

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 476

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2038, IDAHO  
2 CODE, TO REVISE PROVISIONS REGARDING BROKER AVAILABILITY RESPONSIBI-  
3 LITIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2039,  
4 IDAHO CODE, TO REMOVE PROVISIONS REGARDING BROKER AND BRANCH MANAGER  
5 ABSENCES; AND AMENDING SECTION 54-2040, IDAHO CODE, TO REMOVE A CODE  
6 REFERENCE.  
7

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

9 SECTION 1. That Section 54-2038, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 54-2038. DESIGNATED BROKER -- GENERAL RESPONSIBILITIES -- BROKER  
12 PRICE OPINIONS. The requirement that each brokerage company be maintained  
13 and conducted in compliance with the Idaho real estate license law and the  
14 Idaho real estate brokerage representation act is the responsibility of its  
15 designated broker. The designated broker is responsible for the actions of  
16 its licensees and associated unlicensed persons performed within the course  
17 and scope of their employment or agency, regardless of the location of the  
18 company's business or where representation is conducted.

19 (1) A designated broker is required to:

20 (a) Supervise and control, in the manner required by law and rule, all  
21 office locations, and the activities of all licensees and unlicensed  
22 persons associated with that brokerage company or for whom that desig-  
23 nated broker is responsible;

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

27 (c) Be reasonably available to manage and supervise the brokerage  
28 company during regular business hours. ~~When a broker is a regular  
29 full-time employee or is engaged in a full-time activity at a location  
30 other than where the broker is licensed to do business, a presumption  
31 will be made that the broker is unable to manage and supervise the bro-  
32 kerage company in accordance with these requirements, and no sales  
33 associate shall be licensed under the broker until such presumption is  
34 overcome by evidence to the contrary, satisfactory to the commission.  
35 and will maintain adequate, reasonable, and regular contact with sales  
36 associates engaged in real estate transactions so as to prevent or cur-  
37 tail practices by a licensee that would violate any provision of this  
38 chapter; and~~

39 (d) Be reasonably available to the public during business hours in or-  
40 der to discuss or resolve complaints and disputes that arise during the  
41 course of real estate transactions in which the designated broker or his  
42 sales associate is involved.

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

5 (3) An actively licensed salesperson or broker may, in the ordinary  
 6 course of business, give an opinion of the price of real estate for the pur-  
 7 pose of a prospective listing or sale. Only an actively licensed broker or  
 8 associate broker may prepare and render a broker price opinion, as defined  
 9 in this chapter. An associate broker who prepares and renders a broker price  
 10 opinion shall notify the designated broker, and the associate broker may  
 11 not accept any fee except through the designated broker. Any licensee who  
 12 renders a price opinion that does not comply with this subsection or with the  
 13 requirements of section 54-4105, Idaho Code, is subject to discipline by the  
 14 commission.

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

20 SECTION 2. That Section 54-2039, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 54-2039. BROKER AND BRANCH MANAGER ABSENCES AND CHANGES. (1) Each real  
 23 estate brokerage company must have a legally qualified individual acting as  
 24 designated broker at all times. Each branch office licensed under section  
 25 54-2016(4), Idaho Code, shall have, at all times, a legally qualified indi-  
 26 vidual acting as branch manager.

27 ~~(1) Broker or branch manager absent for more than twenty-one (21) days.~~  
 28 ~~A designated broker who is absent from his main office for more than twenty-~~  
 29 ~~one (21) consecutive days shall appoint a qualified designated broker of an-~~  
 30 ~~other office, or an associate broker who is licensed and associated with the~~  
 31 ~~absent broker, to manage, supervise and oversee the regular office opera-~~  
 32 ~~tions of the company in his absence. A branch manager who is absent for more~~  
 33 ~~than twenty-one (21) consecutive days from a branch office in which trust~~  
 34 ~~funds and original transaction files are maintained shall appoint a quali-~~  
 35 ~~fied individual to manage, supervise and oversee the regular office opera-~~  
 36 ~~tions of the company in his absence. The appointee shall conduct all super-~~  
 37 ~~visory activities normally required of the designated broker or branch man-~~  
 38 ~~ager. Except in the event of an emergency, the designated broker or branch~~  
 39 ~~manager shall notify the commission in writing of the name of the appointee~~  
 40 ~~prior to the broker or manager leaving the office for an extended period of~~  
 41 ~~more than twenty-one (21) consecutive days.~~

42 ~~(2) Broker or branch manager absent for more than sixty (60) days. A~~  
 43 ~~designated broker, or manager of a branch office in which trust funds and~~  
 44 ~~original transaction files are maintained, shall not be absent from his main~~  
 45 ~~office for a period longer than sixty (60) consecutive days. In the case of~~  
 46 ~~such extended absence, another qualified individual shall be designated to~~  
 47 ~~act as broker or branch manager. If a designated broker or branch manager is~~  
 48 ~~absent from his main office for a period longer than sixty (60) consecutive~~  
 49 ~~days, and no new broker or branch manager is appointed to act as broker or~~

1 ~~branch manager, the commission shall place on inactive status the licenses~~  
2 ~~of the absent broker or branch manager and all licensees associated with him,~~  
3 ~~and in the case of a brokerage company, all brokerage listing agreements and~~  
4 ~~all buyer brokerage agreements shall be terminated.~~

5 (32) Change of broker in business entity. A license issued to a legal  
6 business entity, as defined in this chapter, is effective only as long as the  
7 individual designated broker's license is in active status and in effect. If  
8 the individual so designated has a license refused, revoked, suspended or  
9 otherwise made inactive by the commission, or if the individual designated  
10 broker voluntarily surrenders the individual license or ceases to be con-  
11 nected with the entity in the manner required in this chapter, the business  
12 entity shall have ten (10) business days in which to designate another qual-  
13 ified individual as designated broker before the entity's license is termi-  
14 nated, and the licenses of all associated licensees are made inactive.

15 (43) Effective date of changes. No change in designated broker shall be  
16 effective until written notice is received and approved by the commission,  
17 in the form required.

18 (54) Failure to comply -- Original broker to remain responsible except  
19 in the case of revocation. Where a licensed brokerage company fails to com-  
20 ply with this section and its office is closed, or during any period where the  
21 designated broker has left the brokerage company and no new broker has been  
22 designated to act for the company, the original designated broker shall re-  
23 main responsible for trust account funds, pending transactions and records  
24 in the manner described in sections 54-2041 through 54-2049, Idaho Code.  
25 However, if the license of the original designated broker of the brokerage  
26 company is revoked, the license of that brokerage company shall be made in-  
27 active and its office closed until the company designates another qualified  
28 individual to act as broker.

29 SECTION 3. That Section 54-2040, Idaho Code, be, and the same is hereby  
30 amended to read as follows:

31 54-2040. MAIN OFFICE OR BUSINESS LOCATION. (1) Definite location re-  
32 quired. Each individual licensed as a designated real estate broker under  
33 the provisions of this chapter shall be required to have and maintain a defi-  
34 nite, physical place of business, which place shall serve as his main office  
35 for the transaction of business and be regarded for the intent and purpose of  
36 this chapter as his principal place of business. Notice in writing shall be  
37 given to the commission of any change by the broker of the business name, lo-  
38 cation, or mailing address. No other location may be used as a main office  
39 location until proper notice is acknowledged by the commission. A change of  
40 business name or location without notification to the commission shall au-  
41 tomatically inactivate the license previously issued. The broker shall also  
42 notify the commission in writing of any change in the business telephone num-  
43 ber. A designated broker is not required to obtain, display or possess a  
44 physical license certificate as evidence of the business's licensure; how-  
45 ever, the commission may make license certificates available for a fee as  
46 authorized by this chapter. The broker shall not display or otherwise make  
47 available to the public any license certificate bearing a former business  
48 name or former location.

1           (2) Broker for more than one business. A qualified individual may be  
2 the designated broker for more than one (1) licensed real estate business en-  
3 tity only if all licensed businesses operate their main offices at the same  
4 physical location.

5           (3) Brokers sharing same business location. More than one (1) individ-  
6 ually licensed broker may operate an office at the same address only if each  
7 broker operates under a business name which clearly identifies the broker as  
8 an individual within the group of brokers, and each broker shall maintain his  
9 or her records and trust accounts separate from all other brokers.

10          (4) Business name. A broker shall not conduct business under any name  
11 other than the one in which the license is issued.

12          (5) Lending license prohibited. A broker shall not lend or permit the  
13 use of the broker's license, whether for compensation or not, to enable any-  
14 one licensed or unlicensed to, in fact, establish or carry on a business for  
15 which a real estate broker's license is required, wherein the broker does  
16 not actively manage and have full control. In like manner, a salesperson  
17 shall not use another person's broker's license, whether for compensation or  
18 not, to establish or carry on a business for which a broker's license is re-  
19 quired, nor to manage and control the office, except as allowed by sections  
20 54-2016(4) and ~~54-2039(1)~~, Idaho Code.