

Commission Core 2022

Course Approval #: C2022

CASE LAW UPDATE

Learning Objectives:

- Describe how applying lessons learned from this year's court cases can reduce risk in real estate transactions
- Explain the importance of clear and adequate written contracts in real property transfers
- Discuss how situations such as easements, water rights, and mineral rights can affect a real estate transaction
- Identify when it is appropriate to recommend clients seek expert legal counsel and other professionals

Sommer v. Misty Valley, LLC

Docket No. 48007, December 21, 2021

<https://isc.idaho.gov/opinions/48007.pdf>

Madison County

Summary

- The Sommers are neighbors to a 152-lot residential subdivision planned by Misty Valley in Madison County, Idaho.
- A *portion* of the Misty Valley property was conveyed via deed *together with* an express easement over the Sommers' property. Misty Valley sought to develop the property contained in the same deed, along with other contiguous property acquired in a separate transaction.
- After receiving notice that Misty Valley planned to use this express easement for access to the subdivision, the Sommers filed a quiet title action seeking to determine the scope of the easement.

Supreme Court Holding and Analysis

Misty Valley asserted a statute of limitations defense, arguing the timeline began accruing at the public hearing on Misty Valley's planned subdivision. The Court determined Sommer did not have adequate notice until Misty Valley sent Sommer a letter stating they intended to utilize the easement for the subdivision and install a gate.

The primary issue was the scope of the easement. Misty Valley argued the deeded easement benefitted the entire Misty Valley property. Sommer argued the only benefitted parcel was the one contained in the original deed that also contained the easement. The Court determined the deed is unambiguous, stating “Parcel 2...together with an easement...” The Court declined to terminate the easement for overuse but limited the scope to the benefitted parcels.

Result of the Case

The district court’s judgement is affirmed.

Practical Application

The scope of an easement (i.e., the benefitted parcels and type of use) is generally ascertained at the time the easement is conveyed. The scope of the easement cannot generally be expanded after the fact.

Disclose the suit to potential buyers of either property.

Ensure the buyer reviews title documents timely, especially if easements are important to their purchase. Refer to legal counsel.

Frost v. Gilbert

Docket No. 48156, September 2, 2021

<https://isc.idaho.gov/opinions/48156.pdf>

Gem County

Summary

- Bruno and her late father, Frost, owned a farming property in Gem County which utilized irrigation handlines located outside of their property.
- The handlines originated at a pump near the Payette River and crossed an adjacent property now owned by the Gilberts. In 2011, the previous owner of the Gilberts' property granted Frost an express easement to access and maintain the irrigation pipeline (not pump).
- From 1981 until the neighbors revoked access in 2018, Bruno and Frost accessed the pump via the Gilberts' driveway and a switchback on Alford's property. Frost helped the previous owner build the switchback.
- Bruno and Frost sued to establish an easement for irrigation handlines and piping and access to irrigation equipment not accessible via the legal description in the express easement.

Supreme Court Holding and Analysis

Bruno sought two alternate claims: 1) that the intent behind the 2011 express easement allowed access to all irrigation equipment; and 2) Bruno had established a prescriptive easement claim to access the irrigation equipment.

The 2011 express easement included a description for the easement area which did not allow access to some of the irrigation equipment. The easement states that the purpose of the easement was for "ingress and egress, and for the maintenance and repair of, an existing pipeline . . . within the easement." There is no language for pump access, access roads, or boundaries beyond the dimensions of the easement area.

Bruno argued that the court should have given weight to the historical use of the driveway, a 2009 survey showing an "Irrigation Access Easement," and the topography. However, the Court found it was inappropriate to consider this type of evidence because the grant of easement was clear and unambiguous as to the easement area, and purpose of the easement which excluded Bruno's desired use.

To establish a prescriptive easement, Bruno had to prove, among other things, that the use over the driveway was adverse. Frost provided testimony that the previous owner gave him permission to cross the driveway until that permission was revoked in 2018. This duration is insufficient to satisfy the statutory period for prescriptive

easements (20 years). Thus, the lack of adverse use for the time period was fatal to Bruno's prescriptive easement claim.

A portion of the claimed prescriptive easement area was apparently on a portion of the property owned by an irrigation district. The prescriptive easement claim over that property failed as prescriptive easements cannot be obtained against public lands. Irrigation districts are quasi-municipal corporations that qualify as public lands.

Result of the Case

The Supreme Court affirmed the judgement of the district court.

Practical Application

So long as an easement is unambiguous, Courts will give meaning to its express terms.

Guarantee clients have access to title documents early on and recommend having an attorney explain questionable items, including the scope and use of easements.

Tricore Investments, LLC v. Estate of Warren

Docket Nos. 46912 & 46913, April 14, 2021

<https://isc.idaho.gov/opinions/46912.pdf>

Bonner County

Summary

- The Warren Estate owned valuable real property on Priest Lake. The Estate orally promised a neighbor, Stockton, that it would come to him first if they were going to sell any portion of their property.
- The Estate notified Stockton of its plans to sell portions of the property. Stockton declined to purchase.
- The Estate entered into a Purchase and Sale Agreement (PSA) with Tricore. In the PSA, the Estate reserved “not less than 200 feet of waterfront property” and excluded this parcel from the sale. Tricore later realized that the PSA contained less waterfront than originally anticipated and attempted to renegotiate the terms of the sale. Tricore continued initial steps to close and develop the property in the meantime.
- After learning about Tricore’s proposed purchase and development of the property, Stockton and Brinkmeyer approached the Estate about purchasing the land.
- The Estate told Tricore that the Estate was going in a ‘different direction,’ and stopped communicating with Tricore; subsequently selling the property to Stockton and Brinkmeyer.
- Tricore filed suit, seeking specific performance of the sale.

Supreme Court Holding and Analysis

The Estate argued the PSA was unenforceable because there was no meeting of the minds as to the land being sold, therefore violating the Statute of Frauds. The Court disagreed.

The legal description stating “not less than 200 feet of waterfront” directed the parties to County Code which allowed the parties to ascertain the minimum dimensions. Further, even though Tricore believed the sale included an additional 318 feet of waterfront, that mistake was unilateral (only Tricore) since the Estate always knew the waterfront was not included.

A mutual mistake deems the contract unenforceable. A unilateral mistake affords only the mistaken party the ability to rescind or modify. That remedy is not available to the party that was not mistaken (i.e., the Estate). As such, the PSA contained all of the necessary terms of a contract and, therefore, is valid and enforceable. The fact

that Tricore sought to rework the PSA after discovering this issue does not defeat the contract.

Accordingly, the Estate breached the PSA when it sold the Warren Property to Stockton and Brinkmeyer, instead of Tricore. The indemnity agreement entered into between the Estate, Stockton, and Brinkmeyer acknowledged the Estate had some risk exposure due to repudiating the PSA.

The Estate also violated the Idaho Consumer Protection Act (ICPA). The ICPA is intended “to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection.” (Idaho Code 48-601)

The Estate acted in a misleading and deceptive manner by allowing Tricore to believe the parties were moving forward without mentioning the ongoing negotiations and eventual sale of the property to Stockton and Brinkmeyer. Tricore attempted to meet and communicate with the Estate but was met with “radio silence.” It learned about the Stockton sale via the title company.

As to Stockton and Brinkmeyer, the Court found they tortiously interfered with the PSA. Stockton and Brinkmeyer knew of the Tricore PSA and intentionally interfered causing the Estate to breach the contract, injuring Tricore as a result. Stockton’s purported right of first refusal did not justify the interference.

The Court did overturn the district court’s decision that the Estate, Stockton, and Brinkmeyer engaged in a civil conspiracy. A co-conspirator must be legally capable of committing the tort. If the underlying tort is tortious interference, the Estate cannot commit a tort against itself. If the underlying tort is breach of contract, Stockton and Brinkmeyer cannot breach a contract to which they are not a party. As such, the Court reversed the district court’s finding on this issue.

Result of the Case

The Supreme Court affirmed summary judgement that the PSA is enforceable, and the Estate breached the PSA, along with violating the ICPA after the breach.

The Supreme Court also affirmed that Stockton and Brinkmeyer tortiously interfered with the Tricore PSA. However, the Supreme Court reversed the finding of civil conspiracy among the defendants. The Supreme Court awarded Tricore statutory damages in the amount of \$1,000 under the ICPA.

Practical Application

The terms included in a PSA are important. A multi-day trial, plus appeals is expensive. A more definite legal description in the PSA would have reduced or eliminated this expense at the onset.

Be careful what advice you give clients; a contract is typically binding. Recommend legal counsel when appropriate instead of stepping outside of your lane.

Choice Feed, Inc. v. Montierth

Docket No. 46544, February 9, 2021

<https://isc.idaho.gov/opinions/46544.pdf>

Canyon County

Summary

- Montierth owned a feedlot in Wilder, Idaho. As a tenant, Choice Feed, Inc. operated a cattle business on the feedlot.
- Representatives of Choice Feed met with Montierth to discuss purchasing the feedlot. Montierth stated he wanted to utilize a 1031 tax deferred exchange.
- The parties met twice and exchanged communications regarding the sale. Choice Feed presented Montierth with a second offer. Montierth stated that he needed to discuss the offer with his wife and accountant before accepting. The parties agreed that Choice Feed's rent would be raised an additional \$3,000 a month to be applied toward the purchase price of the feedlot.
- Beginning in September 2014, Choice Feed delivered monthly checks to Montierth with the memo line reading "payment feedlot purchase," which included the additional \$3,000 per month. Montierth accepted and cashed the checks. Believing that a deal was made, Choice Feed made substantial and necessary improvements to the feedlot.
- In November 2014, Choice Feed sent Montierth a draft purchase and sale agreement reflecting the terms of the offer. KPT, LLC, an entity formed by Choice Feed representatives, was listed as the purchaser. Montierth did not sign the agreement.
- In March 2015, Montierth sold the feedlot to a third party without notifying Choice Feed. Notably, Montierth had a conversation with a representative from Choice Feed in April 2015, where he maintained that their deal could still be done.
- In June 2015, Montierth notified Choice Feed of the sale to the third party; stating that the additional rent payments could be applied to outstanding amount that Choice Feed owed Montierth for hay; and provided Choice Feed with an eviction notice.
- Choice Feed filed suit and Montierth counterclaimed. The jury awarded Choice Feed with \$49,459.19 in compensatory damages to be offset by Montierth's open hay account and an additional \$250,000 in punitive damages. The district court reduced both of these amounts.

Supreme Court Holding and Analysis

Montierth argued that Choice Feed did not have standing to sue because the PSA identified KPT as the buyer. The Court quickly disposed of that argument, finding that

Choice Feed bargained for the sale of the feedlot, relied on Montierth's misrepresentations, paid Montierth extra money for the purchase of the feedlot, and made improvements to the feedlot based on Montierth's misrepresentations. The fact that Montierth's fraudulent actions prevented KPT (an LLC solely formed to operate the feedlot for Choice Feed) from becoming a real property in interest did not allow Montierth to avoid liability for his actions.

Without providing legal authority and as an issue of first impression, Montierth asked the Court to find that common law fraud requires an actual sale or transfer of property. The Court declined, stating that this case perfectly illustrates how fraud can occur without a completed sale or transfer of property. The Court efficiently found that Montierth's conduct established each element necessary to support a claim for fraud and affirmed that finding.

As to damages, the district court limited damages to those incurred *after* the draft PSA was presented to Montierth, and reduced the punitive damages awarded by the jury (\$250,000). The Supreme Court declined to limit the duration as requested, finding that Montierth's fraudulent misconduct and resulting damages began as soon as Montierth accepted increased rent checks. As such, Choice Feed's \$49,459.22 in compensatory damages was reinstated. Further, the Supreme Court reinstated Choice Feed's award of \$250,000 in punitive damages.

Result of the Case

The Supreme Court affirmed the district court's decision on all issues raised in Montierth's direct appeal. They also affirmed the district court's decision on the award of prejudgment interest to Ray on his open hay account.

The Supreme Court rejected Montierth's argument that Choice Feed did not have standing to bring suit or that it was on the real party in interest.

Further the Supreme Court reversed the district court's decision to reduce compensatory and punitive damage awards.

Practical Application

A verbal agreement can become binding so long as the parties' conduct demonstrates an agreement is reached and the parties are operating under said agreement. This is an anomaly to the Statute of Frauds. Verbal agreements should be reduced to writing to avoid relying on the same outcome.

Non-Idaho Case Law

Disclaimer

The following cases are examples of the types of rulings made on current out of state real estate cases.

These non-Idaho cases have been included because there are important takeaways that can help Idaho licensees to develop appropriate risk reduction techniques.

Because the law is different in every state, Idaho courts reviewing a similar case may rule a different way on the same issue. Idaho courts are not bound to follow case precedent in other jurisdictions. But sometimes these cases are instructive.

Focus on the practical application of the cases that can help you in your daily real estate practice.

George Clift Enterprises, Inc. v. Oshkosh Feedyard Corporation

Docket No. S-19-700, August 14, 2020

<https://law.justia.com/cases/nebraska/supreme-court/2020/s-19-700.html>

Supreme Court of Nebraska

Summary

- The owner of a feed yard, Oshkosh, entered into an exclusive listing agreement with a broker.
- The agreement included a protection period clause that obligated Oshkosh to pay a brokerage fee if the feed yard was sold under certain circumstances within 60 days of the agreement's termination.
- In April 2014, a potential buyer contacted the broker looking for a feed yard property. The broker provided this buyer with several options including the Oshkosh feed yard.
- Around the same time, Oshkosh and this buyer met separately through a mutual friend. Oshkosh informed the broker of this meeting. The buyer communicated that it was not ready to purchase the feed yard. The broker encouraged the buyer to continue discussions with Oshkosh.
- Several months later, the buyer decided to purchase the Oshkosh feed yard.
- The agreement terminated on July 15, 2014, and the protection period expired on September 15, 2014.
- The buyer and Oshkosh formed a purchasing entity on August 12, 2014. The sale was finalized on December 12, 2014.
- The broker filed suit alleging that Oshkosh had breached the agreement and he was owed commission for the feed yard.

Court Holding and Analysis

Oshkosh did not breach the exclusive listing agreement by interfering with the broker's commission by negotiating with the buyers and failing to refer them to the broker. The broker failed to produce a ready, willing, and able buyer during the listing period, which ended on July 15, 2014.

Additionally, the broker was not entitled to commission under the protection period clause. Protection period clauses, and their timelines, are strictly construed. The purpose of the protection period was to protect the broker when the sale is not timely completed. The broker's actions put the buyer on notice of the available property, and the seller would not have been able to conclude the sale without notice

from the broker. Here, the feed yard sale was not finalized until after the protection period had expired.

While the broker argues that Oshkosh tortiously interfered in the broker's commission, the broker explicitly recommended that the buyer continue its discussions with the Oshkosh directly. The broker recommended this course of action to expedite the sale and protect his commission. However, in doing this, the broker effectively waived the referral obligation.

Further, Oshkosh and the buyer acted in good faith and did not engage in a conspiracy to tortiously interfere with the broker's expected financial gain.

Result of the Case

The Supreme Court held that:

- the agreement eventually reached between the vendor and purchasers did not breach the exclusive listing agreement.
- the agency waived the portion of the protection period clause in which the vendor agreed not to negotiate with prospective buyers.
- even if the vendor violated the protection period clause, such violation was not a proximate cause of any damages to the agency.
- there was no evidence that, but for the alleged conspiracy to deprive the agency of a commission, the purchasers would have either made an offer at the property's listing price or reached an agreement acceptable to the vendor on price and terms of a purchase within either the listing period or the protection period of the exclusive agency agreement.

Practical Application

Words are important. Use the correct contract and know what is in your contract.

If a protection period clause is used, consider including language to require a list with names and details of when and how they were introduced to the property, in written format, prior to the transaction falling apart.

Mabery v. Morani River Ranch Holdings, LP

Docket No. 04-19-00798-CV, May 26, 2021

<https://casetext.com/case/mabery-v-morani-river-ranch-holdings-lp-6>

Court of Appeals of Texas

Summary

- Morani River Ranch Holdings, LP owned a ranch where it ran a successful business breeding exotic game and selling exotic game hunts.
- Mabery and Thorpe—real estate brokers—became acquainted with Morani. A representative from Morani orally agreed to pay the brokers a 5% commission if they were able to procure a buyer for the ranch.
- In 2014, the brokers introduced Morani to a potential buyer. Needing funds, this buyer contacted Glenn Staack to solicit a contribution from his charitable trust.
- Morani emailed the brokers to ask if they would accept a \$500,000 flat brokerage fee instead of the 5% commission. The brokers rejected this. Morani conceded to the 5%. Ultimately, the deal failed to close.
- Three years later, in 2017, Morani sold an 84.08% interest in the land to another entity owned by Staack.
- The brokers filed suit alleging they were owed 5% commission on the sale to Staack's entity. Morani responded that the prior agreement only applied to the 2014 transaction and there was no written agreement to satisfy the Statute of Frauds.

Court Holding and Analysis

Texas requires that a person cannot recover a commission on a real estate transaction unless the agreement is in writing and signed by the party against whom a commission is sought. Morani (Seller) did not sign a written promise, agreement, or memorandum to pay the brokers a commission on the 2017 sale to Staack's entity. The brokerage and seller exchanged emails in 2014, but the Court determined those discussions were simply negotiations and did not rise to the level of an enforceable contract.

In 2014, the brokerage and seller did execute a representation agreement. However, this 2014 contract contemplated a specific buyer, and conditioned the commission on the successful closing on the property. The 2014 sale failed to close and, as such, the brokerage is not entitled to a commission on that failed transaction. The Court also determined that the 2014 agreement is inapplicable to the subsequent sale because the buyer was not the same buyer contemplated in the 2014 representation

agreement. As such, the 2014 agreement does not entitle the brokerage to any commission on the failed 2014 sale or the 2017 sale.

The partial performance exception to the Statute of Frauds does not apply because again, the broker cannot recover a commission without a valid agreement.

Result of the Case

The court affirmed the lower court's judgment.

Practical Application

The Statute of Frauds requires most transfers of interest involving real property be in writing. Don't rely on oral commitments. Know your contract parameters, especially timelines and expiration dates.

It's important to remember that the Idaho Real Estate Brokerage Representation Act prohibits the creation of an agency relationship absent a separate, written agreement to such representation.

Franklin Real Estate Group, Inc. v. Spero Dei Church

Docket No. M2019-01691-COA-R3-CV, January 27, 2021

<https://www.tncourts.gov/sites/default/files/franklinrealestate.opn.pdf>

Court of Appeals of Tennessee

Summary

- A real estate broker and a church entered into an exclusive representation agreement where the church would pay the broker a 4% commission if the church entered into a purchase contract during a one-year term. Additionally, the church agreed to pay the broker a 4% commission on any property that the broker introduced to the church if the church entered into a purchase agreement within six months of the expiration of the agreement.
- This carryover provision contained an error: the language should have read “client,” but instead it stated “seller/landlord.” Accordingly, the contract illogically read the seller was being introduced to its own property.
- Initially, when the broker sent over the proposed agreement, the church’s pastor asked several questions via email. The broker sent a clarifying email answering the pastor’s questions. Later in the day, the pastor confirmed that the church signed the agreement.
- On the same day, the pastor was driving around town and stopped to take pictures of a church building that was not for sale—the Park Avenue Property.
- Two months later, the broker sent the pastor information on several properties including the Park Avenue Property. The broker urged the pastor to consider the Park Avenue Property and accompanied the pastor for an on-site inspection. The pastor never informed that broker that he was already familiar with property nor mentioned taking pictures.
- The broker sent the church over 100 properties and negotiated several written offers without fruition.
- After the agreement had expired but while the six-month carryover provision was still in effect, the church hired another real estate broker (who was also a parishioner) to negotiate the purchase of the Park Avenue Property. The church did not pay a commission to the original broker—stating that it had not “introduced” the property to the church.
- The broker filed a complaint alleging breach of contract. The church responded that the carryover provision was poorly drafted and too indefinite to be enforced.
- Ultimately, the trial court reformed the agreement under the doctrine of mutual mistake and the broker prevailed.

Court Holding and Analysis

The mistake in the carryover provision is subject to reformation so that the contract conforms to the true intention of the party. The trial court's reformation of the agreement was proper because:

- (1) The parties had reached a prior agreement about an aspect of the bargain. The broker had represented the church on a related deal. The agreement was drafted only after the church stated it wanted to look at unlisted properties as part of the transaction.
- (2) The parties intended for the broker to receive a commission for assisting the church in finding another property.
- (3) The agreement materially differed from the prior agreement.
- (4) The variance between the agreement and the prior agreement was not the result of gross negligence.
- (5) The error in the carryover provision was clearly just a mistake of expression.

The evidence was clear that the mistake in the agreement was caused by a scrivener's error in transferring language from a seller's agreement into a buyer's agreement.

The broker did not breach the reformed agreement because it did not "introduce" the church to the Park Avenue Property. The carryover provision did not contain an exception providing that the broker would not be entitled to a commission if the church purchased a property presented by broker that the church already knew existed. Therefore, the word "introduced" did not require that the church be unaware of the property, otherwise driving around taking photos could rid buyers/sellers of their contractual obligations. Rather, an 'introduction' requires only that the broker present the property for the church's consideration.

Result of the Case

The court affirmed the lower court's judgment.

Practical Application

In Idaho, courts will typically only reform a contract if its terms are unconscionable and cannot do so just to make a contract more fair.

Document your showings and any property introductions to clients. Double check all paperwork, even to the point of amending it.

Don't rely on the court – make it easy for the court to decide the case.

Commission Core 2022

Course Approval #: C2022

Legislative Update

Learning Objectives:

- Review 2022 law and rule changes impacting Idaho real estate practices

I. Legislation by the Numbers:

- 829 legislative ideas
- 596 ideas introduced to the House and Senate
- 344 bills passed by the House and Senate
- 336 bills signed by the governor and became law

II. Property Tax Reduction, Circuit Breaker, H481 (effective 01.01.2022)

This legislation increases the eligibility for homes for the circuit breaker program from 125% of the median assessed value to the greater of \$300,000 or 150% of the median of assessed valuation of all homes in the county.

(See Idaho Code 63-705)

III. Homestead Exemption, Taxation, H564 (effective 07.01.2022)

This bill enables the Tax Commission to disclose relevant information to the county assessor to assure that residents of Idaho receive only one homeowners' exemption.

It also provides for an appeal process for homeowners who are denied a homeowners' exemption. Appeals must be made to the county assessor within 30 days of the date the exemption refusal notice was sent.

(See Idaho Code 63-602G)

IV. Easements, Commercial Character, H580 (effective 07.01.2022)

This bill creates an exception to allow commercial easements in gross (easements that benefit a particular person, rather than a parcel of land) to be inheritable. These new provisions apply towards commercial agricultural uses, including grazing of livestock, farming, and propagation and harvest of timber crops.

(See Idaho Code 55-603)

V. Water Rights, Transfer, H748 (effective 07.01.2022)

This legislation outlines what happens with water rights and entitlements when property changes hands. The bill codifies existing common law and practice relating the conveyance of water rights and entitlements, including that all appurtenant water rights are conveyed unless expressly retained by the seller.

In addition, all entitlements to receive water from an irrigation district, city irrigation system or canal company are conveyed as are the obligations associated with membership in a ground water district.

(See Idaho Code 55-616)

VI. Liens, Mechanics, H609 (effective 07.01.2022)

This legislation clarifies the materials lien process. This bill outlines that any person claiming a mechanics lien must include certain documentation and notification, and that the prevailing party will be entitled to recover attorney fees. This new documentation requirement includes proof of disclosure and acknowledgement of receipt for work or materials.

It should be noted that real estate licensees **MAY NOT** file mechanics liens in order to collect real estate commissions.

(See Idaho Code 45-507 and 45-525)

VII. Restrictive Covenants, Race, S1240 (effective 07.01.2022)

This bill prohibits and allows for the removal of racially restrictive covenants for real property.

The owner or tenant of a property subject to a written instrument that contains prohibited (and void) restrictions may record a restrictive covenant modification document with a form provided by the county clerk.

(See Idaho Code 55-616 and 55-820)

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Course Approval #: C2022

Guideline Review

Learning Objectives:

- Explain how the covered guideline will impact your real estate practice

I. Guideline 13 – Real Estate Advertising

A. What is advertising?

1. Advertising is the communication in any form of media between a licensee or other entity acting on behalf of one or more licensees and consumers or the public, for any purpose related to licensed real estate activity
2. This may include advertisements on or in:

– Business Cards	– Signs
– Insignias	– Letterheads
– Telephone or e-mail	– Radio
– Television	– Newspaper and magazine
– Internet ads	– Web sites
– Social media	– Social networking
– Telephone directories	– Billboards
– Apparel	– Car wraps
Please note that this list is not intended to be all inclusive; advertising law applies to all types of real estate advertisements by licensees.	

B. IREC Advertising Laws, Rules and Guidelines

1. Idaho Code 54-2053 details the requirements for advertising real estate as a licensed real estate associate in Idaho. The law contains 4 parts:
 - a. 54-2053(1): *“Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.”*
 - b. 54-2053(2): *“All advertising of listed property shall clearly and conspicuously contain the broker’s licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.”*
 - c. 54-2053(3): *“All advertising by licensed branch offices shall clearly and conspicuously contain the broker’s licensed business name.”*
 - d. 54-2053(4): *“No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.”*

C. Are these advertisements compliant?



Idaho Code 54-2053 says:



Idaho Code 54-2053(2) says:



Ann Perkins—Real Estate Agent. WA

July 1, 2022

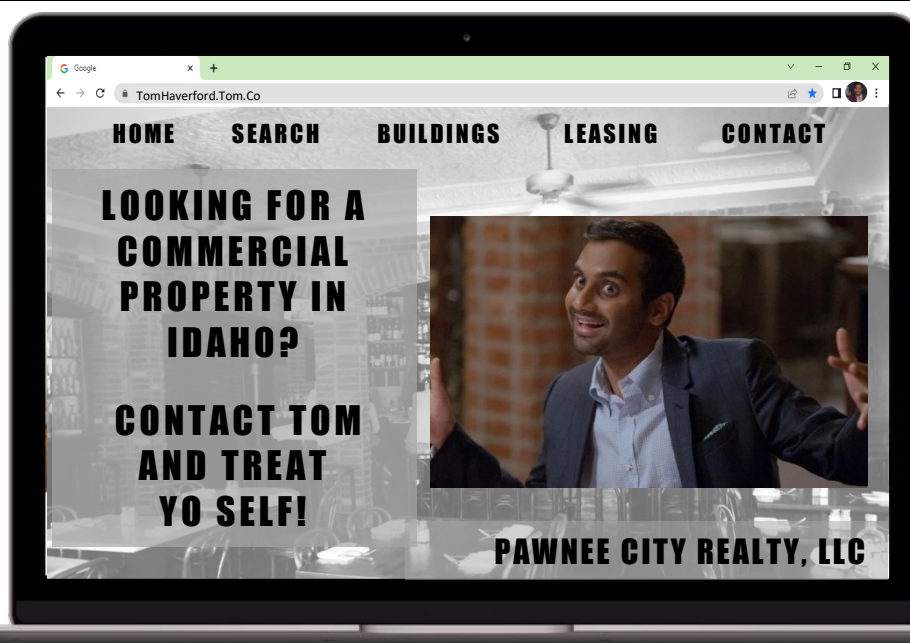
**New Listing! 8616 Duckbill Drive Hawkins, ID 83700--
listed at \$515,000. Open September 20, from 11 to 4pm.**



For Sale—8616 Duckbill Drive Hawkins, ID 83700

Listed by Ann Perkins of Homes of Eagleton. Ann is an experienced salesperson, licensed to sell real estate in Washington and Oregon!

Idaho Code 54-2053(1) says:



Idaho Code 54-2053 says:



Idaho Code 54-2053(4) says:



Idaho Code 54-2053(2) says:



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pawneecityrealty OPEN HOUSE this Saturday from 2:00-4:00! 2713 South Boise Avenue. Listed by Pawnee City Realty, LLC

[#home](#) [#foresale](#) [#dreamhome](#)
[#justlisted](#) [#pawneerealestate](#)
[#pawneerealty](#) [#pawneecityrealty](#)



11 likes

Idaho Code 54-2053(2) says:



Idaho Code 54-2053(2) says:

THINKING OF
SELLING
YOUR HOME?

Get a reliable, honest and
experienced real estate
expert on your side!

FREE
Home Comparative
Market Analysis!

FIND OUT WHAT YOUR HOME IS REALLY WORTH!

**PAWNEE CITY
REALTY, LLC**




CALL US TODAY TO
GET STARTED!
208-555-1928

Idaho Code 54-2053(2) says:



Idaho Code 54-2053(2) says:

IREC ADVERTISING CHECKLIST

All advertisements to be placed by or on behalf of a real estate licensee should be submitted to the broker or the broker's designee for review prior to release.



License Status

Does the advertisement only include the names of actively licensed real estate agents in Idaho? Are any unlicensed individuals identified?

☐ YES ☐ NO



Broker's Licensed Business Name

Does the advertisement **clearly and conspicuously** contain the broker's **licensed** business name?

☐ YES ☐ NO



Proper Identification

Does the advertisement avoid utilizing an abbreviation, company logo, franchise or branch name instead of the broker's licensed business name? If using a nickname, has it been registered? Does the advertisement disclose if a licensee is the seller of real property?

☐ YES ☐ NO



Accuracy

Is the advertisement accurate? Does the advertisement avoid incorrect information or misleading statements? Has the advertisement been reviewed and updated?

☐ YES ☐ NO



Permission to Market

Has the property owner signed a written listing agreement prior to the occurrence of any advertising? Has the property owner been informed about, and agreed to, the advertising options?

☐ YES ☐ NO



Digital Advertisements

Does every viewable page of a website include the broker's licensed business name? Are social media advertisements only one click away from the viewable page? Do electronic communications include the broker's licensed business name?

☐ YES ☐ NO



Paying Others for Leads

Does the advertisement avoid offering compensation or anything of value to an unlicensed person in exchange for the referral of a prospective client or customer?

☐ YES ☐ NO

Please note that this checklist is not intended to be all inclusive, but notes the most common advertising issues. Real estate licensees are expected to familiarize themselves with advertising law.

Commission Core 2022

Course Approval #: C2022

Troublesome Trends

Learning Objectives:

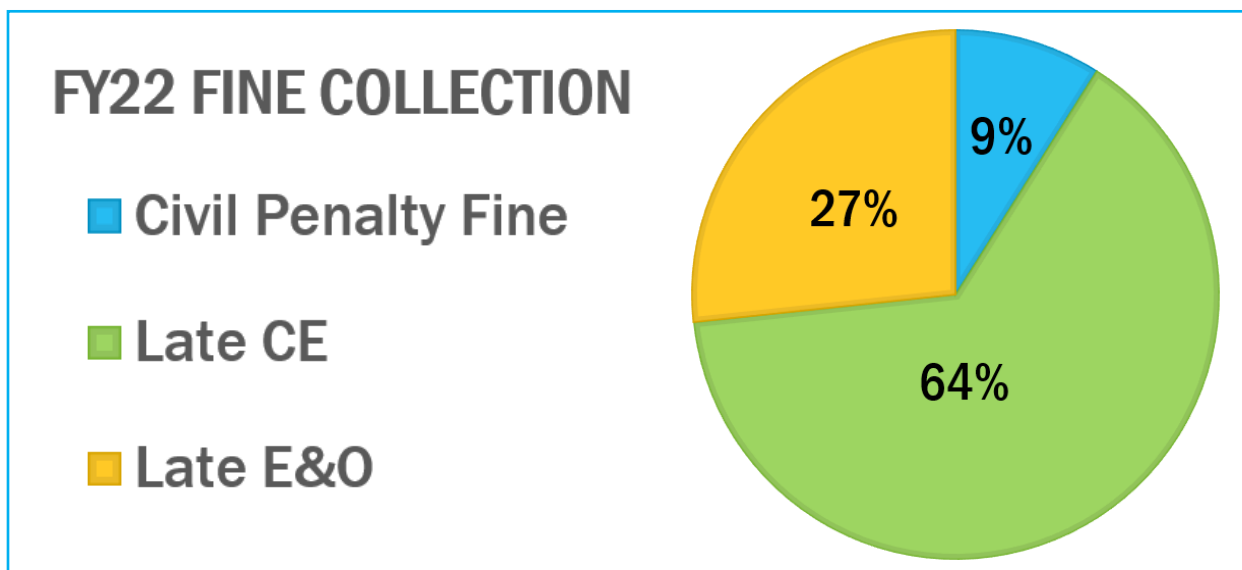
- Identify troublesome trends in real estate and describe how to avoid them in practice

In the Real Estate Commission, the Enforcement Department collaborates with the Education Department to address the rise of any troublesome trends developing in the industry.

These are their stories.

I. Lackluster License Maintenance

- A. In the first half of 2022, 91% of fines collected by IREC were due to licensees' failure to properly to properly care for their license!



B. Errors and Omissions (E&O) Insurance

1. In the first half of 2022, 27% of fines collected were due to failure to obtain E&O Insurance
2. Group policy through RISC insurance is \$155/year
3. First violation for failure to maintain insurance is \$150
 - a. For all subsequent failures to maintain insurance, the fine **DOUBLES, and doubles, and doubles, and doubles...**



Group Discussion:

1. Why is E&O insurance **SO** important?

C. Continuing Education (CE) Requirements

1. In the first half of 2022, 64% of fines collected were due to failure to complete the correct CE courses in a licensing period
2. Licensing periods
 - a. Initial license period:
 - 1 year + # of months until birthday month
 - Ends at **5:00 pm (MT)** on the last day of birth month
 - Example – Your birthday is in March. You were licensed in October 2021. Your licensing period runs October 2021 – March 31, 2023.
 - Example – Your birthday is in June. You were licensed in April 2022. Your licensing period runs April 2022 – June 2023.
 - b. Subsequent renewal periods for all licensees:
 - 2-year period
 - Keep track if you are on even or odd years
 - Ends at **5:00 pm (MT)** on the last day of birth month
 - Example – Your birthday is in June and your license expires on even years. Your licensing period runs July 1, 2022 – June 30, 2024
 - Example – Your birthday is in August and your license expires on odd years. Your licensing period runs September 1, 2023 – August 31, 2025
3. The following charts have been provided to help you assess your continuing education needs:

BROKER RENEWAL

**Active Status
Renewal**

**12 CE Hours &
2 Core Courses**

**Inactive Status
Renewal**

**No CE required
for renewal**

***Brokers who wish to become Designated Brokers must have taken BC00 within the last 3 years!**

BROKER ACTIVATION (Inactive to Active)

Current licensing period renewed on active status?

**YES. No CE required for
activation**

**NO. Has there been another
activation this licensing period?**

**YES. No CE required
for activation**

**NO. 12 CE Hours &
2 Core Courses**

SALESPERSON RENEWAL

Active Status Renewal

First time renewing?

YES. 12 Post License Hours & 2 Core Courses

Inactive Status Renewal

No CE required for renewal

NO. 12 CE Hours & 2 Core Courses

SALESPERSON ACTIVATION (Inactive to Active)

First activation
EVER?

YES. 12 Post License Hours & 2 Core Courses

Has the license been renewed
on active status before?

YES. 12 CE Hours & 2 Core Courses

**NO. Has there been an activation
after a previous inactive renewal?**

YES. 12 CE Hours & 2 Core Courses

NO. 12 Post License Hours & 2 Core Courses



Important to Remember: Still unsure what CEs you need? Call the Commission, 208.334.3285!

II. Real Estate Disclosures and Adverse Material Facts



Discussion Question:

1. What is the most common question you get about disclosures during real estate transactions?

A. Responsibilities of a Real Estate Licensee

1. Idaho Code 55-2502 expressly addresses the intent of the Property Condition Disclosure Act (emphasis added):

*“In order to promote the public health, safety and welfare and to protect consumers... [this act] require[s] **SELLERS** of residential real property...to disclose certain defects in the residential real property to a prospective buyer”*

2. Sellers of residential real property **MUST** disclose certain defects of said property to prospective buyers through a Seller Property Disclosure Form (REALTORS® may recognize this as the Seller’s Property Condition Disclosure Form) as noted in Idaho Code 55-2508
3. Licensees **DO NOT** have a responsibility to discover latent material facts
 - a. For example – a licensee is not required to do things like peel back carpet to discover what flooring lay below (and should **NOT** take this on!)
4. If a licensee becomes aware of any defects and/or adverse material facts, they now have a duty to disclose
5. Licensees should avoid becoming too involved in investigating things themselves and should know when to recommend an outside professional
6. Licensee should ensure the completed Seller Property Disclosure Form is provided to prospective buyers within 10 days of acceptance of the offer as required by Idaho Code 55-2509



Important to Remember: When in doubt, **DISCLOSE!**

III. Forgery

- A. 50% of the cases presented at the January 2022 Commission meeting involved some form of forgery
- B. In real estate, forgery may include things such as:
 - 1. Signing off for someone else's form or application
 - 2. Falsifying client signatures on a document
 - 3. Manipulating email addresses associated with the signature platform so that someone other than the intended recipient can sign a document
 - 4. Signing documents on behalf of a client with their verbal permission, but without having the proper legal documentation to back up the authorization
 - 5. Seeking ratification after the fact on a signature
 - 6. Copying a signature over from one document to another
 - 7. Falsifying supporting documents from third parties
 - 8. Physically or digitally altering an official document or form
 - 9. Creating false invoices for inspection repair items
- C. Electronic Signatures
 - 1. Creates electronic record that serves as an audit trail
 - 2. Includes a detailed certificate of completion, which may include timestamps and an IP address of signer
 - 3. There are various methods of verifying signer identity:
 - a. Access code, SMS, email address, ID verification, etc.
 - 4. Digitally sealed to protect from tampering

D. Power of Attorney

1. In almost every instance, a valid power of attorney is required to sign on behalf of a client, even if they give verbal permission
2. Seek guidance from your broker
3. Consult with an attorney
4. For more information: <https://isb.idaho.gov/ilf/wp-content/uploads/sites/2/Power-of-Attorney-Under-Idaho-Law.pdf>

IV. Misidentification of Industry Roles



Think, Pair, Share – Turn to the person next to you and in 30 seconds, tell them about someone you’ve worked with who couldn’t identify their Designated Broker

Discussion Questions

1. Why does it matter if a *licensee* knows who their Designated Broker is?
2. Why does it matter if a *client* knows who the Designated Broker is?

A. The Commission has recently noticed an increase of licensees who are unaware of who exactly is who and what their responsibilities are during real estate transactions

1. Often, licensees are mistakenly identifying their:
 - a. Designated Broker
 - b. Responsible Broker
 - c. Team leader
 - d. Transaction coordinator
 - e. Assistants (licensed and unlicensed)
 - f. Broker’s licensed business name

Test Yourself: Mix and Match!



The activity on the next page includes common industry roles, as well as their definitions. You will have 60 seconds to match as many definitions to their term as possible!

Many of the definitions are from Idaho Code 54-2004, so choose the best answer for each!

DEFINITIONS
1. An individual who is qualified as a real estate broker in Idaho, but is licensed under, associated with and represents a designated broker
2. An individual who oversees a group of agents operating within the same office
3. An individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees
4. The Designated Broker in a regulated real estate transaction who is responsible for the accounting and transaction files for the transaction
5. Represents the seller in a real estate transaction
6. A salesperson or an associate broker licensed under and associated with a Designated Broker
7. An individual who often handles the administrative work of a real estate transaction
8. Represents the buyer in a real estate transaction

TERMS
A. Sales Associate
B. Transaction Coordinator
C. Associate Broker
D. Team Leader
E. Selling Agent
F. Responsible Broker
G. Listing Agent
H. Designated Broker

B. Idaho Code 55-2038 stipulates that all licensees working at a brokerage are working under the Designated Broker's license. Designated Brokers are responsible for the supervision and control of the brokerage, including:

1. Conducting compliance checks on advertisements
2. Reviewing transaction documents as the transaction progresses
3. Offering classes, training, and mentoring sales associates
4. Creating and enforcing office policies



Important to Remember: Your broker is your best resource! Know who they are, how to contact them, and what their expectations are for you!

V. Case Study Application

Case Study: “The Plot Thickens”



Below is a preliminary case study of two agents navigating a transaction.

After reviewing the preliminary case study, separate into your assigned groups and investigate your assigned Plot Twist case study.

As a group, identify where each scenario derailed, discuss possible solutions, and answer the corresponding questions. Elect a member from your group to act as a spokesperson to provide a summary of the case study and your discussions

Diana Kent has recently become an Associate Broker at Hall of Realty, LLC. Prior to becoming an Associate Broker, Diana worked at this brokerage for the past 5 years under the Designated Broker, Alexander Luther.

Alexander requires all new Associate Brokers to participate as a mentor for newly licensed agents by acting as their team lead. Diana has been assigned as mentor for Clark Prince, who has only been licensed for 6 months.

Diana has decided to invite Clark into one of her current transactions so they can work in tandem. Diana has made sure that her client is aware of, and okay with, her using this transaction to help train Clark.

Barry Jordan is a client working with Diana. After their initial meeting, Diana and Barry agree to list the property, a single-family home, for \$450,000. Barry indicated that he wants to include the garage refrigerator and chest freezer with the sale, so he doesn't have to move them.

Barry has primarily been using this property as a short-term rental; however, over the last 3 years of ownership, Barry has himself lived in the residence at various times. The property requires some cosmetic updates, including fresh paint and new carpet.

And now, the plot thickens...

“Plot Twist 1: Improving Defects”



After updating Clark about the status of the Barry Jordan transaction, Diana assigns a few tasks for him to complete. Diana instructs Clark to deliver the Lead-Based Paint and Seller’s Property Condition Disclosures forms to Barry in person.

Clark meets with Barry at the property that afternoon. After introducing themselves, Clark gives Barry the two documents. Clark explains what each is for and how best to fill them out. While Barry reviews the documents, Clark takes a look around the property.

As he is assessing the property, Clark notices some cosmetic defects that should be spruced up prior to pictures or showings—this includes updating the paint, dusting vaulted ledges, cleaning sliding glass door and window tracks, etc.

He also notices that the vent hood shuts itself off after a few seconds, the carbon monoxide detectors do not appear to be functioning, the HVAC system looks like it could use a tune up, and there is a small puddle of water, along with water stains, in the cabinet under the kitchen sink.

After his look about, Clark reviews all of the issues he noted. Barry seems defensive about Clark’s observations, so Clark asks if Barry would be willing to have a pre-inspection. Barry agrees and says he will hire a friend who is a home inspector.

A few days later, Barry sends both the Inspection Report and the Seller’s Property Condition Disclosure Form over to Diana and Clark. None of the issues that Clark identified or those that are included on the inspection report, are mentioned in the Property Disclosure Form.

1. What should Clark and Diana do?
2. What are some possible ramifications for the various parties of this scenario if the Seller Property Disclosure Form is left as is?

“Plot Twist 2: The Backdate”



After updating Clark about the status of the Barry Jordan transaction, Diana assigns a few tasks for him to complete. Diana instructs Clark to deliver the Lead-Based Paint and Seller's Property Condition Disclosure forms to Barry in person.

However, when Clark arrives at the property, he receives a text from Barry cancelling the appointment and asking for electronic copies of the documents. Clark takes it upon himself to enter the property and take a look around; he then leaves the two documents on the counter with a note of instructions for Barry.

The next day, Diana asks Clark if he has the signed Lead-Based Paint Disclosure, as it must be turned into their broker, prior to the end of the day. Clark panics and tries to cover his mistake by telling Diana that he accidentally left it at home after the appointment, but will run to get it at lunch.

Clark texts Barry asking if they can quickly meet to get the document signed. Barry texts back, telling Clark to sign the document on his behalf. Clark prints a new copy of the document to sign for Barry; Clark makes sure that he uses yesterday's date while completing the form. After signing for Barry, Clark scans the document and electronically signs it as the agent.

Clark emails the completed document to Diana and their broker Alexander. However, after conferring with Alexander, Diana confronts Clark and asks him why the signature from the Lead-Based Paint Disclosure does not look like the signature from the Representation Agreement.

1. What should Clark have done differently?
2. What are some possible ramifications for the various parties of this scenario?

“Plot Twist 3: Team Effort”



Diana assigns Clark to craft a plan for an open house next weekend. Clark has Lois, the team’s unlicensed assistant, draft the marketing material—social media posts, flyers, property description handouts, advertisements on the MLS, company website, etc.—as well as gather supplies for the actual event.

After Lois supplies Clark with the draft materials, he reviews them and takes them to Diana for approval. Diana is impressed with the materials and complements Clark. Always the nice guy, Clark tells Diana that Lois was the one who drafted the materials. Diana reminds Clark to be cautious with what he is delegating to Lois—she isn’t a licensed real estate associate in Idaho, after all.

On the day of the open house, Clark has a great turn out. However, about 2 hours before the open house event is to end, Clark receives a call from his babysitter—Clark’s daughter had to use her EpiPen for a bee sting and needs to be checked out by a doctor.

Clark is worried about ending the open house earlier than advertised and is just about to call Diana when Lois offers to host the open house for him for the remaining time. Clark is hesitant, but Lois reminds him that she was a real estate licensee in Montana for over 10 years, and besides, there probably won’t be too many more prospects who stop by.

That Monday, Diana calls Clark into her office to discuss the open house—she wants to know all about the person who completed a Representation Agreement and an offer to purchase the property. Clark has no idea what, or who, she is talking about, but he knows Lois was involved.

1. What should Clark do?
2. What are some possible ramifications for the various parties of this scenario?

VI. Avoiding the Troublesome Trends

A. Properly care for your real estate license

1. Educate yourself – use the Education Lookup on the Commission’s website at <https://apps.irec.idaho.gov/PublicSearch/SearchEdu> to find classes that interest you and help you with your professional development
2. Maintain current E&O, and don’t forget to notify the Commission!

B. Familiarize yourself with the disclosure requirements so that you can ensure you always properly disclose adverse material facts

1. Don’t take it upon yourself to investigate when it is not required of you
2. Be cognizant of when it is time to recommend a professional

C. Track and double check contract signatures

1. Take appropriate precautions with electronic documents
2. Remember, a power of attorney is required to sign on someone else’s’ behalf
3. Identify your legal resources

a. Idaho REALTOR® Legal Hotline

- <https://idahorealtors.com/member-resources/ir-legal-hotline/>
- 800.324.3359

b. Housing Legal Advice Line

- <https://www.idaholegalaid.org/node/1067/legal-advice-hotlines>
- 208.746.7541

D. Know who your broker is and don’t be afraid to ask questions!

Commission Core 2022

Course Approval #: C2022

Introduction to Idaho Water Rights and Easements in Property Transactions

Learning Objectives:

- Review Idaho water rights and associated easement requirements in relation to real estate transactions

I. Water Rights and Easements

- A. Water rights and easements can be a complicated subject. This section is intended to provide a **brief overview** of potential issues that may arise with water rights during property transfers.



Group Discussion:

1. What are some common questions or issues that arise when brokering a real estate transaction that includes water rights?

- B. Many property transactions in Idaho will involve some connection to water and/or associated easements
- C. As Idaho communities have developed and expanded into historical farmlands, two things remain:
 - 1. The water rights and/or entitlements
 - 2. Associated easements



TRUE or FALSE

The roadways along irrigation canals are public property.

II. Overview of Water Rights and Water Laws in Idaho

A. Important terms

1. Canal, lateral, ditch: Man-made channels used to convey water from the river to the ultimate place of use
 - a. Generally, canals are large conveyance structures that feed water to laterals
 - b. Laterals feed ditches, which convey water to the ultimate destination
2. Headgate: A structure used to control the flow of water into a canal, lateral, or ditch
3. Spring: A point at which groundwater from an aquifer flows out on top of Earth's crust and becomes surface water
4. Well: An artificial excavation or opening in the ground more than 18 feet in vertical depth below land surface by which ground water is sought or obtained
5. Lake: Any permanent body of relatively still or slack water, including man-made reservoirs, and capable of accommodating boats or canoes
6. Drainage: All water flowing into a common river or stream system, either above or below ground, due to area geography
7. Pressurized Irrigation System: A system that receives irrigation water from a canal or lateral and distributes it through pressure pipes to the end user (parks, residential yards, etc.)
8. Prior Appropriation: The priority date of a water right determines the order of water delivery during times of shortage. The earlier priority date being the better right.

9. Application, permit, license: Administrative process for acquiring a new water right (Idaho Code 55-101)
 - a. An application is filed. If approved, a permit is granted. Finally, a license is issued based on the actual development and use of water.
 - An application and permit are personal property assigned to a buyer
 - A license is real property once it becomes a water right
10. Claims, recommendations, decrees: Judicial process for confirming a water right in the water court
 - a. The water user files a claim with the court. That claim is investigated by the Idaho Department of Water Resources (IDWR). The court issues a decree, which formally adjudicates the water right.
11. Domestic Use Water Right (Idaho Code 42-111)
 - a. Use of water for domestic purposes that does not require a documented water right, so long as the use is limited to:
 - No more than 13,000 gallons per day, in home use, and irrigation of no more than $\frac{1}{2}$ acre
12. Water Entitlement: The right a water user has to use water. This is based on:
 - a. Land ownership (in the case of an irrigation district)
 - b. Ownership of shares (in the case of a canal company)
 - It is common in Idaho to receive water from an irrigation district or canal company. In these instances, the district or company own the water right(s).
13. Shares: A canal company is a private non-profit corporation; water entitlement within a canal company is represented by shares
 - a. Those who own shares of the company are entitled to a proportional use of the company's water rights

B. Water right elements (who, what, when, where)

1. Who owns the water right?
 - a. Identifies the current owner, prior owners, attorney of record, and known security interests
2. What is the source of the water being use?
 - a. A river, stream, lake, groundwater, etc.
3. What is the authorized (i.e., beneficial) use of the water?
 - a. Irrigation, aesthetic ponds, fish propagation, etc.
4. When can a water right be used?
 - a. Also known as “season of use”
5. Where can a water right be diverted and where can it be used?
 - a. Also known as “point of diversion” and “place of use”



Important to Note: Though real estate licensees are not expected to be water right experts during a property transaction, they should familiarize themselves with common indicators that may indicate that more research is needed.

C. Common Water delivery infrastructure

1. Headgate
2. Canals, laterals, ditches, drains
 - a. These channels can be open and visible or they can be buried in a pipeline

- b. Check with property records and local water delivery entities to determine location of any buried channels on the property

3. Pumps

- a. Will usually be placed in a canal, lateral, ditch or drain
- b. Can be used for individual properties or for a group of properties. If used for a group of properties, be sure to check for any shared well agreements.

4. Pressurized irrigation systems

- a. Commonly used for developments to deliver water to multiple property owners



TRUE or FALSE

Irrigation districts and canal companies are the same—they just have different names.



TRUE or FALSE

An irrigation district can take a tax deed (take ownership) on property for unpaid assessments (no matter how small the unpaid assessment bill is).

III. Taxing and Assessing

A. Irrigation Districts and Ground Water Districts

1. Entitlement based on land ownership
2. Taxing authority (Idaho Code 43-706)
3. Tax deed for unpaid assessments (Idaho Code 43-716 and 43-720(7))

B. Canal Companies

1. Entitlement based on shares owned
 - a. The shares are considered personal property
2. Assessments (Idaho Code 42-2201)
 - a. A lien may be placed on property for any unpaid assessments
3. Unpaid Assessments (Idaho Code 42-2206 and 42-2207)
 - a. Foreclosure process for water rights to recover delinquent assessments



Important to Note: Unpaid assessment liens take priority over mortgage or deed of trust.



Important to Note: If landowners don't utilize their water right, they can lose it (Idaho Code 42-222(2))!



Discussion Questions:

1. What are the rights of a landowner as it relates to a ditch easement across that landowner's property?

2. What are the rights and duties of a ditch owner as it relates to a ditch easement across a landowner's property?

IV. Easements and Rights of Way

A. Ditch owner rights

1. Elements of an easement (Idaho Code 42-1102(4)):
 - a. Recording of ditch easement not required!
 - Visible ditch = notice of easement
2. Right of access & maintenance (Idaho Code 42-1102(2)):
 - a. Right to “enter land”
 - b. Right to inspect, operate, clean, maintain, and repair
 - c. Right to occupy the easement (ditch and roadway)
 - d. Rights extend “during any season” and do not require notice
3. Width of easement (Idaho Code 42-1102(2)(a)): “Such width as is necessary to properly” maintain the ditch

B. Debris within an easement (Idaho Code 42-1102(2)(b))

1. Includes “debris, soil, vegetation, and other material” that must be removed to properly maintain the ditch
2. An easement includes the right to clear debris and either:
 - a. Remove the debris from the property,
 - b. Incorporate the debris into the ditch and related roadways (i.e., sediment), **OR**
 - c. “Deposit and leave” the debris within the easement

C. Obligations associated with an easement

1. Make sure you know who owns or operates the infrastructure:
 - a. Canals or Laterals: Irrigation districts, canal companies
 - b. Ditches: Landowners
 - c. Groundwater pumps: Generally, individual water right owners
 - d. Pressurized irrigation System: Landowners, subdivisions, HOA
2. Operator of the infrastructure (Idaho Code 42-1102(3) and 42-1204):
 - a. Has a duty to keep the ditch “in good repair”
 - b. Is liable for all damages caused by overflow or due to any neglect or accident

D. Landowner rights and obligations

1. Ditches, including roadways along either side, are not public property
2. Landowner cannot exclude water management representatives from accessing the easement
3. Landowner can be on their land, but encroachments are prohibited

E. Encroachments prohibited

1. Idaho law prohibits any encroachment on a ditch easement without the written permission of the ditch owner
 - a. Encroachments include public or private roads, utilities, fences, gates, pipelines, structures, landscaping, trees, vegetation, or other construction or placement of objects
 - b. Must have “written permission of the owner or operator of the right-of-way” to place any encroachment (Idaho Code 42-1102(5) and 42-1209)
2. Any unauthorized encroachments will be “removed at the expense of the person or entity causing” the encroachment

V. Notice and Property Transactions that Include Water

- A. What happens to the water when property changes ownership?
 - 1. **ALL** water rights and/or entitlements are conveyed to the new owner **unless the seller expressly reserves** the water rights and/or entitlements in the sale documents
 - a. Silence = conveyance
 - 2. The new owner assumes all rights and duties associated with the water right and entitlement (i.e., the *right* to use the water and the *duty* to pay any related assessments)
- B. When property is conveyed, the ownership records of the water right or water entitlement **MUST** be updated (Idaho Code 42-248)
- C. Type of notice depends on who owns the water right(s)
 - 1. Property Owner: Submit a Notice of Change of Ownership to the IDWR within 120 days (Idaho Code 42-248)
 - 2. Irrigation District: Submit proof of purchase (i.e., recorded deed) to irrigation district to demonstrate land ownership – i.e., entitlement to water
 - 3. Canal Company: Contact company to notify them of transaction and learn process of assigning the shares to the new owner

VI. Steps when Property Changes Hands

A. What should the licensee remind the seller to do?

1. Identify and disclose all water rights and/or entitlements
2. Provide copies of water documents (i.e., water rights, shares, well agreements, etc.)
3. Identify any water rights / entitlements being retained by the seller
4. Make sure that any water being retained is clearly and expressly identified in the sales agreement

B. What should the licensee remind the buyer to do?

1. Make sure water rights / entitlements are identified on the purchase agreement
2. Update ownership records with state and/or water delivery entities following closing

C. Don't be afraid to contact a local water attorney or expert to answer any questions about water rights and/or easements

1. Idaho Department of Water Resources

- a. 208.287.4800 or idwr.idaho.gov

2. Idaho Water Users Association

- a. 208.334.6690 or iwua.org



Group Activity: Water FAQ

Take a quick look at the **Idaho Water Rights: FAQ** resource. Choose a few questions and practice how you would answer it for a buyer and/or seller with a partner.

Commission Core 2022

Course Approval #: C2022

Idaho Water Rights: Frequently Asked Questions

- A. If there is water on the property (i.e., in a ditch, stream, etc.), do I have a right to use that water?**

ONLY if there is a water right for the use. If there is no water right for the use, then the landowner **CANNOT** use the water.

- B. If there is a well on the property, do I have a right to use it? Do neighbors have a right to use it?**

You may use the well **if there is a water right**. If there is **NO** water right, the well may be used by a neighboring landowner. Look for a shared well agreement.

- C. Since a documented water right is not required for a domestic use (up to 13,000 gallons per day), how do I know if there is a water right associated with the property?**

Even if there is no documented water right on the property, the landowner likely has a domestic use right if water use on the property is (1) less than 13,000 gallons per day; (2) used for 1 home; and (3) irrigates $\frac{1}{2}$ acre or less

- D. There is a ditch on my property. Can I, the landowner, move it to a different location on my property?**

The landowner may not move the ditch easement without written permission from the ditch owner, per Idaho Code 42-1207.

E. There is a ditch on my property. Can the ditch owner move it to a different location on my property?

The ditch owner may not move the ditch easement without written permission from the landowner, per Idaho Code 42-1207.

F. There is a ditch on my property, can I, the landowner, bury the ditch in a pipeline?

The landowner may not pipe the ditch without written permission from the ditch owner. If written permission from the ditch owner is granted, it must meet “standard specifications” and cannot disrupt water delivery, per Idaho Code 42-1207.

G. There is a ditch on my property, can the ditch owner bury the ditch in a pipeline?

The ditch owner may pipe the ditch within the existing easement. However, landowner’s written permission is required to move the ditch (or pipeline) to different location, per Idaho Code 42-1207.

H. I live in a neighborhood and receive an assessment from the local irrigation district. I do not use any irrigation district water and, in fact, have no way to get that water to my house. Do I have to pay the assessment?

Yes! Land within the service area of an irrigation district is subject to assessments. **EVEN IF** you do not use the water. **EVEN IF** you have no ability to get the water to your property (i.e., the ditches were filled in when the land was developed).

Landowners can petition to be excluded from the irrigation district, which will eliminate the obligation to pay assessments and the right to receive water (Idaho Code 43-1101).

Contact the local irrigation district to learn about this process!