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**IDAPA 33
TITLE 01
Chapter 01**

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

000. LEGAL AUTHORITY.

The Rules of the Idaho Real Estate Commission contained herein have been adopted pursuant to Section 54-2027, Idaho Code: any violation of these Rules, or of any section of the Idaho Real Estate Brokers Law, shall be sufficient cause for disciplinary action as prescribed by Section 54-2040A(h), Idaho Code. (7-1-93)

001. -- 002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by IDAPA 33.01.02.000 et seq., "Rules of Practice and Procedure of the Idaho Real Estate Commission." (7-1-93)

004. INCLUSIVE GENDER.

Words used in these Rules, in the masculine gender include the feminine gender. (7-1-93)

005. -- 009. (RESERVED).

010. DEFINITIONS.

As used herein, the following words or phrases are defined as follows: (7-1-93)

01. Active License Experience. Practicing the business of real estate, which requires a license, on a full-time basis. The productiveness from such licensed work activity must have been generally commensurate with that of the other licensees working in a similar brokerage capacity. Listings, sales, options, or other activities may be used as some of the criteria to determine proper license experience in conjunction with application for the broker's license. (7-1-93)

02. Active Licensee. A person who holds a current license in good standing. (7-1-93)

03. Approved or Approval. As used in reference to real estate education, a determination by the Commission that the appropriate standards and requirements have been met. (7-1-93)

04. Branch Office. An office operated by a licensed real estate broker or corporation, partnership, or limited liability company separate and apart from the "Main Office". (7-1-96)

05. Brokerage Agreement. An express written contract or agreement between a buyer or seller or both and a real estate brokerage for agency representation in a regulated real estate transaction. (7-1-96)T

06. Business Name. The name which appears on the real estate broker's license issued by the Idaho Real Estate Commission. (7-1-93)

07. Challenge Examination. As used in reference to real estate education, the written test by which the Commission determines whether a participant has successfully completed a course offering according to standards previously approved by the Commission. (7-1-93)

08. Closed Transaction. A transaction which has been finalized including proper disbursement of all trust funds and documents. (7-1-93)

09. Closing Broker. The broker responsible for properly closing the transaction. (7-1-93)

10. Consideration. Any cash or other form of payment having a monetary value in lieu of cash. (7-1-93)

11. Cooperative Sale. A transaction involving two (2) or more brokers. (7-1-93)

12. Designated Broker. A qualified individual named to be designated responsible broker. (7-1-96)
13. Executive. As used in reference to the Idaho Real Estate Education Council, the full-time staff person who is responsible for organizing and administering the activities of the Council. (7-1-93)
14. Expired License. A license which was not renewed for the current license period. (7-1-93)
15. Fee or Commission. A payment, either actual or promised, to a licensee as compensation for participating in a real estate transaction which requires a license. (7-1-93)
16. Fee Splitting. A payment, either actual or promised, to be paid to a person for finding or inducing another person to participate in a real estate transaction. (7-1-93)
17. Inactive Licensee. A person who has paid all applicable fees, who is not affiliated with a designated broker, and who holds a current unsuspended or unrevoked license which is held on inactive status by the Commission. (7-1-96)T
18. Limited Broker. A broker personally qualified to do business in Idaho, but who may not have sales associates licensed with that broker. (7-1-96)T
19. Main Office. The principal location where a real estate broker is licensed to transact business. (7-1-93)
20. Primary License. A license not obtained by reciprocity. (7-1-96)
21. Proprietary School. As used in reference to real estate education, a school that is privately owned and managed. (7-1-93)
22. Revoked License. A license which has been revoked in Idaho or any other state or province. A person may not apply for an Idaho real estate license until two (2) years have passed from the effective date of such revocation. (7-1-96)T
23. Sales Associate. All active licensees associated with a designated broker. (7-1-93)
24. Sales Meetings. As used in reference to real estate education, a meeting of persons, including but not limited to associates in the same office, of which the primary purpose is for consultation, discussion and study by participants on matters of mutual interest and concern other than continuing education for license renewal. (7-1-93)
25. Successfully Completed. As used in reference to a course offering, passing an approved final examination. (7-1-93)
26. Terminated License. A license which was not renewed within one (1) year after last renewal date, as required. (7-1-93)
27. A Transaction. Any type of written agreement in which the broker receives consideration and handles the transaction through a trust account and/or brokerage. (7-1-93)

011. -- 099. (RESERVED).

**RULES 100 through 199 -- APPLICATION,
LICENSURE AND TERMINATION OF LICENSES**

100. APPLICATION FOR EXAMINATION.

Any person desiring to become a licensed Idaho broker or sales associate shall comply with the following

examination requirements. (Previously Rule 2,1,0). (7-1-93)

01. Application Form. The applicant shall submit a properly completed examination application form as approved by the Commission. (Previously Rule 2,1,1). (7-1-93)

02. Fee. The applicant shall submit a nonrefundable sixty-five dollar (\$65) preregistration examination fee or a seventy-five dollar (\$75) walk-in examination fee. (Previously Rule 2,1,2). (7-1-96)T

03. Preregistration. The completed application form for exam preregistration must be submitted and postmarked in the manner and time specified by the Commission. (Previously Rule 2,1,3). (7-1-96)T

04. Walk-in Registration. An applicant may appear at a testing center without being registered for the examination. Admission to the examination is not guaranteed due to seating limitations. The walk-in examination fee of seventy-five dollars (\$75) must be paid at the time of taking the examination. The applicant must bring a completed exam application form to the center. (Previously Rule 2,1,3a). (7-1-96)T

05. Notice of Date, Time and Place. Notice of the date, time, and place of the respective examination will be sent to each preregistered applicant. (Previously Rule 2,1,4). (7-1-93)

06. Cancellation. Failure to appear for any reason for the examination shall cancel the application. A new application and fee will be required. (Previously Rule 2,1,5). (7-1-93)

07. Failure. An applicant who fails the examination may reapply for another examination. The applicant must complete a retake application-and submit the appropriate fee. (Previously Rule 2,1,6). (7-1-96)T

08. Examination Waiver. Any applicant for a salesman's or a broker's license, who is actively licensed in another state at the time of application, may request a partial or full waiver of the examination required for the license. Such certificate of waiver must be obtained from the Idaho Real Estate Commission and submitted with the application for examination. Waiver of the Idaho portion of the examination or the full exam will only be granted to reciprocal license applicants when the formal reciprocal agreement provides for such waiver. Any reciprocal license applicant approved for a waiver of the Idaho portion of the examination or the full exam shall sign an affidavit acknowledging an understanding of the Idaho Real Estate License Law and rules. (Previously Rule 2,1,7) (7-1-96)T

101. APPLICATION FOR SALESMAN LICENSURE.

An initial salesman's license shall be issued to an applicant upon meeting all of the requirements. (Previously Rule 2,2,0). (7-1-93)

01. Application Deadline. The applicant shall have a period of three (3) months after the date of taking and passing the examination in which to initiate the license by making proper application, meeting the education requirements; and all other license requirements and paying the license fee. Failure to apply for the initial license within this three (3) month period will require the applicant to submit another examination application and fee and pass the examination again. (Previously Rule 2,2,1). (7-1-96)T

02. High School Graduation or Equivalency Certificate. Proof of graduation from an accredited high school or a High School Equivalency Certificate must be submitted with the license application. (Previously Rule 2,2,2). (7-1-93)

03. Prelicense Education. The salesman license applicant shall successfully complete Commission approved courses in "Essentials of Real Estate," plus "Real Estate Practices" prior to applying for a license. Such courses need not be completed prior to taking the written license examination. Proof of successful completion of the required education shall be submitted with the license application. Commission approved courses, commonly known as "Essentials of Real Estate" and "Practices of Real Estate," must have been successfully completed within a five (5) year period immediately preceding the receipt date of the application. Each course must consist of at least forty-five (45) classroom hours, for a total of ninety (90) classroom hours, in subjects outlined in Section 54-2029, Idaho Code. The Commission may in its discretion waive such five (5) year period. Courses consisting of the same number of classroom hours as Idaho courses in "Essentials" and "Practices" which are completed out of state, may be approved for salesman applicants providing the subjects outlined in Section 54-2029, Idaho Code, are included. Study of the

provisions of the law and rules pertaining to the state in which the course is taken may be accepted in lieu of a study of the provisions of this act and rules. (Previously Rule 2,2,3). (7-1-93)

04. Fee. The fee for an initial salesman license shall be one hundred eighty dollars (\$180) which includes the twenty dollars (\$20) prescribed in Section 54-2035A, Idaho Code. (Previously Rule 2,2,4). (7-1-93)

05. Limited to One Broker. A sales associate may be licensed under and associated with only one broker at a time. (Previously Rule 2,2,5). (7-1-93)

06. Supervision, Effective Date, Incomplete Application. A broker shall not allow any person to act as a sales associate representing said broker unless that person and the designated broker have first received final approval of the sales associate's application for licensure from the Commission. A broker is required to make application to the Commission on the proper form when licensing a sales associate. The effective date of the newly issued license shall be the date the properly completed forms and fees are received at and approved by the Commission. The newly issued license will be mailed to the broker's office. Any incomplete forms or lack of proper fees shall result in the documents being returned to the applicant for correction and no license will be issued until properly submitted. All licenses, original, changed and renewed must be signed by the licensee to be valid.(7-1-96)T

07. Fingerprints. Effective August 1, 1992, every applicant for a real estate salesperson license shall be fingerprinted by a duly authorized law enforcement agency and said fingerprints shall be filed with the Idaho Real Estate Commission for the purpose of determining whether the qualifications as set forth in Idaho Code are fulfilled. These fingerprints may be forwarded to the Federal Bureau of Investigation, Identification Division, and/or the Department of Law Enforcement of the state of Idaho for processing. The fee charged for these services must be paid by the applicant. (Previously Rule 2,2,7). (7-1-96)T

08. Errors and Omissions Insurance. Effective December 31, 1993, every applicant for a real estate salesman's license shall, as a condition of licensure, carry errors and omissions insurance in accordance with Section 54-2029A, Idaho Code, and with these rules. (12-31-93)

102. APPLICATION FOR BROKER LICENSURE.

An initial broker's license shall be issued to an applicant upon meeting all of the following requirements. (Previously Rule 2,3,0). (7-1-93)

01. Application Deadline. The applicant shall have a period of three (3) months after the date of taking and passing the examination in which to initiate the license by making proper application, meeting the education requirements, and paying the license fee. Failure to apply for the initial license within this three (3) month period will require the applicant to submit another examination application and fee and pass the examination again. (Previously Rule 2,3,1). (7-1-93)

02. High School Graduation or Equivalency Certificate. Proof of graduation from an accredited high school or a High School Equivalency Certificate must be submitted with the license application. (Previously Rule 2,3,2). (7-1-93)

03. Prelicense Education. Proof that the required education in real estate courses has been successfully completed by the applicant must be submitted with the license application. Broker applicants shall provide proof of successful completion of a minimum of four (4) courses consisting of a total of at least ninety (90) classroom hours of approved real estate courses in addition to the "Essentials" and "Practices" courses required for a salesman's license. Note: A broker applicant who has maintained a salesman's license, originally issued prior to January 1, 1989, is exempt from the salesman's prelicense "Practices" course. All courses must have been completed within a five (5) year period immediately preceding the receipt date of the application. The Commission may in its discretion waive such five (5) year period. Approved courses must be comprised of twenty (20) or more classroom hours each. A list of certified courses will be available from the Commission office. (Previously Rule 2,3,3). (7-1-93)

04. Experience and Experience Waivers. The broker license applicant must have active license experience as a salesman for at least two (2) years within five (5) years prior to the application date, except, the Commission may waive all or part of the two (2) year requirement based on education and/or experience in a related industry, as prescribed in subsection B(2) of Section 54-2029, Idaho Code. (Previously Rule 2,3,4). (7-1-93)

05. Report of Listings and Sales. The broker license applicant may be required to furnish a report of listings and sales accomplished by the applicant during at least two (2) within the last five (5) years of licensure immediately prior to the application date. This list is to be certified correct by the broker or brokers with whom the applicant has been associated. (Previously Rule 2,3,5). (7-1-96)T

06. Fee. The fee for an initial broker's or associate broker's license (effective January 1, 1993) is one hundred eighty dollars (\$180), which includes the twenty dollars (\$20) prescribed in Section 54-2035A, Idaho Code. (Previously Rule 2,3,6). (7-1-93)

07. Business Name. A broker shall not conduct business under any name other than the one in which the license is issued. Current licenses of the broker and all associates licensed with the broker shall be prominently displayed in the office designated as the place of business on the application or change of address form, whichever is latest. No other location may be used as an office until proper notice is acknowledged by the Commission. An individual may not be licensed as designated broker for more than one (1) corporation unless all corporations conduct business from the same main office location. (Previously Rule 2,3,7). (7-1-96)T

08. Same Address as Other Broker. More than one individually licensed broker may operate an office at the same address. Each broker shall operate under a business name which clearly identifies the broker as an individual within the group of brokers. (Previously Rule 2,3,8) (7-1-93)

09. Fingerprints. Effective August 1, 1992, every applicant for a real estate broker license shall be fingerprinted by a duly authorized law enforcement agency and said fingerprints shall be filed with the Commission for the purpose of determining whether the qualifications as set forth in Idaho Code are fulfilled. These fingerprints may be forwarded to the Federal Bureau of Investigation, Identification Division, and/or the Department of Law Enforcement of the state of Idaho for processing. The fee charged for these services must be paid by the applicant. (Previously Rule 2,3,9). (7-1-96)T

10. Errors and Omissions Insurance. Effective December 31, 1993, every applicant for a real estate broker's license shall, as a condition of licensure, carry errors and omissions insurance in accordance with Section 54-2029A, Idaho Code, and with these rules. (12-31-93)

103. APPLICATION FOR RECIPROCAL LICENSURE.

An applicant for a reciprocal Idaho license shall meet the requirements of each state's reciprocal agreement. The following are exceptions or additional requirements. (Previously Rule 2,4,0). (7-1-93)

01. Irrevocable Consent Form. A properly executed "Irrevocable Consent" form accompanied by the established fee is required. The form will be filed with the Secretary of State of Idaho or the Idaho Real Estate Commission if authorized by Idaho Code. (Previously Rule 2,4,1). (7-1-93)

02. Primary License versus Reciprocal License. A person may not be licensed in Idaho as both an active primary licensee and as an active reciprocal licensee at the same time. (Previously Rule 2,4,2). (7-1-96)T

03. Errors and Omissions Insurance. Effective December 31, 1993, every applicant for a reciprocal Idaho license shall, as a condition of licensure, carry errors and omissions insurance in accordance with Section 54-2029A, Idaho Code, to cover acts in the state of Idaho. (12-31-93)

104. APPLICATION FOR NONRESIDENT LICENSURE.

Any person who is a nonresident of Idaho and who does not meet the reciprocal requirements of Section 54-2031A, Idaho Code, may make application for a real estate license as specified in Section 54-2029, Idaho Code, and upon successful completion of the requirements for licensure, and making proper application and paying the license fee, a license shall be issued. (Previously Rule 2,5,0). (7-1-93)

01. Irrevocable Consent Form. Nonresident applicants must file an irrevocable consent form as provided in Subsection 103.01. (Previously Rule 2,5,0a.). (7-1-93)

02. Business Location. Active nonresident brokers must maintain a business location in Idaho.

(Previously Rule 2,5,0b.). (7-1-93)

03. Broker Supervision. Active nonresident sales associates must be licensed with a broker who is actively licensed in Idaho. (Previously Rule 2,5,0c.). (7-1-93)

105. RETURNED CHECKS DUE TO INSUFFICIENT FUNDS.

Payment of any fee with a check which is returned by the banking institution due to insufficient funds wherein the reason for not paying the check is not a fault of the banking institution shall be grounds for cancellation of the application. If a license has been issued, the payment by an insufficient funds check shall be grounds for suspension or revocation of the license. (Previously Rule 2,6,0). (7-1-93)

106. LICENSE TERM AND APPLICATION FOR LICENSE RENEWAL.

Any license issued shall be valid up to and including the second consecutive birthmonth of the licensee, but not for more than the license term as established by law. (Previously Rule 2,7,0). (7-1-93)

01. Renewal Date. The license shall be renewed on or before the first day of the month following the birthmonth of the licensee or the license will expire. (Previously Rule 2,7,1). (7-1-93)

02. Fee. The fee for renewal (effective January 1, 1993) is one hundred eighty dollars (\$180) which includes the twenty dollars (\$20) prescribed in Section 54-2035A, Idaho Code. (Previously Rule 2,7,2). (7-1-93)

03. Application Form. License renewal application shall be made on a form prescribed by the Commission. (Previously Rule 2,7,3). (7-1-93)

04. Evidence of Continuing Education (CE). Active license renewal applicants shall provide evidence of having successfully met the continuing education requirements or its equivalent as prescribed in subsections G, H, I, and J. of Section 54-2029, Idaho Code. (Previously Rule 2,7,4) (7-1-93)

05. Continuing Education Challenge Examination. An exemption from the continuing education requirement may be obtained by submitting evidence with the renewal application showing that the applicant successfully completed an approved written challenge examination administered by an approved entity. Any such examination must be approved in advance by the Commission. (Previously Rule 2,7,5). (7-1-93)

06. Continuing Education Extension. A ninety (90) day extension of time for completing the continuing education requirements may be obtained by submitting evidence as prescribed in subsection I. of Section 54-2029, Idaho Code, together with the regular renewal application. The Commission may extend an otherwise expired license if the applicant has met the other renewal requirements and can reasonably be expected to be able to meet the continuing education requirements within the extended period. (Previously Rule 2,7,6). (7-1-93)

07. Failure to Meet Continuing Education Extension. The Commission will not extend any active license beyond ninety (90) days from its specified expiration date until compliance with the continuing education requirements has been met. Failure to satisfy the continuing education requirements within the ninety (90) day extension period shall result in the automatic inactivation of the license. (Previously Rule 2,7,7). (7-1-93)

08. Continuing Education Extension and License Expiration Date. Any license issued after such an extension has been granted shall be dated effective as of the prior license expiration date. (Previously Rule 2,7,8). (7-1-93)

09. Late Renewal and Fee. The Commission may accept a request for a late renewal which shall not exceed one (1) year from the renewal date of the license, in which case, a late fee in the amount of fifteen dollars (\$15) shall be charged. Any person who fails to renew a license shall not practice as a licensee until properly relicensed. (Previously Rule 2,7,9). (7-1-93)

10. Errors and Omissions Insurance. Effective December 31, 1993, every applicant for license renewal on active status shall, as a condition of renewal, carry errors and omissions insurance in accordance with Section 54-2029A, Idaho Code and these rules. (12-31-93)

107. CHANGE FROM INACTIVE LICENSE TO ACTIVE LICENSE STATUS.

A person who holds an inactive Idaho license may activate the license upon meeting the following requirements. (Previously Rule 2,8,0). (7-1-93)

01. Application and Fee. Making proper application and paying the fee; and, (Previously Rule 2,8,1). (7-1-93)
02. Supervision. Licensing under an Idaho broker as a sales associate; or, (Previously Rule 2,8,2). (7-1-93)
03. Establishing Business. Establishing an office in Idaho, if being licensed as a broker. (Previously Rule 2,8,3). (7-1-93)
04. Continuing Education. Providing evidence of having successfully completed the continuing education requirements or its equivalent as prescribed in subsection G. of Section 54-2029, Idaho Code. A continuing education course taken to make up a deficiency of the continuing education requirement from the previous renewal period may be used toward the current period's continuing education requirement. (Previously Rule 2,8,4). (7-1-93)
05. Errors and Omissions Insurance. Provide evidence of having errors and omissions insurance in the manner required by Section 54-2029A, Idaho Code and in accordance with these rules. (12-31-93)

108. EFFECTIVE DATE.

Application requests for licensure and for license changes shall become effective when the properly completed form, attachments and fees are received and approved by the Commission. Placing the proper form in the mail does not constitute delivery to the Commission. Sending the form and fees by Certified Mail, Return Receipt Requested will assure notice of delivery to the Commission office, however, this does not constitute approval of a license application by the Commission. (12-31-93)

109. CORPORATIONS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS.

The Idaho Real Estate Commission may investigate any partnership, limited liability company or corporation conducting a real estate business and shall be furnished with a certified copy or photostatic copy of the partnership agreement, the foreign or domestic filed Articles of Organization for a limited liability company, or the Idaho Certificate of Incorporation or Certificate of Authority for foreign corporations, minutes, resolutions and/or other similar documents in order to enable the Commission to determine that a partnership, limited liability company or corporate authority actually exists at the time the license application is submitted, the nature of the entity and extent of its authority to conduct business under license law. If the change to a partnership, limited liability company or corporation occurs at the time of renewal of the broker's license, then the proper documents must accompany the license renewal form. (Previously Rule 2,10,0). (7-1-96)

01. Designated Responsible Broker. The minutes of the corporation or a corporate resolution shall show that the corporation has appointed a qualified individual as the designated responsible broker who shall be an officer of the corporation, and any other officers who may apply to be a broker in the corporation. The Commission may require similar or equivalent documents from a partnership or limited liability company appointing a qualified individual as the designated responsible broker, and listing any other members who may apply to be a broker in the entity. (Previously Rule 2,10,1). (7-1-96)

02. Similar Names. The Commission may refuse to issue a license to a partnership, limited liability company, corporation or individual proprietorship if said name is the same as that of any person or entity whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. This restriction shall not apply where licensee is using his legal name. (Previously Rule 2,10,2). (7-1-96)T

03. Effectiveness Depends Upon Designated Broker's License. A license issued to a corporation, limited liability company or a partnership is effective only as long as the designated broker's license is in effect. (Previously Rule 2,10,3). (7-1-96)

110. CHANGE OF BUSINESS ADDRESS AND/OR PERSONAL NAME.

Notice in writing shall be given immediately by a real estate broker or sales associate to the Idaho Real Estate Commission of any change of business location, or telephone number, or mailing address, or of any branch offices, or personal name change. A license shall be issued upon the Commission's receipt of the wall license and payment of a fee of ten dollars (\$10) for each licensee requiring the change of address or name change. (Previously Rule 2,11,0).
(7-1-93)

111. CHANGE OF BROKER'S BUSINESS NAME.

Notice in writing shall be given immediately by a real estate broker to the Idaho Real Estate Commission of any change of business name. New licenses shall be issued upon the Commission's receipt of the broker's and sales associates' wall licenses and payment of a fee of ten dollars (\$10) for each licensee requiring the change of business name. A license must be signed by the respective licensee in order to be valid. (Previously Rule 2,12,0). (7-1-96)T

112. CHANGE IN PERSONAL RESIDENCE.

Within ten (10) days following a change in personal residence, inactive licensees shall report any change in their residence address and/or phone number to the Commission. (Previously Rule 2,13,0). (7-1-93)

113. TERMINATING BUSINESS RELATIONSHIPS.

Sales associates terminating their association with a broker, and immediately licensing with another broker, shall turn in their wall license along with the properly completed form and fee to the Commission. If the sales associate's wall license cannot be obtained from the broker, a copy of the written notice of the termination which was sent by Certified Mail, Return Receipt Requested, to the broker by the sales associate, will be delivered to the Commission. Upon receiving such notification from the sales associate, the broker shall immediately send the sales associate's wall license to the Commission. (Previously Rule 2,14,0). (7-1-93)

01. **Broker Terminating Sales Associate.** A broker terminating the association of a sales associate shall turn in the sales associate's wall license with the properly completed termination form to the Commission. (Previously Rule 2,14,1). (7-1-93)

02. **Closing a Branch Office.** A written notice shall be sent to the Commission office along with the branch office license and the wall licenses of all licensees licensed in the branch office immediately upon closing of a branch office. Thereafter transfers to another office may be accomplished as per Subsection 101.06. (Previously Rule 2,14,2). (7-1-93)

03. **Property of the Broker.** Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information, keys, contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices, or induces clients of the broker to terminate any legal business relationship with said broker. (Previously Rule 2,14,3). (7-1-96)T

04. **Location of Trust Accounts and File Records.** When an actively licensed broker changes his or her license to another status other than a designated or individual broker, the broker shall notify the Commission in writing informing the Commission of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a broker. These records shall be available in Idaho to the Commission for three (3) years following the year in which each transaction was closed. (Previously Rule 2,14,4). (7-1-96)T

05. **Terminating Relationships between a Broker and a Corporation or Partnership.** When a designated broker for a corporation, limited liability company or partnership resigns, or is removed as such by the corporation, limited liability company or partnership, all records and trust account funds shall remain with the corporation, limited liability company or partnership if another officer of the corporation, member or manager (if any) of the limited liability company or partner of the partnership is immediately issued a broker's license as the designated broker of the corporation, limited liability company or partnership. In such case, the duty of the terminating broker regarding the retention or disbursement of such records and trust account funds shall not apply. If a new broker is not licensed within twenty-four (24) hours following the termination of the original designated broker, or if the corporation, limited liability company or partnership is dissolved, it shall be the duty of the terminating broker to maintain all records and disburse all trust account funds. If a new broker is subsequently appointed by the corporation, limited

liability company or partnership, the terminating broker shall deliver, upon request made in writing by the new broker, all records and trust account funds to the new broker who shall thereafter have responsibility for preservation and disbursement of such records and funds in accordance with the applicable rules. (Previously Rule 2,15,1).

(7-1-96)T

06. Terminating Relationships between a Broker and a Sole Proprietorship Owned by a Person other than the Broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an association with the owner, all records and trust account funds shall become the property of and be maintained and disbursed by the terminating broker in accordance with the applicable rules. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have the responsibility for preservation and disbursement, in accordance with the applicable rules. (Previously Rule 2,15,2).

(7-1-93)

114. PERSONAL REPRESENTATIVE OF A DECEASED OR INCAPACITATED BROKER.

The Commission may issue authorization for a person to close out the pending transactions of a deceased or incapacitated broker. An executor, administrator, or personal representative of an estate or some other person or agency, as designated by the Commission or its authorized employee, who is given temporary approval to close out the affairs of a deceased or incapacitated sole proprietor broker is limited to closing or terminating all transactions which are in various stages of completion or termination. Note: Further referenced in Section 417. through Subsection 417.04. (Previously Rule 2,16,0).

(7-1-96)T

115. BRANCH OFFICE LICENSURE AND FEE.

A real estate broker may apply to the Idaho Real Estate Commission for authority to establish one (1) or more branch offices for the transaction of business upon the payment of twenty dollars (\$20) for the licensing of each branch office. A branch office license shall be required for an office so established and shall be properly signed by the designated broker. All licenses issued to licensees conducting business from the branch office shall be prominently displayed in the branch office at all times. (Previously Rule 2,18,0).

(7-1-96)T

01. Supervision. A branch office, whether being licensed for the first time or changing its designated manager, shall have a licensed broker, associate broker, or salesman with two (2) years active experience as a real estate salesman regularly occupying the branch office and in charge of same: such experience as a salesman shall have been acquired within three (3) years immediately prior to the licensee being named as the branch manager, regularly occupying it and in charge of it. The broker, associate broker, or salesman in charge shall be so designated at the time of application for the branch office license. Advance notice of change of the designated manager is required. (Previously Rule 2,18,1).

(7-1-93)

02. Name. A broker's branch office must operate under the same name as the main office. (Previously Rule 2,18,2).

(7-1-93)

03. Manager Limited to One Branch. A branch office manager may not be licensed to manage more than one branch office at any one time. (Previously Rule 2,18,3).

(7-1-93)

04. Expiration Date. As prescribed in Section 54-2029E, Idaho Code, the branch office license shall expire on the same birthmonth date as the expiration date shown on the license of the broker establishing the branch office. (Previously Rule 2,18,4).

(7-1-93)

05. Relicensure. Upon renewal of a broker's license, a broker may apply to the Commission for authority to relicense a branch office by submitting the proper form and fee of twenty dollars (\$20). (Previously Rule 2,18,4a.).

(7-1-93)

06. License Validity Dependent Upon Broker's License. A license issued to a branch office is valid only as long as the establishing broker's license is valid. (Previously Rule 2,18,4b.).

(7-1-93)

116. LICENSEE'S DUTIES UPON SURRENDER, SUSPENSION, OR REVOCATION OF LICENSE.

A real estate broker or sales associate upon surrendering a license or upon notice of suspension or revocation of a license shall immediately forward the same to the Idaho Real Estate Commission. All sales associates licensed with a broker shall then turn in their licenses to the Commission immediately upon the effective date of the order to suspend

or revoke the broker's license. (Previously Rule 2,19,0).

(7-1-93)

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

Commencing December 31, 1993, every licensee, upon obtaining or renewing an active real estate license in the state of Idaho, including nonresident and reciprocal licensees, shall have in effect and maintain a policy of errors and omissions insurance when required by Section 54-2029A, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules. (12-31-93)

01. Certification of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan provided for in Section 118. shall be deemed to have satisfied the certification requirement of Section 117. upon the Commission receiving payment of the appropriate premium and ten dollar (\$10) administrative fee from the licensee. The effective date of coverage, however, shall be the day of final license approval. (12-31-93)

02. Certification of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage as defined in Section 119 shall provide to the Commission a Certificate of Coverage, signed by an authorized agent or employee of the insurance carrier, which certificate shall be in the following form: (12-31-93)

IDAHO REAL ESTATE COMMISSION
CERTIFICATION OF COVERAGE
in accordance with Section 54-2029A, Idaho Code and IDAPA 33.01.01

I hereby certify that the insurance company listed below has at least a B+ VI rating from the A.M. Best Company Insurance Rating Service. I further certify that:

INSURED NAME: _____

LICENSE NUMBER: _____

LICENSE EXPIRATION DATE: _____

NAME OF REAL ESTATE FIRM LICENSED WITH: _____

BUSINESS ADDRESS: _____

POLICY NUMBER: _____

POLICY DATES: Effective _____
Expiration _____

INSURANCE AGENT: _____

ADDRESS: _____

INSURANCE COMPANY: _____

ADDRESS: _____

SPECIFY WHETHER FIRM OR INDIVIDUAL POLICY: _____

is insured against claims resulting from errors and omissions as a real estate licensee and that the above-referenced

policy includes, at a minimum, the coverage required by IDAPA 33.01.01.119 and meets the standards set forth in Chapter 20, Title 54, Idaho Code and IDAPA 33.01.01.000, et seq., rules of the Idaho Real Estate Commission.

It is further understood and agreed that coverage for the person(s) insured by this policy is not independently obtained unless the Insurance Company agrees hereby that the policy may not be modified, terminated, cancelled, lapsed or nonrenewed, regardless of cause or reason, without the Insurance Company having provided the Idaho Real Estate Commission and the licensee with thirty (30) days' prior written notice.

SIGNATURE: _____
Insurance Representative

TITLE: _____

DATE: _____

Falsification is punishable under Section 41-1321, Idaho Code.

All certifications under this rule shall be executed on behalf of each licensee by separate certification form. Group or scheduled listing of multiple licensees is not acceptable.

(7-1-96)T

118. GROUP INSURANCE PLAN.

Commencing December 31, 1993, the Commission shall make available to all active licensees, subject to terms and availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan secured by the Commission. (12-31-93)

01. Qualified Insurance Carrier Defined. For the purposes of this section, a "qualified insurance carrier" shall mean an insurance carrier: (12-31-93)

a. Which, for the entire term of its contract shall provide the Group Plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher; (12-31-93)

b. Which is and will remain for the policy term duly authorized by the Idaho Department of Insurance to do business in the state of Idaho as an insurance carrier; (12-31-93)

c. Which is and will remain for the policy term qualified and authorized by the Idaho Department of Insurance to write policies of errors and omissions insurance in Idaho of the type contemplated by these rules; (12-31-93)

d. Which, after competitive bidding, has been notified by the Commission that it is the successful bidder for the Group Plan to provide the errors and omissions insurance contemplated by these rules; and (12-31-93)

e. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules and the Idaho Real Estate License Law. (12-31-93)

02. No Right to Cancel. The group policy obtained by the Commission under these rules shall be available to all active licensees with no right on the part of the carrier to cancel any licensee. (12-31-93)

03. Approved Policy. The group policy obtained by the Commission shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, shall be subject to such terms and conditions as are customary in the insurance industry for policies of errors and omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Insurance Department, and which are contained in a policy of insurance which has been approved by the Department of Insurance; provided, however, that said Group Plan shall provide, at a minimum, the following terms and conditions: (12-31-93)

a. Not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense. (12-31-93)

- b. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (12-31-93)
- c. The minimum coverage requirements of this Subsection shall apply to each individual licensee; (12-31-93)
- d. A deductible amount of not greater than three thousand five hundred dollars (\$3,500), which shall include costs of investigation and defense; (12-31-93)
- e. A reasonable premium not to exceed the maximum premium set forth in Section 54-2029A, Idaho Code; (12-31-93)
- f. A policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent, and which provides for continuous coverage during said policy period. (12-31-93)
- g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (12-31-93)
- h. Prior acts coverage shall be offered to licensees with continuous past coverage. (12-31-93)

04. **Standard of Group Policy Determined.** For the purposes of these rules and the fulfillment of the Commission's obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of any group policy of errors and omissions insurance to be issued to the state of Idaho pursuant to these rules shall be conclusive proof that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Idaho law and the rules of the Idaho Insurance Department with respect to such policies of insurance. (12-31-93)

119. INDEPENDENTLY OBTAINED ERRORS AND OMISSIONS INSURANCE.

Licensees may obtain errors and omissions insurance independently of the Group Policy available through the Commission, subject, however, to the terms and conditions set forth in these rules. (12-31-93)

01. "Independently Obtained" Insurance Defined. The term "independently obtained" insurance shall mean a policy of errors and omissions insurance issued to each individual licensee or issued to the firm with which the licensee is affiliated and which shall provide, at a minimum, all of the following terms and conditions: (7-1-96)

- a. Covers all activities contemplated under Chapter 20, Title 54, Idaho Code, under such terms and conditions as are customary in the insurance industry for policies of errors and omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Department of Insurance, and which are contained in a policy of errors and omissions insurance which has been approved by the Idaho Department of Insurance; (12-31-93)
- b. If an "individual" policy specifies not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (7-1-96)
- c. If a "firm" policy specifies not less than five hundred thousand dollars (\$500,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (7-1-96)
- d. If an "individual" policy, an annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (7-1-96)
- e. If a "firm" policy, an annual aggregate limit of not less than two million dollars (\$2,000,000), not including costs of investigation and defense; (7-1-96)
- f. If an "individual" policy, the minimum coverage limits specified in this subsection shall be available to each licensee; (7-1-96)
- g. If a "firm" policy, the minimum coverage limits specified in this Subsection shall apply to the firm;

(7-1-96)

h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (12-31-93)

i. No policy of errors and omissions insurance shall be deemed "independently obtained" for purposes of this rule unless the insurance company specifically agrees in writing that it will not terminate, cancel, lapse, fail or refuse to renew or modify such policy without the company first providing the Commission and the licensee with thirty (30) days' written notice; (7-1-96)

j. Contains a policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent and which provided for continuous coverage during said policy period, or, if an annually renewable policy, a statement of the policy period and, in either case, the agreement of the insurance carrier that it will not modify, terminate, cancel, lapse or not renew the policy without first providing the Commission and licensee thirty (30) days written notice; and (7-1-96)

k. Prior acts coverage shall be offered to licensees with continuous past coverage. (12-31-93)

02. Approval by Department of Insurance. For the purposes of these rules and the fulfillment of the licensees' obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of a policy of independently obtained errors and omissions insurance covering the licensee shall create a presumption that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of the law and rules of the Idaho Department of Insurance with respect to such policies of insurance. Approval by the Department of Insurance, however, does not create any presumption of equivalency in coverage as required by Idaho Real Estate License Law and these rules. (12-31-93)

03. Carrier Issuing Independent Policy. A carrier issuing an independent policy shall meet all of the requirements of a qualified carrier set forth in Subsections 118.01.a. through 118.01.c. and shall maintain an A.M. Best Company rating of B+ or better and an A.M. Best Financial Size Category of Class VI or higher. (7-1-96)

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

No applicant for an original active license or for renewal of an active license on or after December 31, 1993, shall be issued such active license unless proper payment of insurance premiums and any fees have been received by the Commission if the licensee is with the Group Plan, or unless he or she has first filed with the Commission the Certificate of independently obtained coverage required by Subsection 117.02. (12-31-93)

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance through the Group Plan or failure to file the certificate of independently obtained coverage required by Subsection 117.02. shall result in inactivation or expiration of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. (12-31-93)

01. Notice of Noncompliance. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by certified mail to the licensee's residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated. (12-31-93)

02. Reactivation. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon

submission of any required documents and fees. (12-31-93)

03. Failure to Maintain Insurance. Failure of a licensee to maintain errors and omissions insurance or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by Section 54-2029A, Idaho Code, and in accordance with these rules and while engaging in the business of real estate, as defined in Section 54-2022, Idaho Code, shall constitute a violation of Section 54-2040(h), Idaho Code, and shall subject said licensee to disciplinary action before the Commission, including but not limited to civil fines. (12-31-93)

122. FALSIFICATION OF CERTIFICATES.

Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a certificate of coverage to be filed with the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic inactivation of license provided for in Subsection 121.01. (12-31-93)

123. -- 199. (RESERVED).

RULES 200 through 299 -- OFFICE OPERATIONS

200. ADVERTISING.

Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any advertising of Idaho real property. Only licensees who are actively licensed in Idaho may advertise Idaho property in Idaho or have a sign placed on Idaho property. A real estate licensee from another state may cooperate with an Idaho broker on the sale of Idaho property, but may not perform any activities requiring an Idaho license. (7-1-96)T

01. Broker's Business Name and Telephone Number. All advertising of listed property shall accurately show the name of the listing broker's business and office phone number. No other business name may be used until a proper notice of the change in the business name has been received at the Commission office. (Previously Rule 3,1,2). (7-1-93)

02. Branch Office Advertising. All advertising of branch offices shall clearly show the same business name as the main office of the broker and the branch office phone number. (Previously Rule 3,1,4). (7-1-96)T

03. Misleading Information. No advertising shall provide any information to the public or to prospective clients which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence. (Previously Rule 3,1,3). (7-1-93)

201. LISTINGS.

A broker or sales associate who obtains a written brokerage agreement (listing or buyer-broker) shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. Every brokerage representation agreement, exclusive and nonexclusive, shall state a conspicuous and definite expiration date;. A brokerage listing shall contain a legally enforceable description of the property, price and terms, fee or commission and proper signature. A buyer brokerage agreement shall state a conspicuous and definite expiration date, all obligations of the buyer and the manner in which any fee or commission will be paid. No listing or buyer brokerage agreement shall contain ~~nea~~ a provision requiring the party signing the agreement to notify the broker of the intention to cancel the listing agreement after such definite expiration date. (Previously Rule 3,2,1).(7-1-96)T

01. Retention of Brokerage Agreements. The original or true copy of all brokerage agreements and extensions shall be maintained in the contracting broker's files for a period of three (3) calendar years after the last expiration or extension date of that brokerage agreement. (Previously Rule 3,2,1a.). (7-1-96)T

02. Unilateral Cancellation of Brokerage Agreements. The remedy, if any, for unilateral cancellation of the brokerage contract is a matter of contract law to be decided by agreement or by a court of competent jurisdiction. (Previously Rule 3,2,2). (7-1-96)T

202. OFFERS TO PURCHASE.

A broker or sales associate must give a copy of the offer to purchase to the buyer as a receipt promptly upon receiving a deposit and signature of the buyer. A broker or sales associate shall promptly tender to the seller every written offer to purchase obtained on the property involved and upon obtaining a proper acceptance of the offer to purchase shall promptly deliver true, executed, and legible copies of the same, signed and dated by the buyer and seller, to both buyer and seller. All brokers and sales associates shall make certain that all of the terms and conditions of the real estate transaction are included in all offers to purchase. A purchase and sale agreement, when signed by the prospective buyer, shall be deemed in all respects, an offer to purchase. (Previously Rule 3,3,1). (7-1-96)T

01. Consideration. The actual consideration received as earnest money in any real estate transaction, whether it be cash, check, promissory note, or other consideration, shall be specifically stated in the purchase and sale agreement, and all considerations received must be entered on the appropriate ledger sheets according to the provisions of Subsection 205.01. (Previously Rule 3,3,2). (7-1-93)

02. Retention of Offers Accepted, Countered or Rejected. The original or true copy of all offers accepted, countered or rejected, shall be marked appropriately and retained in the selling and/or closing broker's files for a period of three (3) years after the year in which the transaction was closed and/or all funds have been disbursed. (Previously Rule 3,3,3). (7-1-96)T

03. Rejected Offers. All written offers presented to the seller and not accepted by the seller shall be clearly marked and dated as rejected. (Previously Rule 3,3,4). (7-1-96)T

203. EARNEST MONEY DEPOSITS AND TRUST ACCOUNTS.

All funds received by a real estate broker in connection with a real estate transaction, including but not limited to earnest money, shall be deposited into a real estate trust account maintained by the broker at an approved depository within this state as defined in Commission Subsection 203.07., except that in the case of a cooperative sale, the selling broker may deliver the earnest money or other funds to the listing broker for deposit, and obtain that broker's receipt for the funds or other consideration as required by Subsection 205.05., when specifically directed to do so by the purchase and sale agreement or other documents signed by the buyer and seller. (See also Subsection 205.03) Each such trust account shall be established and maintained under the business name of the broker and shall be under the full control of said broker. Each broker trust account must be separately identifiable and must have its own set of records, not pooled. (Previously Rule 3,4,0). (7-1-96)T

01. Subject to Withdrawal on Demand. Entrusted funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker. (Previously Rule 3,4,0a.). (7-1-93)

02. Responsible Broker. The purchase and sale agreement for a cooperative sale shall state which broker is responsible for the deposit of the funds. (Previously Rule 3,4,0b.). (7-1-93)

03. Establishing a Trust Account. A broker may establish as many trust accounts as desired and each account must be identified by the term "Real Estate Trust Account." A Commission form "Notice of Opening a Trust Account and Authorization for Commission to Inspect" shall be given to the bank or other depository by the broker and is to be completed and signed by the broker and an officer of the bank or depository and sent to the Commission. (Previously Rule 3,4,1). (7-1-93)

04. Time of Deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in said funds direct the broker to do otherwise. (Previously Rule 3,4,2). (7-1-96)T

05. Transaction Number and Ledger Sheet. The broker shall account for the funds or other consideration by assigning a transaction number and maintaining an individual ledger sheet as required by Subsection 205.01. regardless of when the funds are to be deposited. (Previously Rule 3,4,2, paragraph 2). (7-1-93)

06. Deposited in Separate Real Estate Trust Account. Said funds shall be deposited in a separate real estate trust account in an Idaho bank or in an approved escrow depository in this state until such time as the broker makes a full accounting to his or her principal. The broker will be held responsible for such deposits at all times.

(Previously Rule 3,4,3).

(7-1-93)

07. **Approved Escrow Depositories.** Approved escrow depositories are state or federally chartered banks and/or trust companies; state or federally chartered savings and loan associations; properly licensed title insurance companies; actively licensed attorneys at law; or other entities specifically approved by the Commission. All approved depositories must be located within the state of Idaho. (Previously Rule 3,4,3a.)

(7-1-93)

08. **Obtaining Approval of an Escrow Depository.** Any other entity, not covered in Subsection 203.07., to be considered as an approved escrow depository, must disclose details of the financial structure; amount and terms of errors and omissions insurance and any bonding; copy of last audit and financial statement; copy of license(s) or certificate(s) issued to entity; and any other information which will help the Commission make its determination. (Previously Rule 3,4,3b.)

(7-1-93)

09. **Disbursement of Entrusted Funds.** A broker may authorize one or more other persons either licensed or unlicensed to sign trust account checks or direct the disbursement of entrusted funds, but the broker shall remain fully responsible and accountable for all entrusted funds until a full accounting has been given to the parties involved. (Previously Rule 3,4,3c.)

(7-1-93)

10. **Transferring Trust Funds to the Named Closing Agency.** Funds received as earnest money deposits or other payments, when it is set forth in the purchase and sale agreement that such funds are to be paid to the person or company named as the escrow closing agent or agency, are to be paid to the person, company, agent, or agency on or before the day of closing and a receipt for such funds shall be retained in the broker's transaction file. The broker will remain accountable and responsible for such funds until a full accounting has been made to the parties involved. (Previously Rule 3,4,4.)

(7-1-93)

11. **Interest-Bearing Trust Accounts.** The broker may deposit funds in an interest-bearing trust account of an insured Idaho depository pending the closing of a transaction if directed to do so in writing by the parties to the transaction. In such cases, the deposit to an interest-bearing trust account shall be accomplished as follows: (Previously Rule 3,4,5.)

(7-1-93)

a. The deposit must be made in an approved bank or savings depository in the name of the broker as described in Section 203., and Subsections 203.06. through 08. (Previously Rule 3,4,5a.)

(7-1-93)

b. A Commission form "Notice of Opening a Trust Account and Authorization for Commission to Inspect" shall be given to the approved bank or savings depository by the broker and is to be completed and signed by the broker and an officer of the approved bank or savings depository and sent to the Commission. (Previously Rule 3,4,5b.)

(7-1-96)T

c. An interest-bearing trust account, used for this purpose, must allow for the withdrawal of the funds upon demand, unless all parties direct the broker in writing to do otherwise. (Previously Rule 3,4,5c.)

(7-1-93)

d. There is to be a written agreement signed by buyer and seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the broker in the transaction file with a copy given to the buyer and seller. (Previously Rule 3,4,5d.)

(7-1-96)T

12. **Checks Held in Uncashed Form.** Checks may be held by the broker who receives them in an uncashed form if the broker is instructed to do so according to the terms of the purchase and sale agreement. The buyer may in writing require that the broker withhold the deposit of the funds until the seller has properly accepted the offer. (Previously Rule 3,4,6.)

(7-1-93)

13. **Consideration Received by Sales Associate.** All consideration received by a sales associate in connection with a real estate transaction shall immediately be delivered to the designated broker or office. (Previously Rule 3,4,7.)

(7-1-93)

14. **Commingling Prohibited Except for Maintenance Charges.** No deposits to the trust account shall be made of funds that belong to the broker or real estate firm; except, that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for

the trust account. In no event shall the balance of broker or firm funds in the account exceed one hundred dollars(\$100). Funds belonging to the broker or firm shall be accounted for in the following manner: (Previously Rule 3,4,8). (7-1-93)

a. A separate ledger sheet identified as "trust account maintenance fund" shall be initiated when the broker or firm funds are initially deposited in the trust account. This ledger sheet shall be filed with the broker's current "open" ledger sheets. (Previously Rule 3,4,8a.). (7-1-93)

b. Additions or deductions to trust account maintenance funds shall be posted to the ledger sheet as soon as the broker is given notice of the deposit or deduction. The balance on this ledger sheet shall be brought current at least monthly. (Previously Rule 3,4,8b.). (7-1-93)

c. In no case shall maintenance funds be disbursed for any purpose other than to cover bank charges directly charged to the trust account by the bank. (Previously Rule 3,4,8c.). (7-1-93)

204. TRUST ACCOUNT DISBURSEMENTS.

All cash and/or like payments in lieu of cash received by a broker while acting in a regulated real estate transaction are to be disbursed only in accordance with the terms of the purchase and sale agreement or other written authorization signed by the parties having an interest in such payments or by court order. (Previously Rule 3,5,1). (7-1-96)T

01. Disbursements in Advance of the Closing. No disbursements from the real estate trust account shall be made in advance of the closing of a real estate transaction or before the happening of a condition set forth in the purchase and sale agreement to the seller, escrow agent, or to any other person for any reason without a written authorization signed by both the buyer and seller. (Previously Rule 3,5,2). (7-1-96)T

02. Withdrawal of Broker's Commission. The withdrawal of any portion of the broker's commission shall not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer(s) and seller(s) and the seller or buyer has been paid the amount due as determined by the closing statement. (Previously Rule 3,5,3). (7-1-93)

03. Provision of Forfeited Earnest Money. The purchase and sale agreement shall include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained as forfeited payment. (Previously Rule 3,5,4). (7-1-93)

04. Disputed Money. Any time more than one party to a transaction is making demands on any funds for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall first attempt to get the parties to agree in writing as to how the money shall be disbursed. For the purpose of the Commission's enforcement of the rules, the broker may rely on the terms of the purchase and sale agreement or other written instruments signed by the parties involved to determine how the disputed money should be disbursed. It is the broker's responsibility to keep all documentation and records as to why disputed money was disbursed. If the broker does not believe it is reasonably possible to disburse such disputed funds as set forth above, then the broker may hold the disputed money until the broker is ordered by a court of proper jurisdiction to disburse same. The broker shall keep all parties to the transaction informed of these actions. (Previously Rule 3,5,5). (7-1-93)

205. TRUST ACCOUNT RECORDS.

A broker shall maintain in the office for three (3) years after the year in which the transaction was closed, a complete record of all considerations received and/or disbursed or escrowed on real estate transactions in the following manner: (Previously Rule 3,6,0). (7-1-93)

01. Establishment and Retention. An individual trust ledger sheet shall be initiated upon the broker's receipt of any a purchase and sale agreement and/or consideration and assigned the next chronological transaction number for each transaction, be it sale, escrow, or other, showing names of parties, location of property, date of each deposit and/or disbursement, name of payee or payor, transaction information, amount and check number of disbursement, amount of deposit and current balance remaining. Each ledger sheet after the transaction is closed shall show the final disposition whether or not the consideration is deposited in the broker's trust account. The ledger sheet is to be retained in the broker's files for a minimum period of three (3) years following the year in which the

transaction was closed. The ledger sheet posting is to be kept up-to-date at all times. Electronic or computer record keeping systems must have a generally accepted backup system in place at all times. (Previously Rule 3,6,1).

(7-1-96)T

02. Chronological or Alphabetical Order. All ledger sheets are to be maintained in a file or binder. One set shall be established for transactions not closed and another for transactions closed. The ledger sheets shall be kept in chronological or alphabetical order. (Previously Rule 3,6,2).

(7-1-93)

03. Returned Consideration. When consideration received by a broker or sales associate on an offer is to be returned before it has been deposited to a trust account or in accordance with Subsection 203.04., the broker or sales associate shall indicate such return by a dated notation on the purchase and sale agreement and ledger sheet. No consideration is to be returned without the knowledge and consent of the broker. (Previously Rule 3,6,3).

(7-1-93)

04. Duplicate Bank Deposit Record. A broker shall maintain a duplicate bank deposit record denoting the broker's business name, and imprinted with "Real Estate Trust Account." Each deposit record shall show the name of the person or firm placing the money with the broker's office, the date of deposit, and the transaction number. The duplicate deposit record shall be retained in the bank deposit records in proper chronological sequence and shall be date stamped by the bank or the bank deposit receipt shall be attached to the duplicate deposit record in the deposit records. (Previously Rule 3,6,4).

(7-1-96)T

05. Transferring Earnest Money. When a broker deposits funds with another broker, other approved depository, or escrow closing agency, a receipt for such deposit shall be obtained and retained in the broker's transaction file. The receipt is to show the transaction number and the payee's name. (Previously Rule 3,6,5).

(7-1-93)

06. Real Estate Trust Account Checks. A set of checks denoting the broker's business name, address, imprinted with "Real Estate Trust Account" and checks numbered consecutively shall be maintained by the broker. Checks drawn on this account are to be identified by transaction number on the face of the check. Voided trust account checks are to be marked "VOID" and retained in a numerical sequence with other checks for that banking month. (Previously Rule 3,6,6).

(7-1-93)

07. Check Register Journal. A check register journal or check stubs which itemize deposits and disbursements in consecutive order showing date, payee or payor, purpose for deposits or disbursements, check number, transaction number, amount of deposit or disbursements, and the current cash balance remaining in that trust account shall be maintained up-to-date at all times. (Previously Rule 3,6,7a.).

(7-1-93)

08. Reconciliation. Each trust account is to be reconciled with ledger cards, check register and the bank statement at least monthly and such reconciliation information is to be retained in the broker's files for at least four (4) years. (Previously Rule 3,6,7b.).

(7-1-96)T

09. Timeliness. All books, records and accounts concerning trust funds shall be posted up-to-date at all times. (Previously Rule 3,6,7c.).

(7-1-93)

10. Alternative Methods. Any other system which properly accounts for the trust funds and is approved by the Commission or its duly authorized representative in lieu of the foregoing may be used. (Previously Rule 3,6,7d.).

(7-1-93)

206. RETENTION OF TRANSACTION RECORDS.

The broker responsible for the closing shall retain true copies of all documents pertaining to the transaction in file for a minimum period of three (3) years following the year in which the transaction was closed. (Previously Rule 3,7,1).

(7-1-93)

01. Main Office. All files and records for transactions negotiated through the main office shall be maintained in the broker's main office at all times. (Previously Rule 3,7,2).

(7-1-93)

02. Branch Office. When a separate real estate trust account is maintained for a branch office, the broker shall maintain all records for that account, together with all the related files, at either that branch office or at

the main office. (Previously part of Rule 3,7,2). (7-1-93)

03. Numerical or Alphabetical Order. The files shall be maintained in sequence by the transaction number or in alphabetical order. (Previously Rule 3,7,3). (7-1-93)

04. Timeliness. All records and file information are to be posted and kept up-to-date at all times. (Previously Rule 3,7,4) (7-1-93)

05. Personal Property. A broker who handles a transaction involving personal property in conjunction with the broker's real estate business must comply with the Idaho Real Estate License Law and the rules promulgated thereunder. (Previously Rule 3,7,5). (7-1-93)

207. CLOSING STATEMENTS.

The broker who lists and sells any real property shall be deemed the broker responsible for the closing. The responsible broker shall be responsible for the correctness and delivery of detailed closing statements covering all receipts and disbursements for their respective accounts to the buyer and seller at the conclusion of the transaction. (Previously Rule 3,8,1). (7-1-93)

01. Signatures and Proof of Delivery. The broker responsible for the closing shall show proof of delivery of the closing statement to the buyer and seller by their signatures on copies of such closing statements retained in the broker's file. When signatures of the parties cannot be obtained, a copy of the closing statement transmittal letter, as sent by certified mail, return receipt requested, or a written certification of delivery signed by an officer of the escrow closing agency, shall be retained in the broker's transaction file. (Previously Rule 3,8,2). (7-1-93)

02. Retention. The broker responsible for the closing shall retain true copies of the closing statements, together with all other documents relating to the transaction, in the broker's files for a minimum period of three (3) years after the year in which the transaction was closed. (Previously Rule 3,8,3). (7-1-93)

03. Cooperative Sale. In the event of a cooperative sale, the purchase and sale agreement shall state which broker is responsible for the closing of the transaction. (Previously Rule 3,8,4). (7-1-93)

04. Responsible Broker -- Closing. The broker responsible for the closing is responsible for correctness and delivery of the closing statements to the buyer and seller even though the closing is completed by a real estate escrow closing agent or other authorized third party. (Previously Rule 3,8,5). (7-1-93)

05. Responsible Broker -- Deposits and Disbursements. The broker responsible for the closing is responsible to see that all funds involved in the closing are deposited to and disbursed from the responsible broker's real estate trust account or other approved depository. (Previously Rule 3,8,6). (7-1-96)T

06. Agency Representation and Responsible Broker. The duties outlined in these rules which pertain to the broker "responsible for closing" apply to the appropriate broker regardless of the respective statutory agency relationships of the brokerages and the buyers or sellers. (7-1-96)T

208. -- 299. (RESERVED).

RULES 300 through 399 -- OFFICE AUDITS AND INVESTIGATIONS

300. INVESTIGATION OF THE ACTION OF LICENSEES.

Licensees shall answer all reasonable investigative questions propounded by authorized Commission personnel. Failure to comply with these requirements shall be considered a violation of Section 54-2040A(e), Idaho Code. (Previously Rule 3,9,1). (7-1-93)

301. PERIODIC INSPECTIONS AND AUDITS.

The Idaho Real Estate Commission or its duly authorized representative is herewith vested with the authority to make periodic inspections and audits of all Idaho licensed resident and nonresident broker's real estate trust accounts and

records of transactions. It is the responsibility of the broker to make all records available to the Commission at the broker's cost. (Previously Rule 3,9,2). (7-1-96)T

302. AUDIT BY A CERTIFIED PUBLIC ACCOUNTANT.

In case the analysis of a broker's real estate trust account should indicate a deficiency or any irregularity, which cannot be resolved between the Idaho Real Estate Commission and the broker, the Commission may order a complete audit of said trust account by a certified public accountant at the broker's expense. (Previously Rule 3,9,3). (7-1-93)

303. ROUTINE OFFICE SURVEYS AND INSPECTIONS.

The Commission shall from time to time conduct routine office surveys and inspections to determine if licensees are complying with the Idaho Real Estate License Law and rules. Surveys and inspections may be conducted with the use of a form or forms designed by the Commission. An authorized representative of the Commission may require the broker, office manager, or other person present and in charge of the office to sign a copy of such form or forms acknowledging receipt of a copy of such forms showing the results of the survey and/or inspection. (Previously Rule 3,9,4). (7-1-96)T

304. -- 399. (RESERVED).

RULES 400 through 499 -- BUSINESS CONDUCT

400. DUTY TO KNOW LAW AND RULES.

It shall be the duty of all licensees to have knowledge and be aware of all laws regulating the real estate industry in Idaho including, but not limited to, the rules and the Idaho Real Estate License Law as set forth in Chapter 20, Title 54, Idaho Code, as amended. (Previously Rule 4,1,0). (7-1-93)

401. FEE SPLITTING OR FINDER'S FEE.

Any offer of a monetary value made by a licensee to a nonlicensee for the purpose of inducing that person to secure prospects to buy, sell, or option or otherwise dispose of an interest in real property is considered to be splitting fees with a nonlicensee and is a violation of Section 54-2039, Idaho Code. (Previously Rule 4,2,0). (7-1-93)

402. DOUBLE CONTRACTS.

Any licensed broker or sales associate who uses, proposes the use of, agrees to the use of, or knowingly permits the use of two (2) or more contracts of sale, purchase and sale agreements, or loan applications, one of which is not made known to the prospective lender or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain shall be deemed to have engaged in a flagrant course of misconduct and such conduct shall be considered as constituting dishonorable or dishonest dealing. Any licensee found by the Commission to have engaged in conduct defined above shall be subject to disciplinary action by the Commission, which action may include, but not be limited to, suspension or revocation of the license. (Previously Rule 4,3,0). (7-1-96)T

403. COMMISSIONS.

A sales associate may not accept a commission for the performance of any acts requiring a real estate license from any person except the real estate broker with whom licensed. A broker may pay a former sales associate for services performed while the associate was actively licensed regardless of the license status at the time the commission is actually paid. (Previously Rules 4,4,1 and 4,4,1a.) (7-1-93)

404. KICKBACKS AND REBATES.

A licensee shall not receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback, or unearned fee for directing any transaction to any lending institution, escrow or title company as those practices are defined and prohibited by the Real Estate Settlement and Procedures Act of 1974 as amended, 12 USC 2601 et seq. (Previously Rule 4,4,2). (7-1-93)

405. ACCEPTING COMPENSATION FROM MORE THAN ONE PARTY.

A broker may not charge or accept any compensation from more than one party in any one transaction without first making full disclosure in writing of the intent to do so to all parties involved in the transaction. (Previously Rule 4,4,3). (7-1-93)

406. PERSONAL INTEREST AND DISCLOSURE OF LICENSE STATUS.

An actively licensed real estate broker or sales associate shall disclose in writing to any buyer or seller, that he or she is licensed, if the licensee directly, or indirectly through a third party, sells or purchases for personal use or any other purpose or acquires or intends to acquire any interest in real property, or on any option to purchase real property. (Previously Rule 4,4,4). (7-1-96)T

407. LICENSEE'S PROPERTY AND MAINTENANCE OF RECORDS.

An actively licensed broker or sales associate dealing in real property owned wholly or in part by the licensee shall maintain or cause to be maintained the same records which would be required if the property involved was not owned by the licensee. (Previously Rule 4,4,6). (7-1-93)

408. DISCLOSURE REQUIREMENTS.

Licensed real estate brokers and sales associates must comply with all disclosure requirements required by the Idaho Real Estate Brokerage Representation Act. (7-1-96)T

01. Commission-approved Brochure. Licensees shall give a Commission-approved agency relationship brochure to prospective buyers and sellers at the first substantial business contact. "Substantial business contact" occurs when the contacts and communications between the licensee and the potential buyer or seller, taken as a whole, would create a distinct probability that the person dealing with the licensee could reasonably believe that they were dealing with the licensee on a business level. The designated broker in each office is responsible for making these brochures available for use by the broker's licensed associates. (7-1-96)T

02. Selection of Representation. The agreed business relationship between the licensee and the buyer or seller must be determined no later than at the time of preparation of a purchase and sale agreement, and any and all necessary agreements and/or written consents to dual representation must be executed by this time. (7-1-96)T

03. Confirming Representation. The level of representation between the broker and the customer or client must be correctly stated, confirmed and signed by all parties to the real estate transaction. The written confirmation, in the form contained in the statute, must be attached to or be included on any real estate purchase and sale agreement. (7-1-96)T

04. Disclosure of Representation to Others in a Transaction. A licensee representing a buyer/client or working with a buyer/customer shall disclose to the seller or seller's agent in what capacity the selling licensee will be acting for or with the prospective buyer (customer or client) prior to presenting a purchase and sale agreement. Disclosure to the seller's agent, if any, is sufficient under this rule. (7-1-96)T

05. Limited Disclosed Dual Agency. Each designated broker acting as a limited dual agent under Section 54-2066, Idaho Code, must obtain the prior written consent of all parties to the transaction in statutory format. The required consent and disclosure form must be signed by each buyer and seller in the transaction or their attorney in fact. Facsimile transmissions containing the signatures and multiple originals comply with the requirements of this rule. (7-1-96)T

409. WRITTEN AGENCY POLICY REQUIRED.

Each designated broker must adopt and maintain a written policy on agency, nonagency and limited dual agency, as those terms are defined by the Idaho Real Estate Brokerage Representation Act (Section 54-2060 et seq., Idaho Code). The written agency policy should identify the types and levels of representation to be offered by that broker and affiliated licensees. Nothing in this rule limits or requires expansion of the types of agency representation offered by any broker. At least one (1) copy of the written agency policy must be maintained in the broker's main office and any licensed branch office. (7-1-96)T

410. DUTIES OF CONFIDENTIALITY TO CLIENTS.

A real estate licensee and brokerage who have gained "confidential client information" in the course of acting as an agent or limited dual agent have the following duties: (7-1-96)T

01. Duty to Maintain Confidentiality. Information must be kept confidential under this statute as long as the information held by a licensee or brokerage about a client or former client: (7-1-96)T

- a. Is not a matter of public record; and, (7-1-96)T
- b. Is information the client or former client has not disclosed or authorized to be disclosed to third parties; and, (7-1-96)T
- c. If disclosed, would be substantially detrimental to the bargaining position of the client or former client in the same or related real estate transaction; and, (7-1-96)T
- d. Is otherwise within the statutory definition of “confidential client information” in Section 54-2061, Idaho Code. (7-1-96)T
- e. This duty to a client continues beyond termination of representation only if the information continues to meet the definition of “confidential client information” or if the information does not become generally known in the marketing community from a source other than the former brokerage or its affiliated licensees. (7-1-96)T

02. **Change of Office and Duty to Maintain Confidentiality.** A licensee who has personally gained “confidential client information” about a buyer or seller while associated with one (1) broker and who later affiliates with a different broker is still obligated to maintain the client confidentiality as defined in this rule. (7-1-96)T

03. **Clients and Former Clients with Conflicting Interests.** If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage must inform the second client of the broker’s prior representation of the first client and that “confidential client information” obtained during that first representation cannot be given to the second client with a conflicting bargaining position as long as it fits the definitions in Subsection 410.01. Nothing in this rule prevents the brokerage from asking the former client for permission to release any such information. (7-1-96)T

04. **Not a Privileged Communication.** Nothing in this rule or statute is intended to create a “privileged communication” between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal actions. The issue of confidentiality in this rule is intended to address information which, if disclosed before or during a real estate transaction, would be seriously detrimental to the bargaining position of a represented buyer or seller who has reasonable expectations that such information would remain commercially confidential. (7-1-96)T

411. WRITTEN NOTICE OF LEGAL ACTION.

A licensee is hereby required to give written notice of legal action to the Idaho Real Estate Commission within twenty (20) days after being served with copies of Summons and Complaint or similar formal notice in any legal action (civil, criminal or administrative) in which the licensee is named as a defendant and which might reasonably affect that person’s real estate license. Copies of the Summons and Complaint or other formal notice of the legal action shall be forwarded to the Commission with such notification. (Previously Rule 4,4,7). (7-1-96)T

412. DISPUTES CONCERNING COMMISSIONS AND FEES.

The Idaho Real Estate Commission shall not be involved in the resolution of disputes between licensees or between licensees and buyers and sellers concerning matters of commissions or fees.(Previously Rule 4,4,8). (7-1-93)

413. PRICE FIXING.

The Idaho Real Estate Commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction by licensed real estate brokers. (Previously Rule 4,4,9). (7-1-93)

414. TITLE OPINIONS.

No real estate broker or sales associate shall pass judgment upon or give an opinion with respect to the merchantability of the title to property in any transaction. (Previously Rule 4,7,1). (7-1-93)

415. LEGAL OPINIONS.

A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney. (Previously Rule 4,7,2). (7-1-93)

416. OFFICE OPERATIONS AND BROKER SUPERVISION.

A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he/she is responsible. (Previously Part of Rule 4,11,0).

(7-1-93)

01. Factors. The following factors will be among those used to determine adequacy of supervision; however, the Commission is not limited to making a determination on these factors alone, but will examine all pertinent evidence. (Previously Part of Rule 4,11,0).

(7-1-93)

a. Was the designated broker physically available to supervise? (Previously Rule 4,11,0a.).

(7-1-93)

b. What was the experience level of the licensed associate? (Previously Rule 4,11,0b.).

(7-1-93)

c. Has the designated broker contracted to avoid supervisory responsibility? (Previously Rule 4,11,0c.).

(7-1-93)

d. What types of activity were licensed sales associates or unlicensed personnel engaged in? (Previously Rule 4,11,0d.).

(7-1-93)

e. Had the designated broker established written or oral policies and procedures? (Previously Rule 4,11,0e.).

(7-1-93)

f. Does the designated broker hold regular staff meetings and follow-up meetings to determine that policies and procedures are being properly implemented? (Previously Rule 4,11,0f.).

(7-1-93)

g. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered? (Previously Rule 4,11,0g.).

(7-1-93)

h. Does the designated broker maintain a written office policy on agency relationships and reasonably implement that policy?

(7-1-96)T

02. Real Estate Agreements. The designated broker shall be responsible for the review and approval of all real estate agreements including, but not limited to, those related to listing, selling, or purchasing property. (Previously Rule 4,11,1).

(7-1-93)

03. Shared Office Space between Brokers. When more than one individually licensed broker operates an office at the same address, each broker shall maintain his or her records and trust accounts separate from all other brokers. Each broker shall operate under a business name which clearly identifies the broker as an individual within the group of brokers. All advertisements of the brokerage or of individual properties shall clearly indicate which broker is responsible for that advertisement. If the names of sales associates are shown, the broker with whom they are associated shall be clearly indicated. (Previously Rule 4,11,2 and 4,11,2a.).

(7-1-93)

04. Must be Available to Supervise and Manage. Any broker licensed as an individual proprietorship or as a designated broker for a corporation, limited liability company or partnership, or any manager, must be reasonably available to manage and supervise each such office during regular business hours. (Previously Rule 4,11,3).

(7-1-96)

a. When a broker is a regular full-time employee or is engaged in a full-time activity at a location other than where he or she is licensed to do business, a presumption will be made that he or she is unable to manage an office and no sales associate will be licensed under the broker until such presumption is overcome by satisfactory evidence to the contrary, acceptable to the Commission. (Previously Rule 4,11,3a.).

(7-1-93)

b. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than where he or she is licensed to do business, a presumption will be made that he or she is unable to manage a branch office until such presumption is overcome by satisfactory evidence to the contrary, acceptable to the Commission. (Previously Rule 4,11,3b.).

(7-1-93)

c. However, a broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to these rules, may be licensed as a "limited broker" in Idaho. A limited broker shall not have any sales associates licensed under that broker. (7-1-96)T

05. Rent-a-Broker Prohibited. A broker shall not permit the use of his or her license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control of the office. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office except in the manner allowed by Section 54-2033A, Idaho Code. The broker shall have overall supervisory control and responsibility for the main office and all branch offices established under his or her license. The broker must be in attendance at the office on a regular basis and available to supervise the day-to-day operation of the office. (Previously Rule 4,11,4). (7-1-96)T

06. Lending a License Prohibited. No arrangement shall be entered into by any licensee whereby an individual lends his or her license for the benefit of another person, partnership, limited liability company or corporation whereby the provisions of the Commission's Rules relating to licensing are circumvented. (Previously Rule 4,11,5). (7-1-96)

07. Broker Absent for More than Fourteen (14) Days. A designated broker who will be absent from his/her main office for more than fourteen (14) calendar days, shall appoint a designated broker of another office or an associate broker who is licensed and associated with the absent broker to manage, supervise and oversee the regular office operations. The appointee shall conduct all supervisory activities normally required of the designated broker. Except in the event of an emergency, the designated broker shall notify the Commission in writing of the name of the appointee prior to the broker leaving the office for an extended period of more than fourteen (14) days. (Previously Rule 4,11,6). (7-1-93)

08. Broker Absent for More than Forty-Five (45) Days. Whenever a designated broker will be absent from his/her main office for a period of more than forty-five (45) calendar days, either: (Previously Rule 4,11,7). (7-1-96)T

a. A new broker shall be designated; or, (Previously Rule 4,11,7). (7-1-96)T

b. All associated licenses shall be placed on an inactive status, and the office shall be closed, and the broker's license shall be placed on an inactive status, and all listings shall be terminated. (Previously Part of Rule 4,11,7). (7-1-96)T

09. Inadequate Supervision and Fines. A broker who has been fined by the Idaho Real Estate Commission for inadequate supervision under these rules shall not, directly or indirectly, pass liability or responsibility for payment of such fine to any sales associate licensed with said broker. (Previously Rule 4,11,8). (7-1-93)

10. Penalty for Unlicensed Real Estate Sales Practice. A broker who allows an unlicensed person to represent that broker as a sales associate is guilty of inadequate supervision and is in violation of Section 54-2040A(h), Idaho Code. (12-31-93)

417. DEATH OF A SOLE PROPRIETOR BROKER.

At the time of death of a sole proprietor broker, the following will take place and are to include, but are not to be limited to the following: (Previously Rule 4,12,0). (7-1-93)

01. Termination of Listings and Buyer Brokerage Agreements. Termination of all listings and buyer brokerage agreements in which there are not outstanding offers or earnest money receipts. (Previously Rule 4,12,1). (7-1-96)T

02. Completion of Negotiations. Completion of all negotiations between buyers and sellers on transactions in which an offer to purchase has been written or received. (Previously Rule 4,12,2). (7-1-96)T

03. Accounting for Moneys. Depositing and withdrawing moneys from the real estate trust account in connection with completion of all transactions still pending at the time of death of a sole proprietor broker. (Previously Rule 4,12,3). (7-1-93)

04. Commissions. Prompt payment of all real estate commissions owing after closing of all transactions, both to the decedent broker's duly appointed personal representative and to sales associates of the deceased broker or participating brokers entitled to commissions resulting from said transactions. (Previously Rule 4,12,4). (7-1-93)

418. INACTIVE LICENSEES.

During the period of time that a license is inactive, the licensee shall not engage in, or carry on, or advertise, or hold the licensee out as engaging in real estate activity, including splitting fees with active licensees for referrals. (7-1-96)T

419. -- 499. (RESERVED).

RULES 500 through 549 -- IDAHO REAL ESTATE EDUCATION COUNCIL

500. ESTABLISHMENT OF THE IDAHO REAL ESTATE EDUCATION COUNCIL.

An Education Council consisting of six (6) members, four (4) of whom are to be named by the Idaho Real Estate Commission from nominees submitted by the Idaho Association of Realtors and the industry, plus a Commissioner and the executive director is established to perform functions as set forth in the Council's bylaws, which bylaws must be approved by the Commission. Members appointed by the Idaho Real Estate Commission shall be named from the four (4) geographic districts of the state -- North, South, East, and West -- one (1) Council member for each district. The education director of the Commission shall serve as the Council Executive at all Council meetings and functions. Each Education Council member shall be appointed for a term of at least four (4) years. Members shall be reimbursed expenses in the same manner as state employees in addition to a per diem allowance as established for Commissioners for each day in which approved service is performed. (Previously Rule 5,1,0). (7-1-93)

501. DUTIES OF THE IDAHO REAL ESTATE EDUCATION COUNCIL.

The Idaho Real Estate Education Council shall be responsible to the Commission for recommending real estate education policy and course content quality for all educational courses approved by the Commission as meeting the education requirements of Section 54-2029, Idaho Code, and Subsections 102.03; 101.03; 106.04; 106.05; 106.06; 106.07; and 107.04 of the rules, and such other courses or clinics deemed advisable for promoting higher standards of practice in the real estate business. The Council will prepare for ratification by the Commission a procedure for certifying educational courses, instructors, and institutions as meeting Commission approval. (Previously Rule 5,2,0). (7-1-93)

502. -- 549. (RESERVED).

RULES 550 through 599 -- EXECUTIVE DIRECTOR

550. APPOINTMENT OF EXECUTIVE DIRECTOR.

It is the responsibility of the Idaho Real Estate Commission to employ and to outline the duties of an executive director. (Previously Part of Rule 5,3,0). (7-1-93)

551. DUTIES OF THE EXECUTIVE DIRECTOR.

Duties of the executive director shall include the following: (Previously Part of Rule 5,3,0). (7-1-93)

01. Office. To maintain and operate a suitable office for the Idaho Real Estate Commission in Boise, Idaho and/or in other specific locations in the state as necessary. (Previously Rule 5,3,1). (7-1-93)

02. Records. To keep books, records, and account of all activities of the Commission. (Previously Rule 5,3,2). (7-1-93)

03. Issue Licenses. To issue real estate broker and/or sales associate's licenses. (Previously Rule 5,3,3). (7-1-93)
04. Staff. With the approval of the Idaho Real Estate Commission, to employ and discharge other staff members as deemed necessary and to outline their duties. (Previously Rule 5,3,4). (7-1-93)
05. Investigations. To make investigations of complaints and possible violations of the Idaho Real Estate License Law and rules. (Previously Rule 5,3,5). (7-1-96)T
06. Disciplinary Actions. To take the necessary action for correction of violations of the Idaho Real Estate License Law and the Rules of the Commission by filing the necessary complaints, notices, and/or setting hearings. (Previously Rule 5,3,6). (7-1-93)
07. License Examinations. To prepare and submit to the Commission examinations to be given applicants for real estate broker and salesman licenses and to conduct such examinations at the direction of the Commission. (Previously Rule 5,3,7). (7-1-93)
08. News Bulletin. To have charge of the preparation of material to be published in the news bulletin to be issued from time to time and mailed to all licensees. (Previously Rule 5,3,8). (7-1-93)
09. Educational Clinics. To conduct or promote the conduct of educational clinics or meetings necessary to comply with the education requirements set forth in Section 54-2029, Idaho Code, and such other educational clinics or meetings deemed advisable, with the aim of promoting higher standards of practice in the real estate industry. (Previously Rule 5,3,9). (7-1-93)
10. Professional Trade Associations. To cooperate insofar as practical with the Idaho Association of Realtors in conducting specialized educational clinics and meetings throughout the state of Idaho. (Previously Rule 5,3,10) (7-1-96)T
11. Real Estate Education Council. To serve as a voting member of the Real Estate Education Council. (Previously Rule 5,3,11). (7-1-93)

552. -- 599. (RESERVED).

**RULES 600 through 699 --
CERTIFICATION OF SCHOOLS, INSTRUCTORS AND COURSES**

600. PURPOSE OF CERTIFICATION.

The purpose of certification is for the general improvement of real estate educational programs available to the real estate industry and persons interested in pursuing a real estate career in this state; to prevent misrepresentation, fraud, and collusion in offering real estate education programs; to establish higher standards for, and to protect, preserve, foster, improve, and encourage the real estate educational programs offered to the industry; and to encourage and to attain a high degree of excellence in the pursuit of real estate education. (Previously Rule 6,1,0). (7-1-93)

601. EDUCATION GOVERNED.

Certification applies to real estate courses as well as to course sponsors (schools) and instructors seeking approval to conduct a course of education in real estate subjects in compliance with the prelicense education requirements for both salesman applicants and broker applicants and/or in compliance with the continuing education requirements for both salesman and broker licensees. (Previously Rule 6,1,0, paragraph 2). (7-1-93)

602. COLLEGES AND UNIVERSITIES.

Degree granting institutions approved by the Idaho Board of Education and colleges and universities accredited by the Board of Education shall be deemed to be approved schools, and courses satisfactorily completed at such colleges or universities shall be accepted by the Idaho Real Estate Commission to the extent of the appropriateness and the number of classroom hours involved in real estate courses. (Previously Rule 6,2,0). (7-1-93)

01. Agreements. A contract may be effected between each such institution of higher learning and the

Commission outlining course content, administration responsibilities, and scheduling commitments. (Previously Rule 6,2,1). (7-1-93)

02. Course Descriptions. Such institutions offering real estate courses shall provide upon request of the Commission, a statement containing a description of real estate courses given. (Previously Rule 6,2,2). (7-1-93)

03. Instruction. Instructors shall meet the criteria for certification as set forth in Section 612. (Previously Rule 6,2,3). (7-1-93)

603. ADMINISTRATION AND COURSE CONTENT.

All real estate courses offered by such colleges and universities or by proprietary institutions shall meet the following criteria for administration and course content, if such courses are to be accepted by the Commission as satisfying the education requirements for licensure, to wit: (Previously Rule 6,2,4). (7-1-93)

01. Individual in Charge. Each institution shall designate an individual in charge of and responsible for real estate courses with whom the Commission may communicate. (Previously Rule 6,2,4a.i.). (7-1-93)

02. Fees. The institution shall provide to the Commission for each real estate course taught, a breakdown of all fees charged to each student: fees, materials, and books. (Previously Rule 6,2,4a.ii.). (7-1-93)

03. Student Records. Each institution shall establish and maintain for each individual student a complete, accurate, and detailed record which shall include: the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study. Each student shall be required to pass an approved written final examination with a minimum score of seventy percent (70%) in order to be classified as completing successfully. (Previously Rule 6,2,4a.iii.). (7-1-93)

04. Grade Lists. Within five (5) working days after conclusion of each course of instruction for which no academic credit was given, the institution shall submit to the Commission an alphabetical list which shall include the names, addresses, and social security numbers of the students completing the course of instruction, the name of the course, the number of hours included in the course, the date of the course, and the location. Said list shall be certified by the instructors from whom the students received instruction and the authorized representative of the institution. (Previously Rule 6,2,4a.iv.). (7-1-93)

05. Student Critiques. Each institution shall also submit acceptable student critiques for each course and instructor. The use of the Commission critique form is recommended. (Previously Part of Rule 6,2,4a.iv.). (7-1-93)

06. Course Schedules. Each school shall submit schedules of courses and instructors as requested by the Idaho Real Estate Commission and submit changes promptly as they occur. (Previously Rule 6,2,4a.v.). (7-1-93)

07. Catalogs, Bulletins, Pamphlets. Printed catalogs, bulletins, pamphlets, advertisements, and other forms of prospectus information shall be specific and accurate with respect to the prerequisite educational training or experience requirements for admission to the course, curriculum, the tuition, and all other fees or charges. (Previously Rule 6,2,4a.vi.). (7-1-93)

08. Advertising. Institutions may advertise that they are currently certified by the Commission, if current certification has been approved, but no such advertising may state or imply that institution is an agency of the Idaho Real Estate Commission or the Council. (Previously Rule 6,2,4a.vii.). (7-1-93)

09. Classrooms and Other Facilities. The institution shall have such classrooms and such other further facilities and supportive personnel as is necessary to adequately implement the real estate program. (Previously Rule 6,2,4a.viii.). (7-1-93)

10. Curriculum. The curriculum of real estate courses taught by each institution shall be consistent with the Commission's master outline covering course content. Each course will be individually approved in advance. All courses, outlines, texts, course revisions, and final examinations involved in courses for which no academic credit is given must be submitted at least sixty (60) days prior to course offering for approval by the education director to

insure content at least meets the minimum prescribed course content as set forth by the Commission. Whenever there is a change in an approved course, such as, but not limited to, curriculum, course length, instructor, the sponsoring entity shall promptly notify the Commission in writing of this change. The education director may refuse to certify real estate courses when, after investigation, it is determined that the specific course is not equivalent to standards adopted by the Commission in quality of instruction or course content does not meet the Commission standards. A certified instructor must be present at all times while class is in session. The final examination shall be monitored. (Previously Rule 6,2,4b.i.). (7-1-93)

11. Classroom Hours. The length of a course is defined as follows: Twelve (12) classroom hours of instruction shall include at least two (2) days, twenty (20) classroom hours of instruction shall include at least three (3) days, thirty (30) classroom hours shall include at least four (4) days and forty-five (45) classroom hours shall include at least six (6) days. Examination time shall not be included as approved classroom hours of instruction. A classroom hour is meant as a period of at least fifty (50) minutes of actual classroom instruction. (Previously Rule 6,2,4b.ii.). (7-1-93)

a. The length of a correspondence course shall be based upon the number of hours which would be awarded in an equivalent classroom course. (Previously Part of Rule 6,2,4b.ii.). (7-1-93)

b. Educational offerings will normally not be approved in segments of less than three (3) hours and only if the sponsoring entity agrees to certify each attendee's enrollment for credit toward the total classroom-hour requirement. (Previously Part of Rule 6,2,4b.ii.). (7-1-93)

12. Prerequisites. A student must successfully complete all prerequisites for a course before he/she may receive credit for such course. A student may request to substitute equivalent courses or past work experience in lieu of required courses. Requests must be approved by the education director, in accordance with the Commission's master outline covering course content. (Previously Rule 6,2,4b.iii.). (7-1-93)

13. Auditing. Auditing a course is not sufficient to satisfy education requirements for license purposes. (Previously Rule 6,2,4,b.iv.). (7-1-93)

14. Attendance. Regular attendance at the course shall be required except as provided in Section 54-2029, Subsection H., Idaho Code. (Previously Rule 6,2,4b.v.). (7-1-93)

15. Challenge Examination. A challenge examination must be in the form of a written examination covering the respective subject matter and be administered by an approved entity. Any such examination must be approved in advance by the Commission. If a student receives less than seventy percent (70%) on a challenge examination, the student may be allowed to retake the examination once. If the student fails the second challenge examination, education credit may be obtained only by successfully completing the classroom hours and examination. (Previously Rule 6,2,4b.vi.). (7-1-93)

16. Unacceptable Challenge Examinations. Challenging a course by passing an examination is unacceptable for satisfying the education requirements for licensure, except for the following purposes: (Previously Part of Rule 6,2,4b.vi.). (7-1-93)

a. To receive credit for previously completed out-of-state real estate education hours that may not be equivalent to the Commission's certified courses; (Previously Part of Rule 6,2,4b.vi.(a)). (7-1-93)

b. To receive credit for previously completed real estate education hours that were not completed within five (5) years of the application and when the applicant has not been actively licensed; or, (Previously Part of Rule 6,2,4b.vi.(b)). (7-1-93)

c. To receive credit for the continuing education requirement as prescribed in Subsection H. of Section 54-2029, Idaho Code. (Previously Part of Rule 6,2,4b.vi.(c)). (7-1-93)

17. Monitored by Idaho Real Estate Education Council. Courses may be audited by one (1) or more representatives from the Council for course content and presentation. (Previously Rule 6,2,4b.vii.). (7-1-93)

18. Topics Eligible for Approval. A list of approved prelicense and continuing education courses shall be available at the Commission office. (Previously Rule 6,2,4b.viii.) (7-1-93)

a. Topics eligible for approval for compliance with the salesman's pre-license requirement include the following: Real Estate Essentials or its equivalent; and, Real Estate Practices or its equivalent. (Previously Rule 6,2,4b.viii.(a)). (7-1-93)

b. Topics eligible for approval for compliance with the broker's prelicense requirement include the following: Real Estate Brokerage Management; Real Estate Exchanging; Real Estate Finance; Real Estate Investment; Real Estate Law; Real Estate Taxation; and, Real Estate Valuation and Analysis. (Previously Rule 6,2,4b.viii.(b)). (7-1-96)

c. Topics eligible for approval for compliance with the continuing education requirement for both salesman and broker licensure include the following: real estate oriented education intended to keep licensees abreast of changing real estate practices and laws. The Commission will establish specific topics on a continuing basis as required by current real estate practices and laws. (Previously Rule 6,2,4b.viii.(c)). (7-1-93)

19. Continuing Education Topics Not Eligible for Approval. The following activities shall not be eligible for approval for compliance with the continuing education requirement: those which are specifically examination preparation in nature; those which deal with office or business skills, such as typing, speed reading, memory improvement, body language, motivation and similar activities; those which are held in conjunction with a brokerage firm's sales promotion or sales meetings; those which are held by trade organizations for licensee's orientation. (Previously Part of Rule 6,2,4b.viii.(c)). (7-1-93)

20. Continuing Education Courses Taken to Make Up a Deficiency. Courses which have been taken by an inactive to active applicant to make up a deficiency of the continuing education requirement from the previous continuing education period may be used toward the current period's continuing education requirement. Credit for completion of approved real estate education will not be granted when the content of a course repeats that for which credit has been previously received. (Previously Part of Rule 6,2,4b.viii.(c) and Rule 6,2,4b.ix.) (7-1-93)

604. POSTING AND RECORDING FEES.

In connection with those courses for which no academic credit is given, and to enable the Commission to certify applicants and to administer and enforce these rules, colleges and universities may be required to pay to the Commission a posting and recording fee as established by the Commission. Fees are not refundable; these fees are estimated costs required to defray normal expenses incurred in maintaining the certificate program. (Previously Rule 6,2,4c.) (7-1-93)

605. ADULT EDUCATION, COMMUNITY EDUCATION, VOCATIONAL EDUCATION AND CONTINUING EDUCATION PROGRAMS.

Adult Education, Community Education, Vocational Education and Continuing Education programs are normally interpreted as part of the public educational system. (Previously Rule 6,3,0). (7-1-93)

01. Administration and Course Content. Real estate courses shall meet the criteria for administration and course content as outlined under "Other Real Estate Schools" of these rules and as outlined under Section 606. of these rules. (Previously Rule 6,3,1). (7-1-96)

02. Instruction. Instructors shall meet the criteria for certification as outlined under "Instructor Certification" of these rules. (Previously Rule 6,3,2). (7-1-93)

606. OTHER REAL ESTATE SCHOOLS.

Except as otherwise provided under these rules, real estate schools which offer instruction in real estate shall comply with Sections 607 through 610. (Previously Rule 6,4,0 through Rule 6,4,3). (12-31-93)

607. SPONSORS.

Eligibility to conduct a school for real estate education shall require the production of satisfactory evidence to the Commission of the moral and financial responsibility of its sponsors. Applicants for school approval must make application and satisfy the following requirements: (Previously Rule 6,4,1). (7-1-93)

01. Qualifications. The applicant must not have had a license revoked or have been refused a renewal of a license issued by the state of Idaho or any other state, as a real estate broker or salesman, if such revocation or refusal occurred within two (2) years prior to the date the application is submitted to the Commission. The applicant must not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of a felony or a misdemeanor involving moral turpitude in a state or federal court within five (5) years prior to the date the application is submitted to the Commission. (Previously Rule 6,4,1a.). (7-1-93)

02. References. Each sponsor, member, officer, or director of an applicant embraced by the terms of the above Subsection shall file with the Commission two (2) or more character references providing information relative to the applicant's integrity and to any previous experience in the administration or operation of an educational program. (Previously Rule 6,4,1b.). (7-1-93)

03. Recruitment Prohibited. No person operating a school, or acting as an instructor in an approved school shall in any way whatsoever use the school or course, directly or indirectly, to recruit real estate sales staff. Schools shall not use the trade name of any brokerage, or any part thereof, nor shall classes be conducted in the offices of any brokerage. The intent of this Subsection is to insure that no broker or brokerage shall gain an unfair advantage over his or her colleagues by conducting a school for salesmen. (Previously Rule 6,4,1c.). (7-1-93)

608. SURETY BOND.

Each applicant for school approval, or if approved, each applicant for renewal shall post with the Commission an acceptable surety bond in the penal sum of ten thousand dollars (\$10,000), before such certification, or renewal, shall be issued. If a school shall seek certification of a branch school, pursuant to Section 609., the applicant shall post an additional surety bond in the amount of ten thousand dollars (\$10,000) for each branch. This bond shall be in a form approved by the Commission and shall be by a surety authorized to do business in the state of Idaho. Such bond shall be continuous in form for the term of the certificate, shall be conditioned to provide indemnification to any student suffering loss as a result of fraud or misrepresentation by the school, its employees, or agents, or the failure, for any reason, of the school to timely complete each course of instruction started by the school, and shall provide by its terms that if suit be brought against the surety and recovery obtained, reasonable attorney's fees shall be awarded to the person receiving said judgment. The liability of the surety shall in no event exceed ten thousand dollars (\$10,000), exclusive of attorney's fees and costs, as an aggregate for any and all students attending the school or branch named in the bond for all breaches of conditions of the bond. The liability of the surety shall be limited to those claims arising out of or in connection with those courses certified by the Commission. The surety of any such bond may cancel the same upon giving ninety (90) days notice in writing to the Commission and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of such cancellation. The Commission shall give written notice of such cancellation to any affected school or branch, when the Commission has been notified that any such bond is to be cancelled, and if such applicant shall not post another acceptable bond before the effective date of its cancellation, the school's certification shall be revoked as of the date of cancellation of the bond. (Previously Rule 6,4,1d.). (7-1-93)

01. Prior Bond. The fact that a bond is in force pursuant to these rules shall neither limit nor impair recovery otherwise available under the provisions of law as against the proprietor of any certified school; nor shall the amount of such bond be relevant in determining the amount of damages or other relief to which any plaintiff may be entitled. (Previously Part of Rule 6,4,1d.). (7-1-93)

02. Recovering Damages. Any student injured by the breach of any obligation for which a bond is written under these Rules shall be entitled to sue on the bond in his or her own name, without joining the school as a party, in a court of competent jurisdiction to recover the damages he or she may have sustained by such breach. This remedy shall be in addition to any other remedy available to the student. In case of recoveries had by two (2) or more persons for violation of such bond the combined total of which is in excess of the amount of the bond, such recoveries shall be prorated to fall within such limitations. (Previously Part of Rule 6,4,1d.). (7-1-93)

03. Effective Date. This Amendment shall be effective July 1, 1985 and each applicant for certification, or renewal of a certificate for a term beginning after the effective date of this Amendment shall post a surety bond in accordance with the terms of this Amendment. (Previously Part of Rule 3,6,4,1d.). (7-1-93)

609. CERTIFICATION.

Certification shall be granted to the particular school for the specific ownership, school location, and name designated in the application for certification. Any changes in ownership, school location, or school name must be submitted for approval to the education director of the Commission, at least thirty (30) days in advance of the effective date of the proposed changes. A school in possession of a certification document may make application with the Commission to establish a branch in any county in the state of Idaho. The certificates for schools and the certificates for branches shall expire on the respective anniversary dates, at which time the certificate becomes void and shall be returned immediately to the Commission's office. If a certificate for the main school becomes void, the certificate for the branch school will automatically become cancelled. (Previously Rule 6,4,2). (7-1-93)

01. Notification of Certification Expiration. At least sixty (60) days before the termination date of a certificate, the education director shall inform the school that an application for renewal is due and shall forward the necessary forms. (Previously Rule 6,4,2a.). (7-1-93)

02. Renewal Application. At least thirty (30) days before the termination date of certificate, the school shall submit a renewal application, filing fee, and a surety bond or renewal thereof as set forth in Section 608. (Previously Rule 6,4,2b.). (7-1-93)

03. Disapproval. The education director shall notify the school at least fifteen (15) days before the termination date of a certificate if the renewal application has been disapproved. Any courses starting after receipt of notice of termination shall not be approved by the Commission. (Previously Rule 6,4,2c.). (7-1-93)

610. OTHER ADMINISTRATIVE REQUIREMENTS.

Except as otherwise provided, every school shall meet the following administrative requirements: (Previously Rule 6,4,3). (7-1-93)

01. Director. Each application for approval shall designate an individual as director of the school in charge of and responsible for its operation. (Previously Rule 6,4,3a.). (7-1-93)

02. Fees. All fees charged by a school shall be specified separately in writing. If additional fees are charged for supplies, materials or books needed in course work, they shall be itemized by the school and the supplies, materials or books, shall, upon payment, become the property of the student. Those fees and the manner of payment for them shall be stated in a student contract approved by the Commission. The contract also shall expressly state the school's policy regarding the return of fees in instances when the student is dismissed or withdraws voluntarily. (Previously Rule 6,4,3b.). (7-1-93)

03. Records. Each school shall establish and maintain records according to the certification and policy. (Previously Rule 6,4,3c.). (7-1-93)

a. Each school shall establish and maintain complete, accurate, and detailed financial records pertaining to student fees and supplies. Such records shall be kept current and available for inspection during regular school hours by one or more representatives of the Council. (Previously Rule 6,4,3c.i.). (7-1-93)

b. Each school shall establish and maintain for each individual student a complete, accurate, and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study. Each student shall be required to pass an approved written final examination with a minimum score of seventy percent (70%) in order to be classified as completing successfully. (Previously Rule 6,4,3c.ii.). (7-1-93)

c. If a student receives a score of less than seventy percent (70%), the student may be allowed to retake the examination within one (1) month of the original examination except as provided in Subsections 603.15 and 603.16. If the student fails the second attempt, licensable credit may be obtained only by successfully completing or repeating the classroom hours and final exam. (Previously Rule 6,4,3c.iii.). (7-1-93)

d. Within five (5) working days after conclusion of each course of instruction, the school shall submit to the Council an alphabetical list which shall include the names, addresses and social security numbers of the students completing the course of instruction, the name of the course, the number of hours included in the course, the

date of the course, and the location. Said list shall be certified by the instructor from whom the students received instruction and an authorized representative of the school. Each certified school shall also submit acceptable student critiques for each course and instructor. The use of the Council's form is recommended and will be provided upon request. (Previously Rule 6,4,3c.iv.) (7-1-93)

e. The school will provide written notification to students who successfully or unsuccessfully complete a course within seven (7) days of course completion date. (Previously Rule 6,4,3c.v.) (7-1-93)

f. Each school shall submit schedules of courses and instructors as requested by the Council and submit changes promptly as they occur. (Previously Rule 6,4,3c.vi.) (7-1-93)

04. Advertising. No school shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence. The following specific types of advertising (because of their common tendency to mislead) shall not be used: (Previously Rule 6,4,3d.) (7-1-93)

a. A school shall not apply itself either as part of its name or in any other manner the designation of "college" or "university" in such a way as to give the impression that it is an educational institution conforming to the standards and qualifications prescribed for colleges and universities by the Idaho Board of Education unless it, in fact, meets the said standards and qualifications and has been so approved by the Idaho Board of Education. (Previously Rule 6,4,3d.i.) (7-1-93)

b. Printed catalogs, bulletins, pamphlets, advertisements and other forms of prospectus information shall be specific and accurate with respect to the prerequisite educational training or experience requirements for admission to the school or courses, curriculum, the graduation requirements, the tuition, and all other fees or charges. Copies of printed catalogs, bulletins, pamphlets, advertisements, and other forms of prospectus information shall be submitted to and approved for compliance with Commission standards by the education director prior to use. (Previously Rule 6,4,3d.ii.) (7-1-93)

c. Schools may advertise that they are currently certified by the Commission, if current certification has been approved, but no such advertising may state or imply that a school is an agency of the Idaho Real Estate Education Council or Commission. (Previously Rule 6,4,3d.iii.) (7-1-96)

05. Facilities. The school shall have classrooms and such other and further facilities and supportive personnel as is necessary to adequately implement the school's program. (Previously Rule 6,4,3e.) (7-1-93)

611. COURSES.

The curriculum of real estate schools certified by the Commission shall be consistent with the Commission's master outline. Each course will be individually certified. All courses, outlines, texts, course revisions, and final examinations must be submitted at least sixty (60) days prior to course offering for approval by the education director to insure content at least meets the minimum prescribed course content as set forth by the Commission. Whenever there is a change in an approved course, such as, but not limited to, curriculum, course length or instructor, the sponsoring entity shall promptly notify the Commission in writing of this change. The education director may refuse to certify real estate courses when, after investigation, it is determined that the specific course is not equivalent to standards adopted by the Commission in quality of instruction or course content does not meet the Commission's standards. A certified instructor must be present at all times while class is in session. The final examination shall be monitored. Courses shall meet the criteria for administration and course content as outlined under Section 603. (Previously Rule 6,4,4.) (7-1-93)

612. INSTRUCTION.

Instruction in any school approved by the education director hereunder shall be provided with a staff which meets the requirements established by the Commission. (Previously Rule 6,4,5.) (7-1-93)

01. Moral Character. The instructor must not have had revoked, suspended, or been refused a renewal of a license issued by the state of Idaho or any other state, as a real estate broker or salesman, if such revocation, suspension or refusal occurred within two (2) years prior to the date the application is submitted to the Commission. The instructor must not have been convicted, issued a fine, or placed on probation, received a withheld judgement, or

completed any sentence or confinement for or on account of a felony or a misdemeanor involving moral turpitude in a state or federal court within five (5) years prior to the date the application is submitted to the Commission. (Previously Rule 6,4,5a.). (7-1-93)

02. Education Qualifications. Each instructor shall meet at least one (1) of the following qualifications: (Previously Rule 6,4,5b.). (7-1-93)

a. A qualified instructor or professor of a college or university approved as such by the State Board of Education who teaches in subjects dealing with real estate; or (Previously Rule 6,4,5b.i.). (7-1-93)

b. An attorney at law with a minimum of five (5) years of active practice in the areas of study proposed to teach; or (Previously Rule 6,4,5b.ii.). (7-1-93)

c. An individual with a minimum of five (5) years active real estate oriented experience, who has successfully completed an instructor training course administered by the Council, and who has been assigned as an instructor trainee for at least one (1) course in the subject area proposed to teach, or more at the discretion of the education director depending on the experience of the instructor trainee; or (Previously Rule 6,4,5b.iii.). (7-1-93)

d. An individual who has been appointed to teach a recognized real estate course which is of national scope and which has been approved by the appropriate national or state professional association or agency; or (Previously Rule 6,4,5b.iv.). (7-1-93)

e. An individual who has any combination of at least two (2) years active real estate oriented experience and post-secondary education which shall total eight (8) years and which shall have included acceptable experience as an instructor or which shall have included courses in acceptable teaching methods. (Previously Rule 6,4,5b.v.). (7-1-93)

03. Special Consideration. Upon appropriate application, the Idaho Real Estate Commission may waive any of the educational qualifications set forth in Subsection 612.02 and may designate additional educational qualifications. (Previously Rule 6,4,5c.). (7-1-93)

613. POSTING AND RECORDING FEES.

To enable the Commission to certify applicants and to administer and enforce these rules, schools may be required to pay to the Commission a posting and recording fee as established by the Commission. Fees are not refundable; these fees are estimated costs required to defray normal expenses incurred in maintaining the certificate program. (Previously Rule 6,4,6). (7-1-96)

614. WITHDRAWAL OF APPROVAL AND DENIAL OF CERTIFICATION.

If the Commission at any time determines that an instructor, course, or school is not meeting the requirements of the Commission for continued approval, immediate notification shall be made to the proper person in writing detailing the deficiencies requiring correction. The Commission shall not take any further action for at least thirty (30) days from the date of such written notice. At the expiration of this period, if the problem has not been corrected to the Commission's satisfaction, and the problem is not one involving material issues of fact or one which would require the receipt of evidence to aid the Commission in reaching an ultimate decision, the Commission may, by and through the education director or executive director deny certification or withdraw approval immediately. (Previously Rule 6,4,7). (7-1-93)

01. Notice of Hearing. In the event that the Commission determines that material issues of fact do exist or that the receipt of evidence would aid the Commission in reaching its ultimate decision, the Commission shall, prior to making a decision as to certification or the cancellation thereof, provide timely and adequate notice to the deficient party of the deficiency and the date on which the Commission will hold a hearing on said deficiency. The notice shall also apprise the deficient party that he or she will have the opportunity to confront adverse witnesses, present oral evidence, and shall have the right to appear with counsel. All hearings shall be conducted in accordance with the Rules of Practice and Procedure for the Idaho Real Estate Commission. (Previously Part of Rule 6,4,7). (7-1-93)

02. Decision. The Commission shall then issue its decision within thirty (30) days after the hearing

before the Commission, stating the reasons for its decision and the evidence upon which it relied. (Previously Part of Rule 6,4,7). (7-1-93)

03. Appeal. A final decision by the Commission may be appealed pursuant to the provisions of Chapter 52, Title 67, Idaho Code. No further education offered by the school, course or instructor shall be approved for credit, as pertains to required education for a real estate license, after the date written notice is issued withdrawing approval or denying certification. (Previously Part of Rule 6,4,7). (7-1-93)

615. VOLUNTARY DISCONTINUANCE.

Approval may be discontinued by the person involved voluntarily, by submitting to the Commission the plan for such termination or dissolution. The plan will include, but not be limited to, date of termination, provision for currently enrolled students, and disposition of records. (Previously Rule 6,4,8) (7-1-93)

616. REQUEST FOR REVIEW AND REHEARING.

If the Commission has determined that no hearing was necessary prior to the decision on certification or cancellation thereof, pursuant to Section 614., and the decision of the Commission was by and through the education director or the executive director, then any person, corporation, limited liability company, partnership, or association operating a private school offering real estate courses or any instructor of a supervised course of study who objects to such Commission refusal to certify or the cancellation of previous certification of a real estate school, course, and/or instructor, may request review of such refusal or cancellation by the Commission. Such request must be made in writing within thirty (30) days of receipt of the notice of refusal to certify or the cancellation. The hearing shall be conducted pursuant to Section 614, above and the Rules of Practice and Procedure for the Idaho Real Estate Commission. Upon any decision by the Commission after a hearing pursuant to Section 614, or any decision after a hearing on a request for review, a rehearing may be requested pursuant to the Rules of Practice and Procedure for the Idaho Real Estate Commission. (Previously Rule 6,4,9). (7-1-96)

617. EQUAL OPPORTUNITY AND ACCESS TO COURSE OFFERINGS.

The Commission subscribes to the principles pertaining to Civil Rights, and all educational opportunities shall be available without regard to race, color, sex, age, handicap, religion, or national origin. Real estate schools must file a statement with the Council's office in evidence of practices consistent with such equal opportunity policy. Registration for all certified offerings shall be open to all persons meeting the course prerequisites. Sponsors and their agents shall be responsible for compliance with this rule. (Previously Rules 6,4,10 and 6,4,11). (7-1-93)

618. WAIVER OF COURSE REQUIREMENTS.

Any license applicant may make application to the Commission for waiver of approved Idaho courses based on satisfactory completion of similar real estate courses taken in other states or Provinces of Canada. An application for waiver shall be accompanied by an official transcript from a college, university, or private school along with a description of the subjects covered in the course and number of classroom hours involved in the instruction. Attendance and successfully passing a written examination is required to be acceptable as a course of instruction. No credit will be given for courses which have been taken for audit. (Previously Rule 6,5,0). (7-1-93)

619. -- 999. (RESERVED).