

BROKERING IDAHO PROPERTY REQUIRES AN IDAHO REAL ESTATE LICENSE

This Guideline is designed to advise all brokers and salespersons, whether licensed in Idaho or in another state, that, in order to engage in any real estate brokering activities relating to Idaho real property, a broker or salesperson must hold an active Idaho real estate license. This is true even if the broker, salesperson, or their clients do not reside in or personally enter this state.

1. An Idaho license is required to engage in any brokering activities relating to Idaho real property.

Idaho law flatly prohibits any person from engaging in any act of a “real estate broker” “in this state” without an active Idaho real estate license. Idaho Code 54-2002.

“Real estate broker” is defined in the license law to include “any person who, directly or indirectly, while acting for another for compensation or promise or expectation thereof, sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate,” and also includes “any person who represents to the public” that he is engaging in any of these acts. Idaho Code 54-2004(36). This also includes “any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth.” The Commission interprets procuring prospects to include any marketing or advertising designed to attract the attention of buyers or sellers.

A person is “acting in this state” if he is “dealing with any interest in real property... that is situated in this state...” Idaho Code 54-2004(2).

Under Idaho Code, then, any person who “sells, lists, buys or negotiates” the purchase or sale of real property “situated in this state” is, by definition, engaging in acts requiring an Idaho real estate license.

2. A person who does not hold an Idaho license may not “co-broker” Idaho property with an Idaho-licensed broker.

Idaho Code provides no mechanism to allow a person who does not hold an Idaho license to “co-broker” Idaho property with an Idaho-licensed broker. To the contrary, the law states that each person who performs any defined brokering act – whether as salesperson or broker – must hold an active Idaho license. Idaho Code 54-2002. A person who engages in any defined act of “real estate broker” – including selling, listing, buying, or negotiating the purchase or sale of Idaho real property – but who does not hold an active *Idaho* license is guilty of unlicensed practice, regardless of any contractual arrangement with an Idaho-licensed brokerage.

3. An Idaho designated broker may not “co-broker” Idaho property with a person who does not hold an Idaho license.

Similarly, an Idaho designated broker violates the license law if he “co-brokers” Idaho property with a person who does not hold an active Idaho license.

Idaho designated brokers should also be aware of the license law’s prohibition against “lending” or “permitting” a license to be used to carry on a business for which an Idaho broker’s license is required. Lending a license includes, but is not limited to:

- An Idaho broker allowing a licensee affiliated with another brokerage to use their name and licensee number for the purpose of a transaction.
- An Idaho broker allowing an out of state licensee to use their name but failing to require the out of state licensee to obtain a cooperative license.
- An Idaho broker agreeing to be the responsible broker for a transaction, but taking no action beyond that.

Under the license law, the Idaho designated broker must “actively manage and have full control” of the transaction. Idaho Code 54-2040(5). Thus, an Idaho designated broker may not contract away his statutory management responsibilities; the Idaho designated broker, and not any other person, must be the active manager in control of the Idaho transactions.

4. Fee-sharing arrangements between licensed brokers.

The license law prohibits Idaho brokers from “fee-splitting,” i.e., sharing brokerage fees with, or paying any portion to, any person *except* persons who are licensed “in Idaho or another state or jurisdiction.” Idaho Code 54-2054(2).

This “fee-splitting prohibition” does not apply to fee arrangements made between Idaho-licensed brokers and brokerages licensed in other states. A proper fee sharing arrangement, such as a referral fee, is not regulated by the Commission as “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.” Rule 300.

5. Obtaining a cooperative Idaho real estate license.

Although any out-of-state licensee is welcome to obtain an Idaho real estate license through the traditional licensing method, Idaho has adopted a streamlined method to obtain an active Idaho real estate license called a cooperative license. The Idaho Real Estate Commission considers the out-of-state broker and their salespeople as having a proper active Idaho license after obtaining Idaho’s cooperative license.

A cooperative license applies only to transactions on commercial properties, as defined in Idaho Code 54-2004(13). The cooperative license is not available for transactions on residential and agricultural properties. The cooperative license will be valid for one transaction only. The cooperative license is valid for one year, but the brokers may reapply for another subsequent

This guideline is not a new law but is an agency interpretation of existing law.

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cooperative license as many times as necessary to complete the transaction. An out-of-state broker may apply for multiple cooperative licenses at a time. Each cooperative license carries its own separate fee.

To obtain a cooperative Idaho license the out-of-state broker must find an actively licensed Idaho broker to be named on the application. Both brokers must sign the application. The application will also list any of the out-of-state's broker's licensees that may be assisting in the transaction, if any. The Idaho designated broker will be responsible for the supervision of the transaction and all licensees working on the transaction. An Idaho broker must be the responsible broker and all rules governing responsible brokers still apply. The Idaho broker must maintain a complete transaction file and adhere to all the Idaho requirements for document retention. The application must be made, and the cooperative license granted, before any out-of-state licensee performs any activity requiring an active Idaho license.

The Idaho broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved. See Idaho Code 54-2041(5). Once the cooperative license is granted, the out-of-state broker and any of their named licensees may conduct any activity requiring an active Idaho license – sell, list, buy, negotiate, or offer to sell, list, buy, negotiate, and procure prospects – for that single Idaho transaction.

The Idaho Real Estate Commission provides a form and process to obtain the cooperative license, and requires certain criteria such a filing a Consent to Service with the Executive Director of the Idaho Real Estate Commission, a certified license history from their home state of licensure, and a current errors and omissions insurance policy. Additional information may be found in Idaho code section 54-2017.