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**IDAPA 33
TITLE 01
CHAPTER 01**

IDAPA 33 - 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. (3-15-02)

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. (3-15-02)

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. (3-15-02)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(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. These documents are available for public inspection and copying at cost at the Idaho Real Estate Commission, 633 North 4th Street, Boise, Idaho, 83702. (3-15-02)

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". (3-15-02)

004. INCORPORATION BY REFERENCE.

There are no materials incorporated by reference. (3-15-02)

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

The office hours for Real Estate Commission are 8 a.m. to 5 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. (3-15-02)

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. (3-15-02)

007. -- 099. (RESERVED).

**RULES 100 THROUGH 199
APPLICATION, LICENSURE AND TERMINATION OF LICENSES**

100. LICENCE FEES.

License fees are established as follows. (3-15-02)

01. Fees For Licensed Individuals. The fees for an initial or renewing license for broker, associate broker, or salesperson shall be one hundred eighty dollars (\$180) per license period, which fees include the twenty

dollar (\$20) fee prescribed in Section 54-2070, Idaho Code. (10-1-05)

02. Fees For Licensed Legal Business Entities. The fee for an initial or renewing license for each legal business entity shall be fifty dollars (\$50) per license period. (10-1-05)

101. -- 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. (3-15-02)

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. The effective date of coverage, however, shall be the day of final license approval. (4-2-03)

02. Certification of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in Section 119 of these rules, shall obtain 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, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce for inspection the Certificate of Insurance. (4-2-03)

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. (3-15-02)

01. Qualified Insurance Carrier Defined. For the purposes of Section 118, a “qualified insurance carrier” shall mean an insurance carrier: (3-15-02)

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; (3-15-02)

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; (3-15-02)

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; (3-15-02)

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 (3-15-02)

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. (3-15-02)

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. (3-15-02)

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: (3-15-02)

a. Not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (3-15-02)

b. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (3-15-02)

c. The minimum coverage requirements of Subsection 118.03 shall apply to each individual licensee; (3-15-02)

d. A deductible amount of not greater than three thousand five hundred dollars (\$3,500), which shall include costs of investigation and defense; (3-15-02)

e. A reasonable premium not to exceed the maximum premium set forth in Section 54-2013, Idaho Code; (3-15-02)

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; (3-15-02)

g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; and (3-15-02)

h. Prior acts coverage shall be offered to licensees with continuous past coverage. (3-15-02)

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. (3-15-02)

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. (3-15-02)

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: (3-15-02)

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; (3-15-02)

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; (3-15-02)

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; (3-15-02)

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; (3-15-02)

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; (3-15-02)

f. If an “individual” policy, the minimum coverage limits specified in Subsection 119.01 shall be available to each licensee; (3-15-02)

g. If a “firm” policy, the minimum coverage limits specified in Subsection 119.01 shall apply to the firm; (3-15-02)

h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (3-15-02)

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; (3-15-02)

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 (3-15-02)

k. Prior acts coverage shall be offered to licensees with continuous past coverage. (3-15-02)

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. (3-15-02)

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. (3-15-02)

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 the applicant has certified to the Commission, in the form and manner approved by the commission, that he is in compliance with the insurance requirements of this chapter. This certification of compliance by the applicant shall satisfy the filing requirement of Section 54-2013, Idaho Code. (4-2-03)

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance coverage required by Subsection 117.02 shall result in inactivation 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. (4-2-03)

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. (3-15-02)

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. (3-15-02)

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 salesperson, 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. (3-15-02)

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, or produced to, 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. (4-2-03)

123. -- 199. (RESERVED).

RULES 200 THROUGH 299 -- OFFICE OPERATIONS

200. BRANCH OFFICES.

The current license certificates for the branch office, the branch manager, and for each sales associate conducting business from the branch office shall be prominently displayed or available for public inspection at the branch office. (5-3-03)

201. -- 299. (RESERVED).

RULES 300 THROUGH 399 -- BUSINESS CONDUCT

300. 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. (3-15-02)

301. 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. (3-15-02)

302. 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. (3-15-02)

303. LEGAL OPINIONS.

A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney. (3-15-02)

304. 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. (3-15-02)

01. Designated Broker Physically Available to Supervise. Was the designated broker physically available to supervise? (3-15-02)

02. Experience Level of the Licensed Associate. What was the experience level of the licensed associate? (3-15-02)

03. Designated Broker Contracted to Avoid Supervisory Responsibility. Has the designated broker contracted to avoid supervisory responsibility? (3-15-02)

04. Types of Activity. What types of activity were licensed sales associates or unlicensed personnel engaged in? (3-15-02)

05. Established Written or Oral Policies and Procedures. Had the designated broker established written or oral policies and procedures? (3-15-02)

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? (3-15-02)

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? (3-15-02)

305. -- 399. (RESERVED).

RULES 400 THROUGH 499 -- CONTINUING EDUCATION

400. -- 401. (RESERVED).

402. APPROVED TOPICS FOR CONTINUING EDUCATION.

01. Topics Approved by the Commission. Approved topic areas for continuing education, as provided for in Sections 54-2023 and 54-2036, Idaho Code, include the following: (3-20-04)

- a.** Real estate ethics; (3-20-04)
- b.** Legislative issues that influence real estate practice; (3-20-04)
- c.** Real estate law; contract law; agency; real estate licensing law and administrative rules; (3-20-04)
- d.** Fair housing; affirmative marketing; Americans with Disabilities Act; (3-20-04)
- e.** Real estate financing, including mortgages and other financing techniques; (3-20-04)
- f.** Real estate market measurement and evaluation; (3-20-04)
- g.** Land use planning and zoning; land development; construction; energy conservation in building; (3-20-04)
- h.** Real estate investment; (3-20-04)
- i.** Accounting and taxation as applied to real property; (3-20-04)

- j.** Real estate appraising; (3-20-04)
- k.** Real estate marketing procedures related specifically to actual real estate knowledge; (3-20-04)
- l.** Real estate inspections; (3-20-04)
- m.** Property management; (3-20-04)
- n.** Timeshares, condominiums and cooperatives; (3-20-04)
- o.** Real estate environmental issues and hazards, including lead-based paint, underground storage tanks, radon, etc., and how they affect the practice of real estate; (3-20-04)
- p.** Water rights; (3-20-04)
- q.** Brokerage office management and supervision; and (3-20-04)
- r.** Use of calculators or computers as applied to the practice of real estate. (3-20-04)

02. Other Topics. Upon written request, the Commission may also approve any other topic that directly relates to real estate brokerage practice and that directly contributes to the accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills, and competency necessary to function in the real estate business in a manner that protects and serves the public interest. The knowledge or skills taught in an elective course must enable licensees to better serve real estate consumers. (3-20-04)

03. Topics Not Eligible for Continuing Education Credits. The following activities shall not be eligible for approval for compliance with the continuing education requirement: (3-20-04)

- a.** Those which are specifically exam preparation in nature; (3-20-04)
- b.** Those which deal with office or business skills, such as:
 - i.** Typing; (3-20-04)
 - ii.** Speed reading; (3-20-04)
 - iii.** Memory improvement; (3-20-04)
 - iv.** Body language; (3-20-04)
 - v.** Motivation and similar activities; (3-20-04)
- c.** Those which are held in conjunction with a brokerage firm's sales promotion or sales meetings; or (3-20-04)
- d.** Those which are held by trade organizations for licensee's orientation. (3-20-04)

403. -- 999. (RESERVED).

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