

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE SENATE

SENATE BILL NO. 1228

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2012, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE; AND AMENDING SECTION 54-2093, IDAHO CODE, TO REMOVE AN OBSOLETE TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2012, Idaho Code, be, and the same is hereby amended to read as follows:

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE. (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license ~~revoked~~, suspended or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have had a real estate or other professional or occupational license revoked for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction; provided that, after a period of five (5) years from the date the license was revoked, the applicant may make a written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the disciplinary action that resulted in the license revocation and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors and evidence:

1 1. The severity or nature of the disciplinary violation for
2 which the applicant's license was revoked;

3 2. The period of time that has passed since the disciplinary
4 violation occurred;

5 3. The existence, number and pattern of any other misconduct
6 for which the applicant has been disciplined;

7 4. The circumstances surrounding the disciplinary viola-
8 tion that would help the commission determine the risk of
9 repetition;

10 5. The relationship of the disciplinary violation to the li-
11 censed practice of real estate; and

12 6. The applicant's activities since the disciplinary vio-
13 lation under review, such as employment, education, partic-
14 ipation in treatment, payment of restitution or any other
15 factors that may be evidence of current rehabilitation.

16 (iii) The applicant shall bear the burden of establishing his cur-
17 rent suitability for licensure.

18 (f) Not have been convicted or completed any sentence of confinement
19 for or on account of any misdemeanor involving fraud, misrepresenta-
20 tion or dishonest or dishonorable dealing, in a state or federal court,
21 within five (5) years immediately prior to the date the application for
22 license is submitted to the commission;

23 (g) Not have been convicted of any felony in a state or federal court
24 or convicted by military general court-martial; provided that, after a
25 period of five (5) years from the date the person was convicted or com-
26 pleted any term of probation, sentence or confinement or period of pa-
27 role, whichever is later, the applicant may make written request to the
28 commission for an exemption review to determine the applicant's suit-
29 ability for licensure, which the commission shall determine in accor-
30 dance with the following:

31 (i) The exemption review shall consist of a review of any docu-
32 ments relating to the felony and any supplemental information pro-
33 vided by the applicant bearing upon his suitability for licensure.
34 The commission may, at its discretion, grant an interview of the
35 applicant.

36 (ii) During the review, the commission shall consider the follow-
37 ing factors or evidence:

38 1. The severity or nature of the felony;

39 2. The period of time that has passed since the felony under
40 review;

41 3. The number or pattern of felonies or other similar inci-
42 dents;

43 4. The circumstances surrounding the crime that would help
44 determine the risk of repetition;

45 5. The relationship of the crime to the licensed practice of
46 real estate; and

47 6. The applicant's activities since the crime under review,
48 such as employment, education, participation in treatment,
49 payment of restitution or any other factors that may be evi-
50 dence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(h) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(i) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(j) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission;

(k) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known address of the licensee. All licensees shall provide the commission a full and current mailing address and shall notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(l) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(m) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(n) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productivity of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by

1 the commission in determining whether the applicant meets this qualifi-
2 cation.

3 (i) A broker or associate broker applicant may be required to fur-
4 nish a report of listings and sales accomplished by the applicant
5 during two (2) or more years within the last five (5) years of li-
6 censure immediately prior to the application date;

7 (ii) This report shall be certified as correct by the broker or
8 brokers with whom the applicant has been associated, provided how-
9 ever, that upon preapproval by the commission, the applicant may
10 verify that the report is correct in an alternative manner;

11 (iii) The broker experience requirement may be modified or re-
12 duced, in whole or in part, at the discretion of the commission,
13 based upon the applicant's educational background, or experience
14 in related or affiliated business activities;

15 (iv) The commission in its discretion may make such additional in-
16 vestigation and inquiry relative to the applicant as it shall deem
17 advisable;

18 (b) Designate a physical office location and a business name. The com-
19 mission may refuse to issue a license to any person if the business name
20 is the same as that of any person whose license has been suspended or re-
21 voked or is so similar as to be easily confused with another licensee's
22 name by members of the general public. However, nothing in this para-
23 graph shall restrict an individual from obtaining a license in his or
24 her own legal name.

25 (c) If currently licensed in Idaho as a salesperson and applying for
26 a license as an Idaho broker or associate broker, the individual shall
27 submit a new fingerprint card for processing and pay associated fees.

28 SECTION 2. That Section 54-2093, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 54-2093. VICARIOUS LIABILITY ABOLISHED. (1) A client, as defined in
31 this chapter, whether buyer or seller, shall not be liable for a wrongful
32 act, error, omission or misrepresentation of his broker or his broker's li-
33 censees unless the client had actual knowledge of or reasonably should have
34 known of the wrongful act, error, omission or misrepresentation.

35 (2) A licensee or brokerage engaged in representation of a client shall
36 be entitled to rely upon representations made by a client and shall not be
37 liable for a wrongful act, error, omission or misrepresentation made by the
38 client ~~or made by any subagent~~ unless the licensee or brokerage had actual
39 knowledge or reasonably should have known of the wrongful act, error, omis-
40 sion or misrepresentation.

41 (3) Nothing in this section shall be construed to diminish or limit any
42 of the broker's or licensee's responsibilities under chapter 20, title 54,
43 Idaho Code, or the rules promulgated thereunder.