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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 54-2007, Idaho Code. Any violation of these Rules, or of any provision of Chapter 20, Title 54, shall be sufficient cause for disciplinary action as prescribed in Sections 54-2059 and 54-2060, Idaho Code. (7-1-00)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 33.01.01, "Rules of the Idaho Real Estate Commission," IDAPA 33, Title 01, Chapter 01. (7-1-00)T

02. Scope. These rules contain the requirements for implementation and enforcement of the Real Estate Licensing Law and the Real Estate Brokerage and Representation Act, contained in Chapter 20, Title 54, Idaho Code. (7-1-00)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), this agency has written statements which pertain to the interpretation of the rules of this chapter, or to documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Idaho Real Estate Commission, 633 North 4th Street, Boise, Idaho, 83702. (7-1-00)T

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." (7-1-00)T

004. INCORPORATION BY REFERENCE.

There are no materials incorporated by reference. (7-1-00)T

005. OFFICE HOURS, MAILING AND PHYSICAL ADDRESS, PHONE NUMBERS.

The office hours for Real Estate Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting state holidays. The Real Estate Commission is located at 633 North 4th Street, Boise, Idaho, 83702. The mailing address is P.O. Box 83720, Boise, Idaho, 83720-0077. The telephone number is (208) 334-3285. (7-1-00)T

006. ELECTRONIC SIGNATURES.

A person's entry of the identification number assigned by the commission, or approved for the person's use by the commission, shall constitute the person's signature when transmitted as part of or in connection with an electronic document or procedure in the course of business with the commission. Any identification number assigned or approved by the commission shall be unique to the person using it, capable of verification, and conform to all applicable rules, guidelines and policies established by the commission. (10-1-00)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in these Rules, and in the Idaho Real Estate License Law, Chapter 20, Title 54, Idaho Code, the following words or phrases shall have the following meaning: (7-1-00)T

01. Active Licensee. A person who holds a current license in good standing. (7-1-00)T

02. 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. (7-1-00)T

03. Branch Office. An office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the "Main Office". (7-1-00)T

04. Brokerage Agreement. A written contract or agreement between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction. (7-1-00)T

05. Business Name. The name which appears on the real estate broker's license issued by the Idaho Real Estate Commission. (7-1-00)T

06. Cancel. With reference to a real estate license, means to inactivate the license. (7-1-00)T

07. Closed Transaction. A transaction which has been finalized, including proper disbursement of all trust funds and documents. (7-1-00)T

08. Cooperative Sale. A transaction involving two (2) or more brokers. (7-1-00)T

09. Expired License. A license which was not renewed for the current license period. (7-1-00)T

10. 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. (7-1-00)T

11. Inactive Licensee. A person who has paid all applicable fees, who is not affiliated with a designated broker, and who holds a current license, which is not revoked or suspended, and which has been placed on inactive status by the Commission. (7-1-00)T

12. Main Office. The principal location where a real estate broker is licensed to transact business. (7-1-00)T

13. Successfully Completed. As used in reference to a real estate course offering, completing all required course hours and, except where the licensee is seeking continuing education credit for having regularly attended a "live" course, passing a Commission-approved final examination. (7-1-00)T

14. Terminated License. A license not renewed within one (1) year after the required renewal date, and which has been terminated, automatically, by the Commission. (7-1-00)T

011. -- 099. (RESERVED).

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

100. CERTIFICATE OF WAIVER OF LICENSING EXAM.

Any applicant seeking to obtain a written certificate from the Commission waiving a portion of the licensing exam, as authorized by statute, shall make a written request to the Commission. The request must indicate the address to which the Commission is to mail the certificate. (7-1-00)T

101. LICENSING TERM AND FEES.

Each new or reactivated license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on a date to coincide with the last day of the month of the birth date of the licensee. (7-1-00)T

01. Fees. The fees for an initial or renewing license for broker, associate broker, or salesperson shall be

two hundred twenty dollars (\$220), which fees include the twenty dollar (\$20) fee prescribed in Section 54-2070, Idaho Code. (7-1-00)T

02. Broker For More Than One Business. When an individual is licensed as designated broker for more than one (1) legal business entity, the Commission shall assess a broker's license fee for the second and each sequential legal business entity. (7-1-00)T

102. BROKER TO MAKE APPLICATION FOR LICENSE OF SALES ASSOCIATE, SALES ASSOCIATE LIMITED TO ONE BROKER.

The broker is required to make application to the Commission, on an approved form, for the licensing of each sales associate. The newly issued license will be mailed to the broker's office. A sales associate may be licensed under and associated with only one (1) broker at a time. (7-1-00)T

103. APPOINTMENT OF DESIGNATED BROKER FOR LICENSED BUSINESS ENTITIES.

The appointment of the designated broker for a legal business entity, and a list of the entity's officers, directors, members, or managers, shall be reflected in writing in the minutes, resolutions, or other similar business document of the entity, and submitted to the Commission with the entity license application. (7-1-00)T

104. RETURNED CHECKS DUE TO INSUFFICIENT FUNDS.

Payment of any licensing 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 the fault of the banking institution shall be grounds for denying the licensing application. If a license has been issued, the payment of the licensing fee by an insufficient funds check shall be grounds for expiration, termination, suspension or revocation of the license. (7-1-00)T

105. EXTENSIONS OF TIME TO MEET CONTINUING EDUCATION REQUIREMENTS AND LATE RENEWAL.

The Commission may extend the time for completing the education requirements for renewal of a license for three (3) months, as provided by statute. The Commission will not grant a further extension of time. An applicant's failure to satisfy the continuing education requirement within the three-month period granted by the Commission shall result in the automatic inactivation of the license. (7-1-00)T

01. Continuing Education Requirement And License Expiration Date. Any license issued after an extension of time has been granted shall be dated effective as of the original license expiration date, and not the extended date. (7-1-00)T

02. Late License Renewal And Fee. The Commission may grant an applicant's written request for late license renewal, provided that such request shall be made no later than one (1) year from the license renewal date, and provided the applicant pay the late renewal fee prescribed by statute. (7-1-00)T

106. CHANGE FROM INACTIVE TO ACTIVE LICENSE STATUS.

A person who holds an inactive Idaho license may activate the license upon meeting each of the requirements listed below: (7-1-00)T

01. Application And Fee. Making proper application and paying the fee; and (7-1-00)T

02. Supervision Or Establishing A Business. Licensing under an Idaho broker as a sales associate, or, if being licensed as a broker, establishing an office; and (7-1-00)T

03. Continuing Education. Providing evidence of having successfully completed the continuing education requirements, or their equivalent, as prescribed in Section 54-2023, 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 satisfying the continuing education requirements of the current period. (7-1-00)T

04. Errors And Omissions Insurance. Provide evidence of having errors and omissions insurance in the manner required by Section 54-2013, Idaho Code, and in accordance with the Rules of the Commission. (7-1-00)T

107. CHANGE OF BUSINESS NAME OR ADDRESS.

Whenever a broker changes the name, location, telephone number, or mailing address of his business, such broker shall immediately notify the Commission in writing of such change. If the change necessitates the printing of a new license, the broker shall return to the Commission each wall license requiring change, along with the statutory fee for printing a new license. Upon receipt of the notice of change, the wall license, and payment of the required fee, the Commission shall issue a new license and mail it to the broker. (7-1-00)T

108. CHANGE OF PERSONAL ADDRESS OR TELEPHONE NUMBER.

All licensees, whether active or inactive, shall provide written notice to the Commission of any change of address of personal residence and of any change of personal telephone number. Such notice shall be provided within ten (10) days of the change of address or phone number. (7-1-00)T

109. PERSONAL NAME CHANGE.

Whenever a licensee changes his personal name, the licensee shall notify the Commission in writing of such change, along with legal proof of the name change and the statutory fee for printing a new license. An active licensee shall also return to the Commission the wall license bearing his former name. (7-1-00)T

110. BRANCH OFFICES.

A real estate broker is required to make application for establishing and licensing each branch office in which trust funds and original transaction files are maintained. No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch. The wall license of the branch office shall be signed by the designated broker. Renewal of a branch office license shall coincide with the renewal of the designated broker's license. (7-1-00)T

01. Branch License Dependent On Broker License. A license issued to a branch office is valid only as long as the designated broker's license is valid. (7-1-00)T

02. Supervision. The designated branch manager shall regularly occupy the branch office and shall be responsible for its supervision. When a branch manager is a regular full-time employee, or engaged in a full-time activity, at a location other than where he is licensed to do business, a presumption will be made that such manager is unable to responsibly supervise a branch office; however, such presumption may be overcome by satisfactory evidence to the contrary, acceptable to the Commission. (7-1-00)T

03. Manager Limited To One Branch. A branch office manager shall not be licensed to manage more than one (1) branch office at a time. (7-1-00)T

04. Licensees. The wall licenses of each licensee conducting business from any licensed branch office shall be prominently displayed in the branch office at all times. (7-1-00)T

05. Same Name. A broker's branch office, whether licensed or unlicensed, must operate under the same name as the main office. (7-1-00)T

111. EFFECTIVE DATE OF LICENSE AND LICENSE CHANGES.

Application requests for licensure and for license changes shall become effective when the properly completed forms, attachments and required fees are received at and approved by the Commission. Applications which are incomplete or lacking proper fees shall be returned to the applicant, and no license will be issued until a completed application and proper fees are received at and approved by the Commission. Placing the application in the mail does not constitute its receipt by the Commission. Sending the license application and fees by "Certified Mail, Return Receipt Requested," will assure notice of its receipt by the Commission office, but does not constitute approval of the license application by the Commission. (7-1-00)T

112. LICENSEE TO SIGN LICENSE.

A license must be signed by the respective licensee to be valid. (7-1-00)T

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

Upon surrender of his real estate license, or upon notice of suspension or revocation of such license, a broker or sales associate shall immediately forward the license to the Commission. Any sales associate licensed with a broker whose

license is to be surrendered, suspended or revoked shall return his license to the Commission on or before the effective date of the notice or order surrendering, suspending, or revoking the broker's license. (7-1-00)T

114. -- 116. (RESERVED).

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

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 54-2013, 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. (7-1-00)T

01. Certification Of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in Section 118 of these rules, shall be deemed to have satisfied the certification requirement of Section 117, upon the Commission receiving payment of the appropriate premium and a ten dollar (\$10) administrative fee from the licensee. The effective date of coverage, however, shall be the day of final license approval. (7-1-00)T

02. Certification Of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in Section 119 of these rules, 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 a form approved by the Commission. (7-1-00)T

118. GROUP INSURANCE PLAN.

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 obtained by the Commission. (7-1-00)T

01. Qualified Insurance Carrier Defined. For the purposes of this section, a "qualified insurance carrier" shall mean an insurance carrier: (7-1-00)T

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; (7-1-00)T

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; (7-1-00)T

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; (7-1-00)T

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 (7-1-00)T

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. (7-1-00)T

02. 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. (7-1-00)T

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: (7-1-00)T

- a. Not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense. (7-1-00)T
- b. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (7-1-00)T
- c. The minimum coverage requirements of this Subsection shall apply to each individual licensee; (7-1-00)T
- d. A deductible amount of not greater than three thousand five hundred dollars (\$3,500), which shall include costs of investigation and defense; (7-1-00)T
- e. A reasonable premium not to exceed the maximum premium set forth in Section 54-2013, Idaho Code; (7-1-00)T
- f. A policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent, or, if an annually renewable policy, a statement of the policy period, and in either case, the policy shall provide for continuous coverage during the policy period. (7-1-00)T
- g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (7-1-00)T
- h. Prior acts coverage shall be offered to licensees with continuous past coverage. (7-1-00)T

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. (7-1-00)T

119. INDEPENDENTLY OBTAINED ERRORS AND OMISSIONS INSURANCE.

Licenses 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. (7-1-00)T

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: (7-1-00)T

- 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; (7-1-00)T
- 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; (7-1-00)T
- 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; (7-1-00)T
- 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; (7-1-00)T
- e. If a "firm" policy, an annual aggregate limit of not less than one million dollars (\$1,000,000), not including costs of investigation and defense; (7-1-00)T

- f. If an "individual" policy, the minimum coverage limits specified in Subsection 119.01 shall be available to each licensee; (7-1-00)T
- g. If a "firm" policy, the minimum coverage limits specified in Subsection 119.01 shall apply to the firm; (7-1-00)T
- h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (7-1-00)T
- 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; (7-1-00)T
- 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 (7-1-00)T
- k. Prior acts coverage shall be offered to licensees with continuous past coverage. (7-1-00)T

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. (7-1-00)T

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. (7-1-00)T

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

No applicant for an original active license or for renewal of an active license 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 has first filed with the Commission the Certificate of independently obtained coverage required by Subsection 117.02. (7-1-00)T

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. (7-1-00)T

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 business or 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. (7-1-00)T

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. (7-1-00)T

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 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate sales person, as defined in Sections 54-2002 and 54-2004, Idaho Code, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. (7-1-00)T

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. (7-1-00)T

123. -- 199. (RESERVED).

RULES 200 through 299 --
OFFICE OPERATIONS

200. TRANSACTION NUMBER AND LEDGER SHEET.

The responsible broker shall account for the funds or other consideration by assigning a transaction number and maintaining an individual ledger sheet, as required by law, regardless of when the funds are to be deposited. (7-1-00)T

201. OBTAINING COMMISSION APPROVAL OF AN ESCROW DEPOSITORY.

An entity not specified as an approved escrow depository in Section 54-2042(1), Idaho Code, may be accepted and approved by the Commission as an escrow depository upon disclosure of: (7-1-00)T

01. Financial Structure. The details of the entity's financial structure; (7-1-00)T

02. Amount And Terms Of Errors And Omissions Insurance And Any Bonding; (7-1-00)T

03. Copy Of Last Audit And Financial Statement; (7-1-00)T

04. Copy Of License(s) Or Certificate(s) Issued To The Entity; and (7-1-00)T

05. Information Which Will Help The Commission Make Its Determination. Any other information which will help the Commission make its determination. (7-1-00)T

202. LOCATION OF TRUST ACCOUNT RECORDS FOR BRANCH OFFICES.

When a separate real estate trust account is maintained for a branch office, all records for that account, together with all the related files, shall be maintained at one (1) office, which shall be the branch office. (7-1-00)T

203. 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.

(7-1-00)T

204. -- 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 Idaho Real Estate License Law and the Broker Representation Act, as set forth in Chapter 20, Title 54, Idaho Code, and the administrative rules of the Idaho Real Estate Commission. (7-1-00)T

401. (RESERVED).

402. DOUBLE CONTRACTS.

For purposes of the prohibition against double contracts, contained in Section 54-2054, Idaho Code, and defined in Section 54-2004, Idaho Code, an agreement or loan application “is not made known to the prospective loan underwriter or loan guarantor” unless its existence is disclosed in writing to the prospective loan underwriter or loan guarantor. (7-1-00)T

403. -- 409. (RESERVED).

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: (7-1-00)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: (7-1-00)T

a. Is not a matter of public record; (7-1-00)T

b. Is information the client or former client has not disclosed or authorized to be disclosed to third parties; (7-1-00)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; or (7-1-00)T

d. Is otherwise within the statutory definition of “confidential client information” in Section 54-2083, Idaho Code. (7-1-00)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. (7-1-00)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. (7-1-00)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. (7-1-00)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. (7-1-00)T

411. 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. (7-1-00)T

412. 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. (7-1-00)T

413. 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. (7-1-00)T

414. LEGAL OPINIONS.

A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney. (7-1-00)T

415. OFFICE OPERATIONS AND BROKER SUPERVISION.

A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he is responsible. 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. (7-1-00)T

01. Designated Broker Physically Available To Supervise. Was the designated broker physically available to supervise? (7-1-00)T

02. Experience Level Of The Licensed Associate. What was the experience level of the licensed associate? (7-1-00)T

03. Designated Broker Contracted To Avoid Supervisory Responsibility. Has the designated broker contracted to avoid supervisory responsibility? (7-1-00)T

04. Types Of Activity. What types of activity were licensed sales associates or unlicensed personnel engaged in? (7-1-00)T

05. Established Written Or Oral Policies And Procedures. Had the designated broker established written or oral policies and procedures? (7-1-00)T

06. Determine That Policies And Procedures Are Being Properly Implemented. Does the designated broker hold regular staff meetings and follow-up meetings to determine that policies and procedures are being properly implemented? (7-1-00)T

07. Corrective Or Remedial Action. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered? (7-1-00)T

416. INACTIVE LICENSEES.

During the period of time that his license is inactive, the licensee shall not engage in, carry on, or advertise any real estate activity, or hold himself out as engaging in real estate activity. An inactive licensee may not receive a referral fee for referrals made while the licensee was inactive, unless the referral was made while the licensee was on active status. (7-1-00)T

417. -- 599. (RESERVED).

RULES 600 through 699 --
CERTIFICATION OF PROVIDERS, INSTRUCTORS AND COURSES

601. CONTINUING EDUCATION CREDIT FOR LIVE COURSES.

A licensee may receive continuing education course credit, without having to take or pass an exam, if the licensee personally attends the entire "live" presentation of an approved course. (7-1-00)T

602. PRELICENSE CREDIT FOR SIMILAR REAL ESTATE COURSES.

Upon written request from a license applicant, the Commission may waive or modify one (1) or more prelicense course requirements based upon the applicant's satisfactory completion of similar real estate courses, in Idaho or in another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and number of classroom hours involved in the instruction. "Satisfactory completion" means the applicant regularly attended the course and received a final grade of "C" or better. (7-1-00)T

603. POSTING AND RECORDING FEES.

The Commission may require that course providers pay, to the Commission, a non-refundable posting and recording fee, the purpose of which is to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the Commission by motion. (7-1-00)T

604. DISCLOSURE OF FEES CHARGED BY PROVIDERS.

All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books needed in course work, such fees shall be itemized by the provider, and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees, and the manner in which they are to be paid, shall be stated in a student contract, in a form approved by the Commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course. (7-1-00)T

605. CHANGES IN COURSE CURRICULUM.

Each course provider shall submit schedules of its courses and instructors, as requested by the Commission. Whenever there is a change in a course, such as, but not limited to, curriculum, course length or instructor, the provider shall promptly notify the Commission in writing of the change. (7-1-00)T

606. WITHDRAWAL OF CERTIFICATION FOR COURSE CONTENT, COURSE PROVIDER, OR COURSE INSTRUCTOR.

If the Commission at any time determines that an instructor, course, or provider is not meeting the requirements for continued Commission approval or certification, written notification shall be made immediately to the appropriate person, detailing the deficiencies requiring correction. The Commission shall take no action to withdraw the certification for thirty (30) days from the date of such written notice. At the expiration of this period, if the deficiencies have not been corrected to the Commission's satisfaction, the Commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission". (7-1-00)T

607. -- 999. (RESERVED).

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