

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 99, As Amended

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO REAL ESTATE LICENSES; AMENDING SECTION 54-2004, IDAHO CODE,  
2 TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
3 54-2011, IDAHO CODE, TO AUTHORIZE THE COMMISSION TO ISSUE A COOPERATIVE  
4 LICENSE TO AN OUT-OF-STATE BROKER UNDER CERTAIN CONDITIONS; AMEND-  
5 ING CHAPTER 20, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
6 54-2017, IDAHO CODE, TO PROVIDE TERMS AND CONDITIONS UNDER WHICH A COOP-  
7 ERATIVE LICENSE MAY BE ISSUED FOR A COMMERCIAL REAL ESTATE TRANSACTION;  
8 AND AMENDING SECTION 54-2020, IDAHO CODE, TO AUTHORIZE THE COMMISSION  
9 TO ESTABLISH A COOPERATIVE LICENSE FEE AND TO MAKE A TECHNICAL CORREC-  
10 TION.  
11

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

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

15 54-2004. DEFINITIONS. As used in this chapter:

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

19 (2) "Acting in this state" means and includes dealing with any inter-  
20 est in real property, or a business opportunity involving an interest in real  
21 property, that is situated in the state of Idaho, or conducting or attempt-  
22 ing to conduct or solicit real estate business with residents of the state of  
23 Idaho.

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

26 (4) "Associate broker" means an individual who has qualified person-  
27 ally as a real estate broker in Idaho under this chapter, but is licensed un-  
28 der, associated with and represents a designated broker in the performance  
29 of any act described in subsection (369) of this section.

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

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

39 (7) "Brokerage company" means a real estate business, whether a sole  
40 proprietorship, a legal entity, or any other licensed person engaged in acts  
41 requiring a real estate license in Idaho, that is conducting or holding it-

1 self out as conducting the business of real estate through a designated bro-  
2 ker.

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

6 (9) "Business conduct and office operations course" means the compo-  
7 nent of the advanced real estate course that is required in order to obtain  
8 a broker license and that teaches business practices and office operations  
9 of the brokerage, including recordkeeping, trust account procedures and the  
10 laws governing those practices.

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

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

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

21 (13) "Commercial real estate" means a business opportunity as defined  
22 in this section, or any real estate other than real property improved by one  
23 (1) to four (4) residential dwelling units. Commercial real estate does  
24 not include residential dwelling units such as condominiums, townhouses  
25 or homes in a subdivision when that real estate is sold, leased or other-  
26 wise conveyed on a unit-by-unit basis, even though the units may be part of  
27 a larger building or parcel of real estate containing more than four (4)  
28 units. Commercial real estate does not include property used in association  
29 with any agricultural operation or agricultural facility as those terms are  
30 defined in section 22-4502, Idaho Code, and that is zoned to allow the agri-  
31 cultural use.

32 (14) "Commission" means the Idaho real estate commission, unless the  
33 context clearly indicates a different meaning.

34 (145) "Commission core course" means the annual course covering the  
35 twelve (12) month period between July 1 and June 30, which contains curricu-  
36 lum identified by the commission that stresses that year's trends in real es-  
37 tate practices and changes in laws in real estate-related industries. A core  
38 course must contain no more than four (4) classroom hours of instruction.

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

42 (167) "Convicted" means a plea of nolo contendere or guilty, a jury ver-  
43 dict of guilty or a court decision of guilt whether or not a judgment or sen-  
44 tence has been imposed, withheld or suspended.

45 (178) "Cooperative sale" means a transaction involving two (2) or more  
46 brokers.

47 (189) "Council" means the Idaho real estate education council.

48 (1920) "Dealer in options" means any person, firm, partnership, asso-  
49 ciation or corporation who shall directly or indirectly take, obtain or use  
50 options to purchase, exchange, lease option or lease purchase real property

1 or any interest therein for another or others whether or not the options  
2 shall be in his or its name and whether or not title to the property shall pass  
3 through the name of the person, firm, partnership, association or corpora-  
4 tion in connection with the purchase, sale, exchange, lease option or lease  
5 purchase of the real property, or interest therein.

6 (201) "Designated broker" means an individual who is licensed as a real  
7 estate broker in Idaho and who is designated by the brokerage company to be  
8 responsible for the supervision of the brokerage company and the activities  
9 of any associated licensees in accordance with this chapter.

10 (212) "Distance learning course" means, in relation to a real estate  
11 course offering, a real estate course that is delivered, not as a live  
12 course, but through a medium in which the instructor and student are sepa-  
13 rated by both distance and time.

14 (223) "Double contract" means two (2) or more written or unwritten  
15 contracts of sale, purchase and sale agreements, loan applications, or any  
16 other agreements, one (1) of which is not made known to the prospective loan  
17 underwriter or the loan guarantor, to enable the buyer to obtain a larger  
18 loan than the true sales price would allow, or to enable the buyer to qualify  
19 for a loan ~~which~~ that he or she otherwise could not obtain. An agreement or  
20 loan application is not made known unless it is disclosed in writing to the  
21 prospective loan underwriter or loan guarantor.

22 (234) "Executive director" means the executive director of the Idaho  
23 real estate commission.

24 (245) "Expired license" means the status of a license when the license  
25 period has expired and the license is not renewed or provisional license  
26 granted, and before the license is terminated.

27 (256) "Fee or commission" means a payment, actual, promised or ex-  
28 pected, as compensation for the performance of any act requiring a real  
29 estate license.

30 (267) "Inactive license" means the status of a license that is not ex-  
31 pired, terminated, suspended or revoked, and during which inactive period  
32 the license holder is not authorized to act as or associate with a designated  
33 broker.

34 (278) "Legal business entity" means and includes any type of corpora-  
35 tion, partnership, limited liability company or limited liability partner-  
36 ship, a governmental entity, trust or other entity capable of conducting  
37 business.

38 (289) "Licensee" means any person who is licensed in accordance with  
39 this chapter to engage in the business or act in the capacity of real estate  
40 broker, associate broker or real estate salesperson.

41 (2930) "Limited broker" means a broker individually qualified to do  
42 business in Idaho, but who may not have associate brokers or salespersons  
43 licensed with that broker.

44 (301) "Live presentation" means, in reference to a real estate course  
45 offering, a real estate course that is personally presented by the instruc-  
46 tor and personally attended by the student at the same facility, or, if sepa-  
47 rated by distance, the instructor and student are connected by contemporane-  
48 ous, two-way audio and visual communication.

49 (312) "Main office" means the principal location where the real estate  
50 broker is licensed to transact business.

1       (33) "Out-of-state broker" means a person who holds the equivalent of  
 2 an active Idaho designated broker license in another jurisdiction who is not  
 3 licensed as a real estate broker under this chapter.

4       (34) "Out-of-state sales associate" means a person who holds the equiv-  
 5 alent of an active Idaho salesperson or associate broker license in another  
 6 jurisdiction who is not licensed as a salesperson or associate broker under  
 7 this chapter.

8       (325) "Person" means and includes an individual, or any legal business  
 9 entity.

10       (336) "Post license course" means a commission-approved or certified  
 11 elective course that is specifically oriented toward salespersons in their  
 12 first two (2) years of Idaho practice. The course must contain no more than  
 13 twelve (12) classroom hours of instruction.

14       (347) "Primary Idaho license" means an Idaho real estate license that is  
 15 not contingent upon continuance of a license in another state or jurisdic-  
 16 tion.

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

22       (369) "Real estate broker" means and includes:

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

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

31       (c) Any person who represents to the public that the person is engaged  
 32 in any of the ~~above~~ activities in this subsection;

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

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

38       (3740) "Real estate salesperson" or "salesperson" means any person who  
 39 has qualified and is licensed as a real estate salesperson in Idaho under  
 40 this chapter, and is licensed under, associated with, and represents a des-  
 41 ignated broker in the performance of any act described in subsection (369) of  
 42 this section.

43       (3841) "Real estate settlement procedures act" means the real estate  
 44 settlement procedures act of 1974, as amended, 12 U.S.C. ~~section~~ 2601 et  
 45 seq., and as in effect on January 1, 2008.

46       (3942) "Regular employee" means an individual who performs a service  
 47 for wages or other compensation and whose employer withholds federal employ-  
 48 ment taxes under a contract of hire, written or oral, express or implied.

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

4 (414) "Responsible broker" means the designated broker in the regulated  
5 real estate transaction who is responsible for the accounting and transac-  
6 tion files for the transaction, in the manner described in section 54-2048,  
7 Idaho Code.

8 (425) "Revoked license" means a license that has been permanently re-  
9 voked by the issuing authority.

10 (436) "Sales associate" means a salesperson or an associate broker li-  
11 censed under and associated with a designated broker.

12 (447) "State or jurisdiction" means and includes any state or territory  
13 of the United States, the District of Columbia and any foreign jurisdiction  
14 that issues real estate licenses substantially similar to those provided for  
15 in this chapter.

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

21 (469) "Surrendered license" means a license that has been voluntarily  
22 terminated or surrendered by a licensee who, at the time of the voluntary  
23 termination or surrender, was under investigation or named in a formal ad-  
24 ministrative complaint.

25 (4750) "Suspended license" means a license that has been temporarily  
26 suspended by the issuing authority.

27 SECTION 2. That Section 54-2011, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 54-2011. TYPES OF LICENSES. (1) The commission may issue a primary  
30 Idaho real estate license to any individual, sole proprietorship or legal  
31 business entity in accordance with the requirements of this chapter. An  
32 individual may be licensed as a real estate salesperson, an associate broker  
33 or a designated broker acting for a sole proprietorship or legal business  
34 entity.

35 (2) The commission may issue a nontransferable cooperative license to  
36 any out-of-state broker. The cooperative license shall authorize the out-  
37 of-state broker to work in cooperation with an actively licensed Idaho real  
38 estate designated broker for the purpose of one (1) Idaho commercial real es-  
39 tate transaction.

40 SECTION 3. That Chapter 20, Title 54, Idaho Code, be, and the same is  
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
42 ignated as Section 54-2017, Idaho Code, and to read as follows:

43 54-2017. COOPERATIVE LICENSES. (1) An individual who is currently and  
44 actively licensed as a real estate broker in another jurisdiction and wishes  
45 to work in cooperation with an Idaho real estate broker must submit an appli-  
46 cation on a form approved by the commission. The application must include:

1 (a) The name, physical and mailing addresses and telephone number of  
2 the out-of-state broker and any out-of-state sales associate employed  
3 by the out-of-state broker who will conduct the Idaho transaction;

4 (b) A current certified license history from the primary state of li-  
5 censure for each out-of-state broker and out-of-state sales associate  
6 named in the application, which history shall indicate any disciplinary  
7 action taken against the applicant's license by the other licensing ju-  
8 risdiction, and the status and standing of the applicant's license in  
9 the other jurisdiction;

10 (c) The name, license number, physical address and verified statement  
11 of consent and signature of the Idaho broker with whom the applicant  
12 wishes to cooperate;

13 (d) An irrevocable consent to service from each out-of-state broker and  
14 out-of-state sales associate named in the application, appointing the  
15 commission's executive director to act as the out-of-state licensee's  
16 agent upon whom all judicial and other process or legal notices di-  
17 rected to the licensee that are related to the Idaho transaction may  
18 be served, and consenting that any lawful process against the licensee  
19 that is served upon the executive director shall be of the same legal  
20 force and validity as if served upon the licensee and that the authority  
21 shall continue in force as long as any liability remains outstanding in  
22 this state. Upon receipt of any such process or notice, the executive  
23 director shall immediately mail a copy of the same by certified mail to  
24 the last known address of the out-of-state broker or out-of-state sales  
25 associate;

26 (e) Proof of current errors and omissions insurance that complies with  
27 the minimum requirements established by the commission, covering all  
28 out-of-state licensees for all licensed activities under the provi-  
29 sions of this chapter; and

30 (f) Applicable license fee, which fee shall be nonrefundable.

31 (2) A cooperative license is valid for twelve (12) months from the date  
32 of issuance, or until the license of the out-of-state broker expires or is  
33 inactivated, surrendered, suspended or revoked, whichever occurs first, and  
34 may not be renewed. In the event a transaction is not completed within the  
35 twelve (12) month period, a new cooperative license application may be sub-  
36 mitted.

37 (3) It is a prerequisite to conducting a cooperative Idaho commercial  
38 real estate transaction that out-of-state licenses be maintained on active  
39 status. If the license of the out-of-state broker or any out-of-state sales  
40 associate named in the cooperative license application expires or is inacti-  
41 vated, surrendered, suspended or revoked, the out-of-state broker shall im-  
42 mediately give written notice to the commission.

43 (4) An out-of-state broker holding a cooperative license shall notify  
44 the commission in writing of any change of physical or mailing address for  
45 any out-of-state licensee named in the cooperative license application  
46 within ten (10) business days of the change.

47 (5) If at any time the out-of-state broker or the Idaho broker wishes to  
48 terminate the cooperative relationship, written notice of the termination  
49 shall be provided to the commission within ten (10) business days of the ter-  
50 mination.

1 (6) When acting under a cooperative license, an out-of-state broker  
 2 or out-of-state sales associate shall work through the cooperating Idaho  
 3 broker. The Idaho broker must be in charge of the transaction from begin-  
 4 ning to end. Any entrusted moneys received in a cooperative transaction may  
 5 be handled only by the cooperating Idaho broker in accordance with section  
 6 54-2041, Idaho Code.

7 (7) Each out-of-state broker or out-of-state sales associate, while  
 8 cooperating with an Idaho broker, is governed by the provisions of this chap-  
 9 ter. Any violation of a provision of this chapter by the out-of-state broker  
 10 or out-of-state sales associate subjects the out-of-state licensee and the  
 11 Idaho broker to disciplinary action in accordance with this chapter.

12 (8) An out-of-state broker may cooperate with only one (1) Idaho bro-  
 13 ker and an Idaho broker may cooperate with only one (1) out-of-state broker  
 14 per commercial real estate transaction. However, an out-of-state broker may  
 15 obtain a cooperative license for more than one (1) commercial real estate  
 16 transaction at a time.

17 (9) The commission may deny an application for a cooperative license  
 18 for any reason that is sufficient to deny an application for a license pur-  
 19 suant to this chapter.

20 SECTION 4. That Section 54-2020, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 54-2020. FEES. The Idaho real estate commission shall establish fees  
 23 ~~which that~~, in its discretion, are sufficient, when added to the other fees  
 24 authorized by this chapter, or any other law or rule, to raise that revenue  
 25 required to administer the provisions of this chapter.

26 The commission shall assess the following fees, in addition to any other  
 27 fees established in this chapter or by rule, provided that all fees estab-  
 28 lished by administrative rule of the commission shall remain effective from  
 29 year to year unless changed through the rulemaking process prescribed in  
 30 chapter 52, title 67, Idaho Code:

31 (1) For each year or portion thereof for which an active or inactive li-  
 32 cense or cooperative license is issued or renewed, a license fee in an amount  
 33 not to exceed one hundred fifty dollars (\$150), the exact fee to be estab-  
 34 lished by administrative rule of the commission;

35 (2) A tuition or registration fee for real estate education courses,  
 36 course materials and any course exam fee. These fees shall be established  
 37 based upon the total annual costs involved in the provision of all real es-  
 38 tate education courses, course materials and course exam fees;

39 (3) A late license renewal fee in an amount not to exceed twenty-five  
 40 dollars (\$25.00), the exact fee to be established by administrative rule of  
 41 the commission;

42 (4) For the printing of a license certificate, a fee in an amount not to  
 43 exceed fifteen dollars (\$15.00), the exact fee to be established by adminis-  
 44 trative rule of the commission;

45 (5) A fee in the amount allowed by law for insufficient funds checks or  
 46 other types of insufficient payment;

47 (6) For the compilation of each certified copy of a licensee's educa-  
 48 tion history or license history, a fee in an amount not to exceed ten dollars

1 (\$10.00), the exact fee to be established by administrative rule of the com-  
2 mission;

3 (7) For issuance or renewal of a branch office license, a fee in an  
4 amount not to exceed fifty dollars (\$50.00), the exact fee to be established  
5 by administrative rule of the commission;

6 (8) An application fee for the certification and recertification of  
7 each real estate education provider, instructor or course as follows:

8 (a) For providers, an application fee in the amount of seventy-five  
9 dollars (\$75.00) for initial certification and fifty dollars (\$50.00)  
10 for recertification;

11 (b) For instructors, an application fee in the amount of fifty dollars  
12 (\$50.00) for initial certification and twenty-five dollars (\$25.00)  
13 for recertification;

14 (c) For courses, an application fee in the amount of fifty dollars  
15 (\$50.00) for initial certification and twenty-five dollars (\$25.00)  
16 for recertification.

17 Provided however, that lower fee amounts may be established by administra-  
18 tive rule of the commission.