

## AGENCY DISCLOSURE BROCHURE RECORD KEEPING REQUIREMENTS

The Agency Disclosure Brochure is the statutorily required disclosure form that licensees must give prospective buyers and sellers of real estate. To ensure that agency disclosure is made, the law requires that brokerages keep a record of the buyer or seller's receipt.

Specifically, section 54-2085, Idaho Code, provides, in relevant part:

*(1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho Real Estate Commission. The Commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.* (Emphasis added)

This Guideline attempts to address questions that frequently arise concerning the “record” that is required to be kept under the statute.

**1. When is the first substantial business contact? Does it have to be at the same time, every time? Why or why not?**

It depends on the context of the contact—if there are any discussions related to information that could be confidential, it should be considered substantial. As the meaning of substantial business contact can be considered situational, it is unlikely that a licensee will be presenting the Agency Disclosure Brochure at the same time, every time. However, some licensees find it prudent to present the Agency Disclosure Brochure at the beginning of any real estate related conversation.

**2. Must licensees use the “receipt” printed in the Agency Disclosure Brochure as the buyer or seller “record of receipt”?**

**No.** While the law requires “a signed and dated record” of receipt, it does **not** specify the form of that receipt. The Commission has long recognized that acknowledgments included in a signed and dated Purchase and Sale Agreement, or in another document prepared in connection with a real estate transaction, can provide the record of receipt required by statute.

As a matter of good practice, however, many brokerages maintain an office policy requiring licensees to use the Agency Disclosure Brochure's receipt. Using the included receipt provides the brokerage with documentation of when the licensee gave it to the consumer; thereby protecting the brokerage against any future claim by a disgruntled consumer that the licensee failed to timely give them the Agency Disclosure Brochure.

**3. If a buyer or seller refuses to accept the Agency Disclosure Brochure or refuses to sign any receipt, can a brokerage still comply with the statute?**

**Yes.** Buyers and sellers can refuse to accept—or refuse to acknowledge receipt of—the Agency Disclosure Brochure. This most often occurs when the transaction documents are drafted by a bank, attorney, or someone other than a licensee over whom the Commission has no authority. Where such refusal occurs, the Commission advises that licensees document their attempts to give the Agency Disclosure Brochure and to obtain a receipt and also document the buyer or seller’s response. Such documentation kept within the transaction file will be deemed as compliance with the statute by the Commission.

A similar predicament occurs where a bank or attorney that drafts the transaction documents declines to include the “Representation Confirmation and Acknowledgement of Disclosure” verbiage required by the License Law under section 54-2085(4), Idaho Code. Again, the Commission recognizes the licensee’s limited control over the parties and advises that licensees provide the documentation that is within their control, even if the other party or parties refuse to sign.

*(4) In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved...*

*...Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho Real Estate Commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage’s agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A “CUSTOMER” AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.*

**4. What happens if any (or all) of this is misplaced, forgotten, or ignored?**

This would be considered a violation of license law and could potentially lead to disciplinary action, as outlined in Idaho Code 54-2085(5):

*(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.*

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

For more information on this guideline, please contact:

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