the date of the course and the location. The list shall be
36 certified by the instructor from whom the students received instruction
37 and an authorized representative of the provider;

38 (c) Grades. The provider will provide written notification to students
39 who successfully or unsuccessfully complete a course within thirty (30)
40 days of the course completion date;

41 (d) Evaluations. Upon the conclusion of each course, the provider
42 shall collect written evaluations from students for the course and
43 instructor, using an evaluation form approved by the commission. The
44 provider shall keep such evaluations for a period of one (1) year from
45 the course completion date. Upon written request from the commission,
46 the provider shall submit either the student evaluations for the course
47 and instructor, or a written summary of those evaluations using a form
48 approved by the commission.

49 (e) Course schedules. Each provider shall submit schedules of
50 courses and instructors as requested by the commission and submit

1 changes promptly as they occur. Whenever there is a change in a course
2 including, but not limited to, a change in curriculum, course length
3 or instructor, the provider shall promptly notify the commission in
4 writing of the change.

5 (6) Instructors. A certified provider may offer a continuing education
6 elective course without obtaining approval or certification for the
7 course instructor; provided however, the provider shall take reasonable
8 steps to ensure that the instructor is competent to teach the course and
9 shall maintain resumes or other biographical information that documents
10 the qualifications of the instructor. The provider shall make such
11 documentation available to the public and commission upon written request.
12 A course provider shall not offer for credit any course that is being taught
13 below the minimum teaching standards established by the commission or that
14 is being taught in a manner that is detrimental to the purpose of educating
15 licensees.

16 (7) Posting and recording fees. The commission may require that course
17 providers pay to the commission a nonrefundable posting and recording fee to
18 defray normal expenses incurred in maintaining the certificate program. The
19 fee amount shall be established by the commission by motion.

20 (8) Advertising restrictions:

21 (a) Providers may advertise that they are currently certified by the
22 commission, if current certification has been approved, but no such
23 advertising may state or imply that the provider is an agency of the
24 commission or the council;

25 (b) No course provider shall provide any information to the public or
26 to prospective students which is misleading in nature. Information is
27 misleading when, taken as a whole, there is distinct probability that it
28 will deceive the persons whom it is intended to influence.

29 (9) Changes in certification. Certification shall be granted to
30 the particular provider for the specific ownership, provider location,
31 and named individual in charge as designated in the application for
32 certification. Any changes in ownership, provider location, or provider
33 name, or named individual in charge must be submitted for approval to the
34 commission, at least one (1) month in advance of the effective date of the
35 proposed changes.

36 SECTION 4. That Section 54-2036, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real
39 estate course offered for prelicense or continuing education credit for an
40 Idaho real estate license shall first be certified and accredited by the
41 Idaho real estate commission.

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

45 (2) Minimum requirements for course certification:

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

1 (b) Each prelicense course must contain at least twenty (20) classroom
2 hours, and each continuing education course must contain at least two
3 (2) classroom hours.

4 (c) Exam time shall not be included as approved classroom hours of
5 instruction.

6 (d) A classroom hour is defined as a period of at least fifty (50)
7 minutes of actual instruction.

8 (e) Distance learning courses. The design and delivery of each
9 distance learning course shall be certified by the ~~national~~ association
10 of real estate license law officials or by another institution whose
11 certification standards are deemed equivalent by the commission. The
12 credit hours for a certified distance learning course shall be based
13 upon the same number of hours which would be credited for an equivalent
14 live course, and must include a commission-approved final exam.

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

17 (g) Continuing education course exam.

18 (i) A licensee may receive continuing education course credit
19 without having to take or pass an exam if the licensee personally
20 attends the entire live presentation of an approved course.

21 (ii) The commission may substitute all or a portion of the
22 continuing education coursework required when a licensee shows
23 evidence of passing a commission-approved challenge exam.

24 (h) Exam retake policy. Each certified course provider may, at its
25 option, allow students who complete a course and then fail the course
26 exam one (1) opportunity to retake the approved course exam within the
27 following time periods:

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

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

32 (iii) If a student fails the retake exam for any prelicense or
33 continuing education course, the student must repeat the entire
34 course and pass the final exam to receive credit;

35 (iv) A course provider shall not permit a student who takes and
36 fails a challenge exam to retake the exam. A student who fails a
37 challenge exam must take the entire course and pass the final exam
38 to receive credit for the course.

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
42 prelicense course by challenging and passing the course exam without
43 otherwise completing all course requirements.

44 (3) Approved topics. The commission shall establish specific,
45 approved 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 5. That Section 54-2093, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 54-2093. VICARIOUS LIABILITY ABOLISHED. (1) A client, as defined
2 in this ~~act~~ chapter, whether buyer or seller, shall not be liable for a
3 wrongful act, error, omission or misrepresentation of his broker, or his
4 broker's licensees, ~~or subagent~~ unless the client had actual knowledge of
5 or reasonably should have known of the wrongful act, error, omission or
6 misrepresentation.

7 (2) A licensee or brokerage engaged in representation of a client
8 shall be entitled to rely upon representations made by a client and shall
9 not be liable for a wrongful act, error, omission or misrepresentation made
10 by the client or made by any subagent unless the licensee or brokerage had
11 actual knowledge or reasonably should have known of the wrongful act, error,
12 omission or misrepresentation.

13 (3) Nothing in this section shall be construed to diminish or limit any
14 of the broker's or licensee's responsibilities under chapter 20, title 54,
15 Idaho Code, or the rules promulgated thereunder.