CORE 2026

STUDENT GUIDE

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C2026 – Commission Core 2026
Case Law Update

Learning Objectives:

- Explain the impact of land use restrictions, CC&Rs, and property encumbrances on a property's market value and functional utility
- Justify the necessity of independent verification and timely disclosure/documentation to mitigate professional risk and protect a client's equitable interest prior to conveyance
- Differentiate between the statutory duties owed to customers, clients, and supervised licensed and unlicensed associates within various brokerage relationships

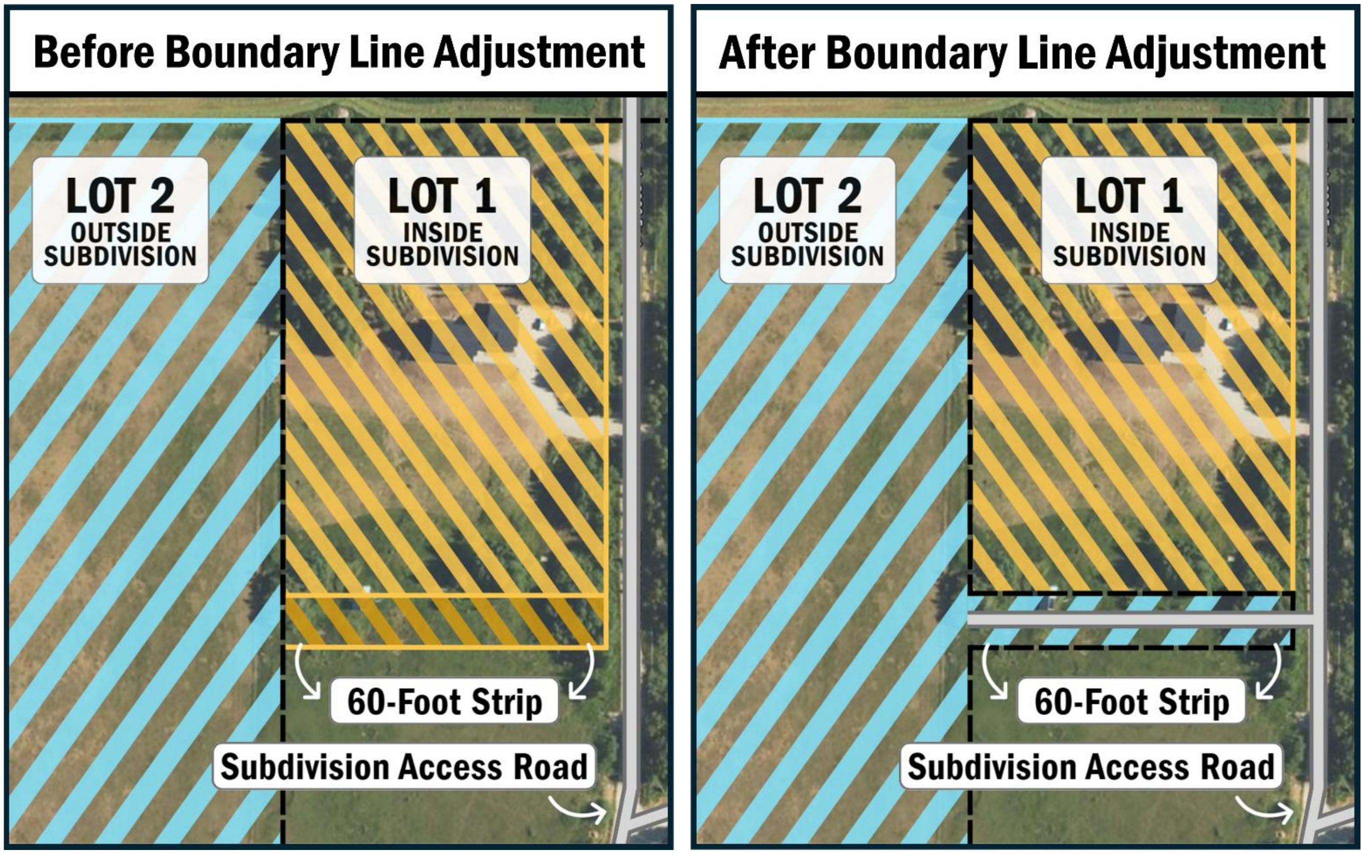
Jordan v. Powers

Injunctive Relief; HOAs; Restrictive Covenants

Docket No. 51330-2023; August 28, 2025; Teton County

SUMMARY

- In 2020, Aaron Powers purchased two adjacent parcels in Teton County:
  - **Lot 1:** a five-acre parcel **within** the Sorensen Creek subdivision and subject to its covenants, conditions, and restrictions (CC&Rs).
  - **Lot 2:** a 69-acre parcel just **outside** the subdivision and **NOT** subject to the CC&Rs.
- Powers planned to develop Lot 2 into a 14-lot subdivision, but the parcel lacked public road access. His solution was to build an access road across a 60-foot-wide strip of Lot 1 ("60-Foot Strip") connecting the two parcels.
  - However, the CC&Rs required Homeowner Association (HOA) approval for any road construction on Lot 1.
- Rather than submit a formal application, Powers informally approached HOA board members about the road, but they rejected the idea.
- Powers responded by obtaining a boundary line adjustment (BLA) from Teton County, transferring the 60-Foot Strip from Lot 1 to Lot 2.
  - Because Lot 2 was outside the subdivision and not subject to the CC&Rs, Powers argued that the BLA removed the strip from the subdivision, extinguished the CC&Rs, and eliminated the need for HOA approval for the access road.



- Carl Jordan, a Sorensen Creek subdivision resident, sued to block the road, arguing the 60-Foot Strip remained subject to the CC&Rs, regardless of the BLA.
- The District Court agreed with Jordan, ruling that the CC&Rs continued to apply to the 60-Foot Strip and categorically prohibited road construction on the land, even with HOA approval. Powers appealed.

SUPREME COURT HOLDING & ANALYSIS

Before discussing the Supreme Court's decision, it is important to understand the nature of CC&Rs:

- **Nature of CC&Rs:** CC&Rs are private agreements that govern real property, typically within a subdivision. CC&Rs run with the land, meaning they attach to the property itself, regardless of ownership changes.
- **Enforcement:** CC&Rs are enforceable by an HOA or property owners within the HOA.
- **Creation:** CC&Rs are typically created by the developer when a subdivision is first established and recorded with the original plat. Individual property owners may also impose CC&Rs on their own property. When a subdivision has no CC&Rs, homeowners may create them, but only with unanimous consent of all affected owners.
- **Amendment:** CC&Rs can only be modified or removed by following the specific procedures outlined within the CC&Rs themselves. This typically requires approval from a supermajority of the affected property owners.

- **Recording and Constructive Notice:** CC&Rs must be recorded to be enforceable. Once recorded, they provide constructive notice, meaning all future buyers are legally presumed to know the restrictions exist, even if they never personally read them.

On appeal, the Supreme Court made the following determinations:

1. **The BLA Does <u>NOT</u> Extinguish the CC&Rs.** The CC&Rs expressly applied to property described in the subdivision's original 1984 plat, which included the 60-Foot Strip. Because the CC&Rs were validly adopted and recorded, they ran with the land and remained binding even after the BLA. County land-use actions (e.g., boundary adjustments, plat amendments, and zoning changes) **do NOT** override private covenant obligations.

2. **The CC&Rs Do <u>NOT</u> Categorically Ban Road Construction.** Idaho courts strictly interpret restrictive covenants in favor of free property use. Restrictions must be explicit; courts will not extend them beyond their written terms. In this case, the CC&Rs restricted road construction on residential lots, but Lot 1 was inadvertently not classified on the subdivision's original plat, even though it appeared intended for residential use. As a result, the Court refused to imply a categorical ban on road construction, ruling that Powers could build one if he obtained HOA approval.

3. **Exhaustion of Remedies: "Comply First, Sue Later" Rule.** Powers argued the HOA's approval process was unenforceable because it lacked clear standards. The Court rejected this argument because Powers never submitted a formal application to the HOA. A property owner must first attempt to comply with HOA rules and procedures before challenging them in court.

RESULT OF THE CASE

The Court held that the CC&Rs continued to apply to the 60-Foot Strip following the BLA and that construction of a road was permitted with HOA approval.

PRACTICAL APPLICATION

CC&Rs Supersede Local Land-Use Decisions. Property owners must independently comply with both local land-use decisions and CC&Rs. Local government land-use decisions (such as boundary line adjustments, plat amendments, zoning changes, and permits) do not override recorded CC&Rs.

CC&Rs Survive Legal Description Changes. Private covenants run with the land. Changes to a property's legal description (e.g., via boundary line adjustments or replats) do not impact CC&Rs.

Verify Original Plat Classifications. Suggest buyers always verify lot classifications in both the original plat and in the CC&Rs. A restriction tied to a specific classification (such as residential or commercial) cannot be enforced against property that is not classified as such, even when the omission was inadvertent.

Disclosure Duties. Under Idaho Code 54-2086 and 54-2087, a licensee who is aware that a property development plan conflicts with CC&Rs, or has been formally opposed by an HOA, **MUST** disclose this information to both clients and customers.

Boundaries of Professional Competence. Distinguish between a licensee's role as a facilitator of information and the buyer's role as investigator and verifier.

Licensees can do this by explicitly stating the limits to the information they provide and taking great care not to guarantee information.

North Henry's Lake Homeowners Association v. Norton

Homeowner's Association Act; Rental Restrictions

Docket No. 51990; January 6, 2026; Fremont County

SUMMARY

- Idaho Code 55-3211, enacted in March 2016, prohibits an HOA from imposing or enforcing rental restrictions against a property unless the owner provides written consent at the time the restriction is adopted.
- In August 2016, the North Henry's Lake Lodge Subdivision ("HOA") amended its CC&Rs to prohibit short-term rentals of less than 30 days. The amendment passed 23-7.
- However, the Lees, who owned a property within the HOA, voted against the amendment and did not provide written consent.
- The HOA acknowledged the restriction did not apply to the Lees but drafted the amendment to apply to all future owners of the property.
- Between 2016 and 2022, the Lee property was conveyed three times, ultimately to the current owners ("Homeowners") in 2022.
- While each warranty deed referenced the recorded CC&Rs, which included the rental restriction, neither the Lees nor any subsequent owner ever consented to it in writing.
- In October 2022, the HOA discovered the Homeowners were renting the property on Airbnb and sued to enforce the restriction, arguing that the Homeowners, having constructive notice of the recorded CC&Rs at the time of purchase, were bound by them.
- The District Court ruled in favor of the Homeowners, holding that the restriction did not apply because no written consent had been provided. The HOA appealed.

SUPREME COURT HOLDING & ANALYSIS

The issue on appeal was whether the HOA could enforce the short-term rental restriction against the Homeowners even though the Lees, who owned the property when the amendment was adopted, had never provided written consent, as required by Idaho Code 55-3211.

For CC&Rs to be enforceable, property owners must have notice of them. Recording CC&Rs provides the public with constructive notice of their existence, creating a legal presumption that all buyers have knowledge of the restrictions. However, notice alone does not guarantee enforceability. CC&Rs must also:

- Be executed with proper authority,
- Adhere to specific procedural requirements set forth in the CC&Rs themselves, and
- Remain consistent with state law.

Idaho Code 55-3211 created a mandatory requirement overriding the CC&R restriction. Because the statute requires written consent from the owner at the time a rental restriction is adopted, and that consent was never given, the restriction never legally attached to the property. Constructive notice of an unenforceable restriction does not make it enforceable.

RESULT OF THE CASE

The Court affirmed the District Court's decision, holding that the short-term rental restriction did not apply to the property because no owner had consented to it in writing.

PRACTICAL APPLICATION

Constructive Notice & Recording Errors. Advise clients that recordation does not guarantee a document will appear in a title search. CC&Rs that are properly submitted to the county are typically enforceable even when clerical errors prevent them from appearing in the searchable record. Clients should never assume a missing document equals a missing restriction.

Notice Does <u>NOT</u> Guarantee Validity. Recording a document provides notice that a restriction exists but does **NOT** guarantee its legal validity. Under Idaho law, rental restrictions adopted after March 2016 are only enforceable against an owner who provided express written consent at the time of adoption. Buyers should verify that this consent was both given **and** recorded.

Hierarchy of Authority. In the legal hierarchy of property governance, state law governs over CC&Rs, and CC&Rs govern over local land-use decisions (e.g., boundary line adjustments, zoning changes). CC&Rs are enforceable only to the extent they do not conflict with higher-level legal authority.

Amendments to CC&Rs. A client's use and enjoyment of a property may be affected by amendments to the CC&Rs. Licensees should inform buyers that they may want to review previous versions of an HOA's CC&Rs.

Uneven Application of CC&Rs. Remind buyers to review HOA documents carefully; CC&Rs may not apply uniformly within a subdivision due to factors such as:

- Grandfather clauses that exempt certain properties from new restrictions (e.g., short-term rental bans).
- Defective or incomplete plats that cause inconsistencies in property descriptions or boundaries.
- Different development phases, where later phases may not be subject to the same restrictions as earlier ones.

McOmber v. Thompson

Breach of Duty to Disclose; Property Condition Disclosures; Fraud

Docket No. 50980; July 22, 2025; Madison County

IMPORTANT TO NOTE

This case and analysis highlight the usage of specific forms, including the RE-25 Seller's Property Condition Disclosure Form and the Seller Property Disclosure form, as outlined in statute. However, the responsibilities of licensees remain the same across all transactions, irrespective of the specific paperwork utilized.

SUMMARY

- The Thompsons owned a home in Rexburg, Idaho. In 2012, they discovered mold and moisture-related damage in their kitchen, and in 2015, they experienced water intrusion from an ice dam on the roof. They remediated both issues and believed they were resolved.
- In 2019, the Thompsons sold the home to the McOmbers for $410,000. As part of the sale, the Thompsons completed the RE-25 Seller's Property Condition Disclosure Form and provided the following answers:
    - Marked "yes" to past water intrusion or moisture-related damage, noting that the "drainage problem was fixed."
    - Marked "yes" to whether remediation for water intrusion or mold had been performed, again noting the drainage issue had been fixed.
    - Marked "no" to being aware of any mold-related problems but noted that the home had not been inspected for mold.
- After closing, the McOmbers discovered ice dams on the roof, resulting in water intrusion inside the home, as well as mold and dry rot in several areas.
- The McOmbers sued the Thompsons for failure to disclose property defects under Idaho's Property Condition Disclosure Act ("Disclosure Act") and for common law fraud.
- The District Court granted summary judgment in favor of the Thompsons, dismissed the lawsuit, and awarded attorney fees to the Thompsons. The McOmbers appealed.

SUPREME COURT HOLDING & ANALYSIS

On appeal, the Supreme Court addressed two primary issues: whether the Thompsons violated the Disclosure Act by failing to disclose known defects; **AND** whether the Thompsons committed fraud by making false statements or failing to disclose property defects.

1. **Overview: Disclosure Act Violations vs. Fraud Claims**

    - **Disclosure Act Violations** involve a failure to disclose material defects known to the seller. Liability depends on the seller's **actual knowledge** at the time of disclosure.

    - **Fraud Claims** require proof of nine elements, including an affirmative false statement made with intent to deceive. Fraud by omission only applies when there is a fiduciary relationship or similar relation of trust between the parties, which was not present here.

2. **Disclosure Act Claim.** Under the Disclosure Act, sellers must disclose material defects they are personally aware of about the property's physical condition. The Court clarified two key aspects of this duty:

    - **Actual Knowledge:** Sellers are liable only for defects they are aware of, not defects they should have known or that could have been discovered through inspection.

    - **Past vs. Ongoing Defects:** Sellers must disclose ongoing defects but are not required to disclose past issues they reasonably believe have been resolved or remediated.

    The Court ruled that the Thompsons complied with the Disclosure Act based on the following factors:

    (1) They disclosed past water intrusion, moisture damage, and remediation efforts;

    (2) Their notation that the "drainage problem was fixed" adequately notified the McOmbers that further investigation might be warranted; and

    (3) They believed the 2012 and 2015 issues were resolved and were unaware of any ongoing defects in 2019.

3. **Fraud Claim.** The McOmbers alleged that the Thompsons committed fraud in two ways: They made affirmatively false statements on the disclosure form AND failed to disclose known defects about the property's condition.

    - **Fraud by Misrepresentation vs. Fraud by Omission:** The Court distinguished between fraud by misrepresentation, which involves knowingly false statements, and fraud by omission, which typically requires a fiduciary relationship.

      Because this was an arms-length transaction, fraud by omission did not apply, and the Thompsons had no duty to disclose defects beyond what they were actually aware of.

    - **Elements of Fraud:** To prove fraud, a plaintiff must establish nine elements, which, for the purposes of this summary, can be condensed into five:
        - A false statement of material fact;
        - Knowledge of its falsity or reckless disregard for its truth;
        - Intent for the plaintiff to rely on it;
        - Reasonable reliance by the plaintiff; and
        - Actual damages from the reliance.

The Court focused on the second element, concluding that McOmbers failed to show the Thompsons made any false statements, let alone knowingly false statements. As such, the Court dismissed the fraud claim.

4. **Attorney Fees.** The parties' RE-21 Purchase and Sale Agreement included a standard provision entitling the prevailing party in any legal action connected with the agreement the right to recover attorney fees. After the Thompsons successfully defended against the McOmbers' claims, the District Court awarded them fees under this provision. Although the McOmbers are married, only the husband signed the RE-21. The Supreme Court upheld the fee award in full against the husband but vacated it against the wife, holding that the husband's signature did not make her liable.

RESULT OF THE CASE

The Supreme Court affirmed summary judgment in favor of the Thompsons, dismissing the McOmbers' claims under the Disclosure Act and for common law fraud. The Court also upheld the award of attorney fees to the Thompsons under the RE-21 Purchase and Sale Agreement.

PRACTICAL APPLICATION

Disclosure Forms are <u>NOT</u> Warranties. The disclosure form is **NOT** a guarantee of the property's condition. Unlike licensees, sellers are liable only for defects within their actual knowledge. Buyers should conduct an independent inspection prior to closing to assess the property's condition.

Disclose Resolved Issues to Reduce Risk. Advise sellers to document any known issues on the Seller Property Disclosure form (SPDF) with specificity, including the nature of the problem, remediation performed, and outcome. Accurate and specific disclosure of past issues and remediation efforts is the most effective risk-reduction tool and legal defense for both sellers and licensees.

Understand all Financial Obligations in Contracts. Advise clients to carefully review all contract provisions before signing. Encourage them to seek legal advice before agreeing to any provision that will solely benefit the opposing party in the event of a lawsuit.

VanRenselaar v. Batres

Fraud; Idaho Property Condition Disclosure Act; Statute of Limitations

Docket No. 51451; September 4, 2025; Canyon County

IMPORTANT TO NOTE

While this analysis refers to specific forms, the responsibilities of licensees remain the same across all transactions, irrespective of the specific paperwork utilized.

SUMMARY

- The Batreses owned a home in Nampa for approximately 40 years, during which they added a kitchen and converted the attic into a loft without obtaining the required building permits.
- On April 3, 2017, the Batreses entered into a contract to sell their home to the VanRenselaars.
- On April 4, 2017, the Batreses provided the VanRenselaars with the RE-25 Seller's Property Condition Disclosure Form ("RE-25"), indicating:
  - No structural problems existed, and
  - No substantial additions had been made without required building permits.
- The VanRenselaars obtained a pre-purchase inspection, which noted "a chance of structural movement," but concluded that the foundation was "acceptable." The inspection did not reveal the full extent of the home's defects.
- On June 1, 2017, the VanRenselaars moved into the home and rented it from the Batreses for one month.
- Shortly after moving in but before closing, the VanRenselaars discovered that the water heater had been improperly installed, which the Batreses corrected.
- On June 29, 2017, the transaction closed. Thereafter, the VanRenselaars began experiencing headaches, which they later traced to exhaust gases venting into the home due to improper modifications.
- Further investigation, including a 2018 city inspection, revealed major structural defects: the kitchen addition was improperly attached to the foundation, the attic conversion was structurally unsound, and both modifications lacked the required permits. Repair costs exceeded $174,000.
- On June 29, 2020, exactly three years after closing, the VanRenselaars filed a lawsuit against the Batreses, alleging fraud and violations of Title 55, Chapter 25, the Idaho Property Condition Disclosure Act ("Disclosure Act").

- The jury found the Batreses liable for fraud and awarded the VanRenselaars $63,024 in damages. However, the District Court dismissed the Disclosure Act claim, ruling it was barred by the statute of limitations. Both parties appealed.

SUPREME COURT HOLDING & ANALYSIS

The Supreme Court addressed three issues: whether the VanRenselaars' fraud claim was timely and supported by the evidence; whether the VanRenselaars' Disclosure Act claim was barred by the statute of limitations; **AND** attorney fees.

1. **Fraud Claim**

- **Statute of Limitations Starts at Discovery of Fraud.** Fraud claims are subject to a three-year statute of limitations that begins when the fraud is discovered, not at closing. The Batreses contended that the VanRenselaars should have known of the defects during the pre-closing inspection (April 4, 2017) or when they moved into the home (June 1, 2017).

  The Court disagreed, ruling that the statute of limitations begins when the buyer obtains actual knowledge of the fraud, not mere suspicion. The VanRenselaars did not discover the fraud until a 2018 city inspection revealed the full extent of the defects. Additionally, the Batreses' affirmative representations on the RE-25 (i.e., that no structural problems or unpermitted work existed) made it reasonable for the VanRenselaars to delay further investigation until those larger defects surfaced. Therefore, the fraud claim was timely.

- **Reckless Ignorance as Fraud.** Fraud requires a knowingly false statement of material fact. However, the Court clarified that this can be established not only by deliberate falsehoods but also by statements made in "ignorance of the truth."

  When a seller marks "No" on the RE-25 form, they are asserting two things:
  - The defect does not exist, and
  - They personally know it does not exist.

  A seller who is uncertain but marks "No" anyway misrepresents the extent of their knowledge. This "reckless ignorance" constitutes fraud.

  Because the Batreses made unverified affirmative statements that the home had no structural issues and no unpermitted work, their RE-25 responses constituted fraud.

- **Pre-Closing Inspections Do <u>NOT</u> Waive Fraud Claims.** The Court rejected the Batreses' argument that the VanRenselaars waived their fraud claim by conducting a pre-closing inspection. The Court distinguished patent defects (visible during a standard inspection) from latent defects (hidden conditions a standard inspection would not reveal). The VanRenselaars could still pursue fraud claims for latent defects missed during the inspection because the Batreses' misrepresentations influenced the VanRenselaars' decision to proceed with the sale.

The Court also held that discovering one patent defect (such as the improperly installed water heater) did not obligate the VanRenselaars to investigate all unrelated latent defects (such as foundation failures) before closing.

2. **Disclosure Act Claim: Statute of Limitations Starts at Closing, <u>NOT</u> Delivery of the Disclosure Form.** Disclosure Act claims are subject to a three-year statute of limitations that accrues when the buyer sustains damages. The Batreses argued the clock started on April 4, 2017, when they delivered the Seller Property Disclosure Form (SPDF), making the June 29, 2020, lawsuit untimely.

   The Court disagreed, holding that the statute of limitations begins at closing because a buyer cannot sustain damages until the purchase price is paid and the transaction closes. Prior to closing, the buyer retains the ability to rescind the deal, or it may fall through for other reasons.

   The Court also noted that sellers have a continuing duty to amend the SPDF when new defects are discovered before closing. Failure to do so constitutes an independent Disclosure Act violation. Since the VanRenselaars filed their claim exactly three years after closing, the claim was timely.

3. **Attorney Fees.** The parties' RE-21 Purchase and Sale Agreement contained a provision awarding attorney fees to the prevailing party in any litigation connected with the agreement. Thus, the VanRenselaars were awarded attorney fees before the District Court and on appeal.

RESULT OF THE CASE

The Court ruled in favor of the VanRenselaars, affirming the jury's fraud verdict and reversing the District Court's dismissal of the Disclosure Act claim.

PRACTICAL APPLICATION

Licensees have an Independent Duty to Disclose. Licensees **MUST** disclose all adverse material facts actually known or which reasonably should have been known to them (Idaho Code 54-2086 and 54-2087). This agency duty is owed to all customers and clients and applies even when disclosure is contrary to the client's interests.

No Duty to Inspect, But No License to Ignore. Licensees are not required to conduct independent inspections or verify sellers' representations. However, they **MUST NOT** ignore red flags or facts that contradict the seller's disclosures. Silence can result in liability.

Reckless Ignorance can Constitute Fraud. The seller's responses on the SPDF should reflect their actual knowledge of the property. When a seller is uncertain, "Do Not Know" is the only appropriate response.

Sellers have an Ongoing Obligation to Update Disclosure Forms. The duty to disclose continues after the SPDF is signed. When new defects are discovered before closing, sellers must update the SPDF with specific details.

When a licensee suspects inaccurate disclosures, they should prompt the seller to verify facts (e.g., permits, invoices, remediation history) and remind them of their obligation to update the SPDF.

McLaughlin v. Moore

Idaho Condominium Property Act; Breach of Contract; Statute of Frauds; Specific Performance

Docket No. 51858; December 23, 2025; Bonner County

SUMMARY

- In August 2020, the Moores offered to sell their Sandpoint condominium to their friends and former neighbors, the McLaughlins.
- On August 4, 2020, the McLaughlins entered into a contract to purchase the property for $525,000 with a closing date of January 5, 2021.
- The McLaughlins paid $10,000 in earnest money, obtained financing, and enrolled their children in ski programs in anticipation of the purchase.
- In early September 2020, the parties spoke by phone and left with fundamentally different understandings: the Moores believed the sale had been mutually canceled, while the McLaughlins believed the transaction was still proceeding.
- As closing approached, the McLaughlins wired their $127,407 down payment to the title company and traveled to Coeur d'Alene to sign closing documents. The Moores, however, refused to attend closing.
- The McLaughlins sued for breach of contract and sought specific performance to compel the sale.
- The District Court found that the Moores breached the contract and awarded the McLaughlins $25,000 in damages and $170,500 in attorney fees. However, the court refused to order specific performance. Both parties appealed.

SUPREME COURT HOLDING & ANALYSIS

On appeal, the Supreme Court addressed two issues: First, whether the property description in the parties' contract satisfied the statute of fraud (which is required for a valid contract); **AND** second, whether the McLaughlins were entitled to specific performance.

1. **Simplified Legal Description for Condos.** Under the statute of frauds, real property contracts must be in writing; signed by the person whom enforcement is sought; must identify the parties, price, property, and all essential terms. When describing the property in the contract, a street address is insufficient; contracts must generally include either a metes-and-bounds description or a reference to a recorded document (such as a deed) containing the legal description.

   Condominiums, however, are treated differently. Because each unit is already defined and recorded with a specific name or number in the official plat and declaration, Idaho law permits condominiums to be identified simply by its unit number, project name, or other designation from the recorded plat or declaration, without the need for a traditional legal description (Idaho Code 55-1503(a), 55-1505(b), 55-1526.

The Moores argued that the contract's property description—consisting of the street address, unit number (#2), and name ("Twin Creeks Condos")—was insufficient because it lacked a metes-and-bounds or recorded legal description. The Court disagreed, ruling that the description was legally sufficient and that the contract was enforceable.

2. **Specific Performance: Concurrent Conditions and the Prevention Doctrine.** The McLaughlins sought specific performance to compel the Moores to complete the sale. This remedy is often sought in real estate disputes because property is unique and monetary damages may be inadequate.

   The Moores cited the contract's "time is of the essence" clause, which requires the buyer to tender the full purchase price at closing. They argued that because the McLaughlins failed to do so by the closing date, they were not entitled to specific performance.

   The Court rejected this argument, noting the contract imposed concurrent conditions with independent obligations. The McLaughlins fulfilled theirs by paying earnest money, securing financing, wiring the down payment, and appearing at closing. The Moores, however, failed to provide the closing documents required for the lender to wire the remaining funds.

   Under the prevention doctrine, a party who prevents the other from performing cannot declare that party in default. Because the Moores own conduct made tender impossible, the Court held that specific performance remained available and remanded the case to the District Court for further proceedings.

RESULT OF THE CASE

The Court found the Moores breached the contract and remanded the case to the District Court to determine whether to grant specific performance. The Court also affirmed the $170,500 attorney fee award and awarded the McLaughlins attorney fees on appeal.

PRACTICAL APPLICATION

Condo Property Descriptions are Unique. Every purchase contract must include an adequate property description, as an insufficient description can render the contract unenforceable. Due to their unique nature, condos can be identified by unit number and project name (or other designation) from the recorded plat or declaration.

Verbal Rescission is Risky. Real estate contracts can be verbally rescinded by mutual agreement; however, it must be proven by clear and convincing evidence if later disputed. Licensees should **ALWAYS** ensure that all contract modifications, including terminations, are documented in writing, signed, and dated by all parties.

Written and Physical Tender are Legally Equivalent. Physical tender requires the actual production and unconditional offer of the specific funds or instrument. Written tender is the legal equivalent of physical tender, but unlike physical tender, it does not require proof that the funds are available.

Concurrent Performance at Closing. The buyer's duty to pay and the seller's duty to deliver the deed and closing documents are concurrent obligations. A buyer who is ready, willing, and able to perform is excused from actual tender when the seller’s conduct prevents closing. A party cannot claim the other is in default while refusing to perform its own obligations.

Reduce Risk with Detailed Documentation. Legal outcomes are based on performance, not stated intention. Licensees should maintain a clear chronological record of every step taken toward closing (e.g., earnest money, financing approval, lender readiness, fund movement, physical presence of closing instrument, in-person attendance at closing, and written tenders/demands) in their transaction files.

Bear Crest Ltd., LLC v. State of Idaho (through ITD)

Breach of Contract; Inverse Condemnation; Reservation of Access Rights

Docket No. 50840; September 3, 2025; Madison County

SUMMARY

- In 1973, the Gideons owned a large tract of land in Madison County, including property bordering U.S. Highway 20 with direct access to the highway.
- Idaho Transportation Department (ITD) needed seven acres of the Gideons' land to expand Highway 20, but the acquisition would have cut off the Gideons' only access to their remaining property.
- The Gideons agreed to sell on two conditions:
  - ITD would build a road (the "County Road Connection") linking their remaining property directly to Highway 20, and
  - The deed would reserve a permanent right of access to this new road for the Gideons and all future owners.
- In the late 1990s, Bear Crest Limited, LLC acquired the Gideons' remaining property and leased it to Bear World, a drive-through wildlife park easily accessible from Highway 20 via the County Road Connection.
- In 2016, ITD began converting Highway 20 into a controlled-access facility (i.e., a highway that restricts direct access from adjacent properties) and closed the County Road Connection intersection, cutting off direct access to Bear World. Visitors were forced to take a five-mile detour to reach the park.
- Bear Crest sued ITD for breach of contract based on violation of their deeded access rights, and for inverse condemnation.
- The District Court granted summary judgment in favor of ITD and dismissed Bear Crest's lawsuit. Bear Crest appealed.

SUPREME COURT HOLDING & ANALYSIS

On appeal, the Supreme Court resolved the following issues:

1. **Breach of Contract Based on Violation of Deeded Access Rights.** The Court examined whether the 1973 deed, which reserved access rights, created a binding agreement that ITD violated by closing the County Road Connection intersection.
   - **Merger Doctrine:** When a real estate transaction closes and the deed is accepted, the deed replaces the purchase contract. Any terms not written into the deed are generally extinguished. Conversely, terms written into the deed can do more than

transfer title; they create enforceable rights and obligations, such as access rights or use restrictions, that run with the land.

- **Access Rights Created an Easement:** In this case, the deed reserved the right of access to the County Road Connection, creating an enforceable express easement.

The Court held that the reserved access rights written in the 1973 deed created an express easement enforceable by both current and future owners. By closing the intersection and removing the access point, ITD breached the contractual obligations established in the deed.

2. **Inverse Condemnation: Taking of Property Rights.** The Idaho Constitution prohibits the government from taking private property for public use without just compensation. When the government takes or damages property rights without formal condemnation proceedings, the property owner may bring an inverse condemnation claim to recover compensation.

   The Court held that ITD's closure of the County Road Connection constituted a compensable taking on two independent grounds:

   - **Taking of Deeded Access Rights:** The 1973 deed expressly reserved Bear Crest's right to access Highway 20 via the County Road Connection. ITD's closure destroyed that property right without compensation.

   - **Substantial Impairment of Abutting Landowner Access:** Property owners whose land borders a public road hold an inherent right of reasonable access to that road. As an abutting owner, Bear Crest held access rights to the public road. Closing the intersection forced a five-mile detour and materially impaired access to Bear World, requiring compensation.

RESULT OF THE CASE

The Supreme Court reversed the District Court's judgment and ruled in favor of Bear Crest on the breach of contract and inverse condemnation claims. The Court remanded the case to the District Court to determine the appropriate damages.

PRACTICAL APPLICATION

Deed Controls After Closing. Once a transaction closes, the deed supersedes the purchase agreement, and any material promises, covenants, or rights not included in the deed are extinguished. Advise clients to ensure that all key terms are clearly reflected in the deed before closing and to seek legal advice when necessary.

Deed Language Can Create Enforceable Easements. Access rights, use restrictions, and other promises written into a deed can create express easements that run with the land. When reviewing deeds, look beyond the property description for covenants, reservations, or conditions that may affect the property's use or value.

Abutting Landowner Access Rights. For listings bordering public roads, confirm the current points of ingress/egress. Even without a recorded easement, owners have an inherent right to reasonable access. When a proposed infrastructure project threatens to create a significant detour or landlock the parcel, licensees should note this as an adverse material fact and take appropriate action.

Check Title for Easements and Deed Restrictions. When listing or buying near a highway, review the chain of title for reserved access rights (like spur roads or connections), as well as any other nonpossessory interests in the land and deed restrictions. Reserved access rights can preserve commercial value.

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.

Remington v. Wild Bill's Campground & Resort, LLC

Breach of Fiduciary Duty; Property Disclosure Laws; Commercial vs. Residential Disclosure Requirements

Docket #30480; January 2, 2025; Supreme Court of South Dakota

SUMMARY

- In April 2017, Duane and Melody Remington, seeking a new business venture, visited Wild Bill's Campground near Galena, South Dakota. The 12.74-acre property featured 98 campsites (some with sleeping cabins), two bridges, and a main building with living quarters and a bar and restaurant.
- The owner, Keith Grimm, claimed the campground generated $235,000 during the previous three-and-a-half-month camping season.
- Grimm, who had owned the property since 2005, began trying to sell it in 2008. Over the following nine years, he routinely listed it during the off-season and removed the listing during peak camping months. Bryan Iverson, a real estate agent with long-standing ties to Grimm, served as the listing agent each time.
- The Remingtons decided to purchase the property and hired Iverson under a dual agency agreement, with Iverson representing both buyer and seller. The Remingtons signed an $899,000 purchase agreement under a contract for deed, with the property sold "as is."
- The Remingtons did not obtain inspections, request financial records, or verify Grimm's revenue claims before closing. Grimm did not provide a statutory seller disclosure form, and Iverson did not inform the Remingtons that they were entitled to one.

– After closing, the Remingtons discovered significant undisclosed defects:

- **Water Intrusion and Mold**: Extensive water penetration caused mold growth throughout the main building. Grimm knew but did not disclose, forcing the Remingtons to close the bar and restaurant.
- **Structural Issues**: Water damage had compromised the foundation, and framing and load-bearing walls were improperly reinforced.
- **Electrical and Fire Safety Violations**: Numerous circuits were outdated or improperly installed. The property also lacked adequate fire exits, suppression systems, and kitchen ventilation.
- **Deck Encroachment**: The restaurant deck encroached 1.5 feet into an adjacent federal right-of-way. Grimm received a notice in 2016 but did not correct or disclose the issue.
- **Noncompliant Fire Pits**: The fire pits did not meet county codes, which Grimm knew but did not disclose.
- **Misrepresented Bridge Repairs**: The listing falsely claimed two bridges had been "recently rebuilt," but the repairs were 7–9 years old. The Remingtons discovered the truth when motorhomes fell through the bridges during their first season.

– The cost of repairing the foregoing defects exceeded $174,000.

– In January 2018, after operating the campground for only one season, the Remingtons sued Iverson for breach of fiduciary duty and failure to advise on disclosure requirements. They also sued Grimm; however, those claims were settled out of court.

– The Circuit Court granted summary judgment for Iverson, finding insufficient evidence that he knew about the defects. The Remingtons appealed.

– During the proceedings, the Remingtons defaulted under the contract for deed and were forced to return the property to Grimm through a quitclaim deed.

SOUTH DAKOTA SUPREME COURT HOLDING & ANALYSIS

The Court addressed three issues: the scope of a licensee's duties under limited dual agency, the applicability of the property condition disclosure statute to mixed-use properties, and the standards for licensee liability for nondisclosure.

1. **Agency Defined Iverson's Duties to the Remingtons.** Iverson argued that dual agency limited his duties to the Remingtons. The Court disagreed, holding that limited dual agency restricts the duties of loyalty and advocacy but does not eliminate the duty to:
   - Use reasonable skill and care, or
   - Perform the terms of the written agency agreement (South Dakota Codified Laws (SDCL) 36-21A-140).

A licensee cannot use the "limited" label to avoid competence and compliance obligations.

Iverson also argued the Remingtons were customers, not clients. The Court rejected this, holding they were clients because they signed a written agency agreement.

2. **Property Condition Disclosure Required for Residential Component of Mixed-Use Property.** In South Dakota, sellers must provide property condition disclosure statements in residential transactions. The Remingtons never received one, and Iverson did not inform them of their right to one.

   Iverson argued no disclosure was required because the campground was commercially zoned and marketed as a business. The Remingtons argued that the on-site living quarters made it residential. The Court sided with the Remingtons, ruling that the living quarters qualified as residential property, triggering the disclosure obligation. However, the Court limited the disclosure requirement to defects in the residential portion only, which only included the water intrusion and mold issues in the main building.

3. **Liability for Disclosure Failures.** The Remingtons alleged Iverson was liable on two grounds: failing to advise them of their right to a disclosure statement and failing to disclose defects he knew about.

   - **Failure to Advise Buyers on Seller Disclosures.** This was the first South Dakota case addressing whether the disclosure statute applied to mixed-use properties. The Court held that it does, but only as to the residential component. Because this rule was unsettled when the transaction closed, the Court declined to apply it to Iverson retroactively. Instead, it remanded for the Circuit Court to determine whether a reasonable licensee should have advised the Remingtons that a disclosure was required, or at least potentially required, for the living quarters.

     The Court also rejected the argument that the Remingtons waived their right to a disclosure statement by purchasing "as is." An "as is" clause means the buyer accepts the property's condition; it does not waive the statutory right to receive a disclosure statement.

   - **Failure to Disclose Known Defects to Buyers.** A licensee has no independent duty to investigate for defects. Liability for nondisclosure requires proof of actual knowledge and is not imputed from the seller. Because the Remingtons produced no evidence of Iverson's actual knowledge, this claim was dismissed.

RESULT OF THE CASE

The Court affirmed dismissal of the claim that Iverson failed to disclose known defects, held that the seller disclosure statute applied only to the residential component of the property, and remanded for the Circuit Court to determine whether Iverson breached a duty by failing to advise the Remingtons of the disclosure requirement for the living quarters

PRACTICAL APPLICATION (All differences with SD law noted)

Agency Status and Duties. Agency exists only through a written representation agreement. Once signed, the licensee owes full client duties. Customer duties are owed to any party who has not signed one (Idaho Code 54-2084, 54-2086, and 54-2087).

Dual Agency Does NOT Eliminate Core Duties. Limited dual agency limits the duty of loyalty and advocacy but does **NOT** eliminate the remaining statutory duties owed to each client, except where a duty would unreasonably conflict with duties owed to the other (Idaho Code 54-2087 and 54-2088).

Seller Disclosure Requirements for Mixed-Use Property. Idaho's Property Condition Disclosure Act applies to mixed-use properties **ONLY** if they include one to four dwelling units (Idaho Code 55-2504).

Idaho law does **NOT** expressly address whether required disclosures are limited to the residential portion of a mixed-use transaction. Advise clients to define the scope of the disclosure in writing at the start of the transaction to avoid later disputes over the commercial space.

Effect of "As Is" Clauses. An "as is" clause means the buyer accepts the property in its current condition. It does **NOT** waive, reduce, or eliminate a seller's or licensee's obligation to disclose adverse material facts (Idaho Code §§ 54-2086, 54-2087(4)(a)).

Licensee Disclosure Standard. Idaho applies a broader disclosure standard than many other states: licensees are responsible for disclosing facts they actually know **AND** those they reasonably should have known. The longer a licensee is associated with a property, the more they are expected to reasonably know about its condition and history.

Documentation as Defense. To reduce risk, licensees should maintain dated transaction notes that clearly categorize information, including:

- What the seller communicated to the licensee,
- What the licensee personally observed,
- When and how the licensee communicated that information to the client and/or customer.

Sandhu v. Fraser Valley Real Estate Board

Brokerage Practice

Docket No. CA49062; January 9, 2025; Court of Appeal for British Columbia

SUMMARY

- In February 2016, managing broker Jasbir Sandhu took a two-month medical leave to India and arranged for a colleague to serve as interim broker. He communicated the arrangement through an internal messaging system ("Touchbase") and at a brokerage meeting one month before his departure.
- During Sandhu's absence, one of his licensees, Kamal Gill, encountered difficulties in a transaction she was handling as the seller's representative.
- When the deal failed to close, the Buyer's Agent demanded Gill personally pay him $8,000, apparently for lost commission or damages. Under pressure, Gill paid. At the time, she was not aware of Sandhu's absence or that an interim broker was available to assist her because she did not read the Touchbase message or attend the meeting where this information was announced.
- After sending payment, Gill called Sandhu in India for help, but the payment could not be reversed. Sandhu directed her to the interim broker, but she did not follow up.
- Upon returning, Sandhu helped Gill file a complaint against the Buyer's Agent with the Fraser Valley Real Estate Board ("Board"), which resulted in discipline.
- The Buyer's Agent then filed a counter-complaint against Sandhu, alleging he failed to adequately communicate his absence and ensure his licensees had access to an interim broker during his leave.
- The Board substantiated the allegations, reprimanded Sandhu, and ordered him to pay $3,647 in hearing costs. Sandhu's internal appeal was dismissed, and he was ordered to complete a managing broker education course and pay increased costs of $9,369.
- Sandhu petitioned the court to overturn the Board's decision; however, his petition was dismissed. Sandhu appealed to the Court of Appeal for British Columbia.

COURT OF APPEAL HOLDING & ANALYSIS

Because the Board is a private, voluntary association that enforces membership obligations rather than statutory duties, the Court was not conducting an administrative judicial review of the Board's decision. Instead, its inquiry was limited to whether the discipline was "oppressive or unfairly prejudicial," a legal standard that turns largely on the member's reasonable expectations and whether the Board's conduct breached those expectations.

Sandhu argued that the discipline should be set aside because the Touchstone message and office meeting proved he communicated his absence and interim coverage. The Court rejected that framing, holding that the proper question was whether the discipline was reasonably supported by the record as a whole, not whether there was *any* evidence, and not whether the court would have reached a different result.

The Board acknowledged that Sandhu took steps to announce his absence but found those steps insufficient because he failed to establish a workable coverage system. The Board identified three operational failures:

1. **No access protocol.** No clear policies defined the interim broker's role, how licensees would reach him, or how urgent issues would be escalated.
2. **Mixed signals about authority.** Sandhu continued performing functions he had delegated, creating ambiguity about who was in charge.
3. **No staff routing instructions.** The answering service and office staff were never instructed to direct issues to the interim broker.

Against that backdrop, the Court found that Gill's $8,000 payment was not an isolated error but evidence that the coverage system was inadequate: when a serious dispute arose, she lacked a clear escalation path for broker-level guidance and acted without any broker involvement.

Because the Board's conclusions were reasonably supported by the record, the Court declined to reweigh the evidence and upheld the discipline.

RESULT OF THE CASE

The Court of Appeal dismissed Sandhu's appeal and upheld the Board's disciplinary decision.

PRACTICAL APPLICATION

Designated Broker's Responsibilities. A designated broker is responsible for keeping the brokerage in compliance with the law, **AND** responsible for the actions of all associated licensees and unlicensed persons (Idaho Code 54-2038 and 54-2038(1)(a)–(d)). A broker **MUST**:

- Supervise and control all offices and associated persons;
- Review and approve all real estate agreements;
- Be available and maintain regular contact with licensee to prevent violations; and
- Be available to the public to address complaints and disputes.

Availability as a Compliance Tool. A designated broker must remain **available** and maintain **regular contact** with their licensees and other staff. This is specifically designed to prevent violations before they occur. When a licensee is unsure about a complex transaction or disclosure issue, they have a statutory right (and professional duty) to seek their broker's guidance (Idaho Code 54-2038(1)(c)).

The Broker as a Public Liaison. A designated broker is the primary point of contact for the public regarding complaints or disputes. When a transaction becomes adversarial, the broker must be available to address the issue directly, serving as a layer of professional mediation before matters escalate (Idaho Code 54-2038(1)(d)).

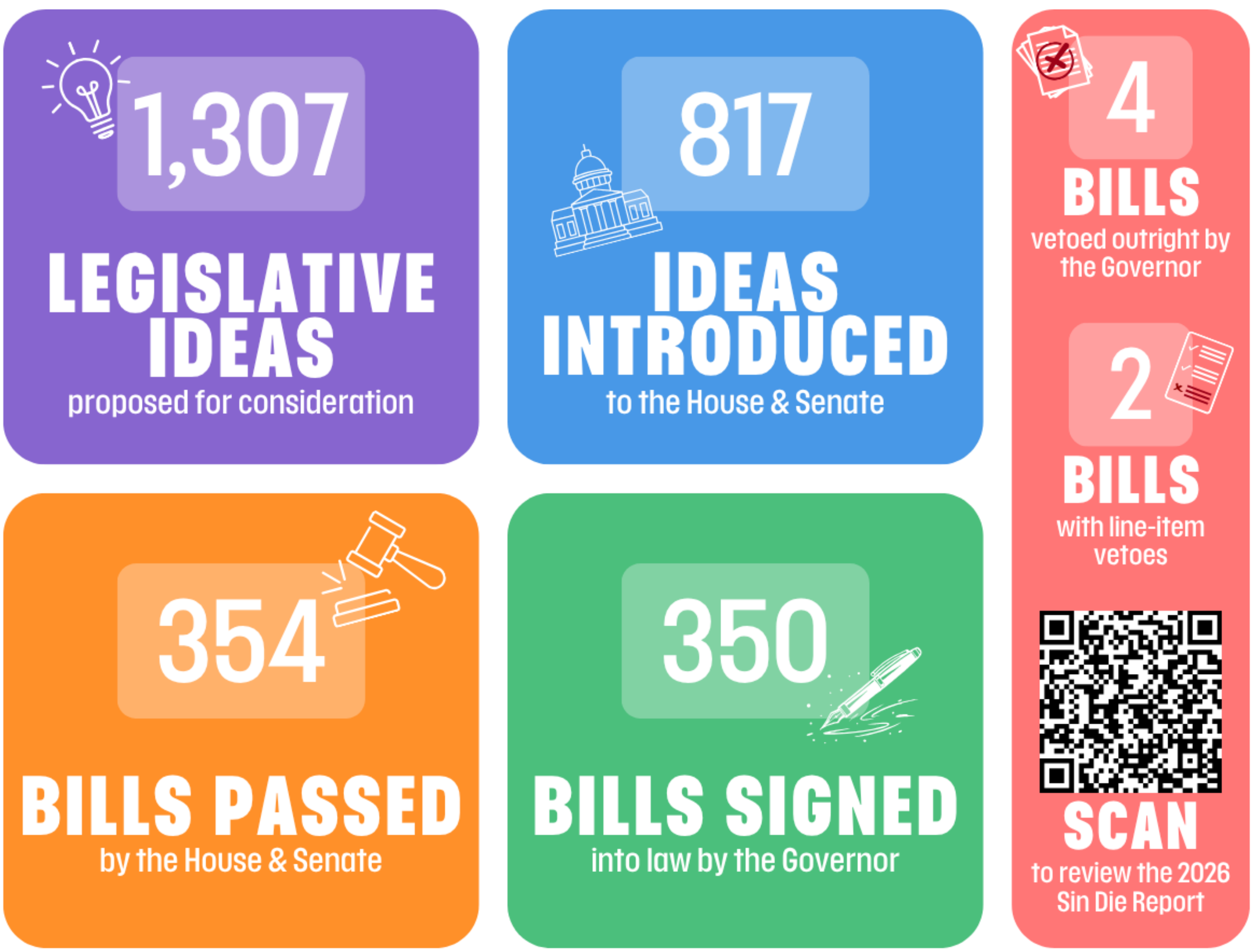
C2026 – Commission Core 2026
Legislative Update

Learning Objectives:

– Review 2026 law and rule changes impacting Idaho real estate practices

SECTION I – 2026 LEGISLATIVE SESSION RECAP

The Second Regular Session of the 68th Idaho Legislature convened on January 12, 2026, and adjourned Sine Die on April 2, 2026. During the session, there were:



SECTION II – PROPERTY RIGHTS & HOMEOWNER AUTHORITY

1. **S1326aa & S1391 – Property Rights (effective March 31, 2026, & April 2, 2026)**

   These companion bills clarify private property rights by standardizing government entry protocols. Officials may approach a residence's front entrance using a standard driveway or walkway, but they must depart immediately if an occupant requests they leave. Accessing acreage, backyards, or outbuildings requires a warrant or owner consent, except in exigent circumstances. The legislation also establishes civil penalties for officials who intentionally disregard these requirements.

   However, the legislation explicitly preserves established legal access for water rights administration, irrigation facility maintenance, and specific public services like weed control or welfare checks.

   (See Idaho Code 18-7101 through 18-7109)

2. **H843 – Homeowner's Exemption (effective January 1, 2026)**

   This legislation removes the proration of the homeowner's exemption based on the date of first occupancy. Clients can now apply for and receive the full **$125,000 exemption** at any point during the year, rather than having it tied to a specific assessment date.

   (See Idaho Code 63-602G)

3. **H583 – Short-Term Rentals (effective July 1, 2026)**

   This bill reinforces that short-term rentals **must** be treated the same as long-term rentals. Local governments cannot ban short-term rentals or require special licensing, professional property management, or structural modifications specific to short-term rentals.

   However, short-term rentals **must** be classified as non-transient residential use, meaning they are subject to the same zoning and building codes as long-term rentals.

   (See Idaho Code 67-6539 & 63-1804)

4. **S1354aa – Accessory Dwelling Units (effective July 1, 2026)**

   This legislation prohibits local governments and HOAs from banning accessory dwelling units (ADUs). It guarantees at least one ADU per lot and prevents authorities from imposing maximum square footage limits on these structures.

   (See Idaho Code 55-3212 & 67-6541)

5. **H800 – Manufactured Homes (effective July 1, 2026)**

This piece of legislation expands affordable housing options by requiring local governments to permit both single-unit and multi-dwelling manufactured homes in residential zones. Understanding these new statewide standards is essential for accurately discussing land-use options and property potential in a limited-inventory market.

The most significant update for licensees is the reduction of minimum size requirements to **400 square feet** for single sections and **800 square feet** for multi-sections.

While local jurisdictions may still enforce standards for foundations and exterior materials, these must remain objective and non-discriminatory to ensure manufactured housing is not excluded through subjective design hurdles.

(See Idaho Code 39-4105 & 67-6509A)

6. **S1352aa – Starter Home Subdivisions (effective July 1, 2026)**

This bill directs Idaho cities with a population greater than 10,000 residents to allow starter home subdivisions on vacant land of four or more acres. It also reduces zoning barriers by lowering minimum lot sizes to 1,500 square feet and adjusts setback requirements to create more affordable options in the market.

(See Idaho Code 67-6541)

7. **H707 – Municipal Corporations (effective July 1, 2026)**

This legislation streamlines the land division process for properties containing an ADU or secondary structure. The key update allows for parcel separation without the time and expense of a full subdivision plat, provided the division is specifically required by a lender for financing purposes. The divided pieces must be sold together in the future.

It is designed to solve a common catch-22 in real estate where a homeowner has the legal right to build a second unit but cannot secure traditional financing because the primary and secondary homes sit on a single, undivided deed. By addressing this, the law ensures that multiple residential units on a single deed do not unnecessarily complicate traditional mortgage or construction lending.

While this process provides a vital solution for unlocking equity, it does not increase density or residential entitlements. It simply aligns the legal property description with lending requirements.

(See Idaho Code 50-1335)

8. **H749 – Annexation by Cities (effective July 1, 2026)**

   This legislation strengthens property rights by preventing cities from forcing nonconsenting landowners to connect to municipal water or sewer systems during or after annexation. Additionally, by requiring cities to pay for damages to private wells or septic systems caused by municipal infrastructure, the law provides a vital financial safeguard for owners in transition areas.

   Given the legal and technical complexities of utility connection rights, licensees should encourage clients to consult with qualified professionals, such as a land use attorney or civil engineer, to verify the status of private systems and any recorded obligations.

   (See Idaho Code 50-222)

SECTION III – PROFESSIONAL PRACTICE & BUSINESS OPERATIONS

1. **H645 – Portable Benefit Plan Act (effective July 1, 2026)**

   The Portable Benefit Plan Act allows independent contractors to access benefits traditionally reserved for employees, such as health insurance, life insurance, and retirement benefits. Hiring parties, such as real estate brokerages, may voluntarily contribute to an independent contractor's portable benefit account. Crucially, the law specifies that these contributions cannot be used as evidence of an employer-employee relationship.

   (See Idaho Code 44-2801 through 44-2804)

2. **H703aaS – Occupational & Professional Licensing (effective July 1, 2026)**

   This bill standardizes disciplinary procedures across the various professional boards within the Division of Occupational and Professional Licenses (DOPL). For real estate licensees, this legislation effectively brings other professions in line with the robust disciplinary framework already utilized by the Idaho Real Estate Commission. A significant update for the Commission is the new statutory authority to order **restitution** to injured parties as part of the formal disciplinary process.

   (See Idaho Code 55-1811, 55-1813, & 67-2616)

3. **S1330aa – Small Claims Dept. of the Magistrate Division (effective July 1, 2026)**

   This legislation triples the small claims limit from **$5,000 to $15,000** for money or property recovery. While it prohibits punitive damages and pain and suffering awards, it provides a cost-effective venue for resolving mid-level commission or earnest money disputes without expensive district court litigation. Licensees should consult a legal professional to evaluate if this simplified venue is appropriate for their specific dispute.

   (See Idaho Code 1-2301 & 1-2311)

4. **H585 – Electrical, Plumbing, & HVAC Inspections (effective July 1, 2026)**

   This legislation enhances construction efficiency by standardizing timelines for electrical, plumbing, and HVAC inspections. It establishes a 48-hour window for requested inspections to be performed; if this timeframe is exceeded, permit holders are authorized to utilize qualified third-party inspectors to maintain project momentum.

   - Permit holder must notify jurisdiction they are now using a third-party inspector
   - A copy of the results must be sent to the jurisdiction
   - If these conditions are met, the jurisdiction shall reimburse the permit holder for the inspection fee they paid to the jurisdiction

   Additionally, if a jurisdiction fails to provide a written reason for why work failed an inspection within three business days, they must refund 10% of the permit fee.

   For licensees, this law offers a practical framework for mitigating common construction delays, ensuring that secondary or new-build projects can progress toward closing with greater predictability.

   (See Idaho Code 54-1004A, 54-2626A, & 54-5020A)

SECTION IV – TAXATION

The following summary outlines the relevant changes that impact fire, ambulance, and library districts. These measures are designed to create means of dealing with rapid growth, including transferring service areas to districts closer to the property, specifically:

- **House Bill 551** (effective January 1, 2026)
- **House Bill 959** (effective January 1, 2026 (Section 2) & July 1, 2026 (Sections 1 & 3))
- **House Bill 765** (effective January 1, 2026)

For more details, review the full bill text or consult with a tax professional, attorney, or County Treasurer.

GENERAL TAKEAWAYS

- Some of the changes are retroactive to January 1, 2026; always pull the most recent data from the County Assessor for 2026 tax estimates
- Boundaries are shifting as districts reorganize; sellers and buyers should be encouraged to verify current service providers and fire districts in fringe or rural areas
- Remind clients that property taxes include various special districts (ambulance, water, fire) beyond just city and county lines
- Clients may now seek corrections for past assessment errors that were driven by market trends rather than property improvements

(See Idaho Code 63-301A; 34-1801D; 63-802; 31-1423; 31-1411; & 63-301A)

C2026 – Commission Core 2026

High & Dry: Avoiding Water Right Pitfalls in Real Estate

Learning Objectives:

- Summarize Idaho water law principles and recent legislative updates; explain disclosure and due diligence responsibilities for real estate licensees, buyers, and sellers

SECTION I – GENERAL IDAHO WATER PRINCIPLES

A. Idaho Water Law

1. Under Idaho's Constitution, all natural water sources, whether surface water (like rivers and lakes) or groundwater, are declared public property

2. While the state retains ownership of the water resource, it legally grants citizens the right to appropriate (claim and use) that water for beneficial purposes

3. When a private right for the use of public waters is established by appropriation, a water right is established

4. A water right is a real property right

GROUP DISCUSSION

When water runs short in Idaho, who gets priority? Is the loss shared equally, or does someone get cut off first?

5. Doctrine of Prior Appropriation: First in time, first in right

6. Conjunctive management is the process by which surface water and groundwater are jointly managed to ensure senior rights are protected

    a. Do not assume a groundwater well is safer than surface water

    b. Under conjunctive management, a well can be shut off if it is determined to be impacting a senior surface water user

B. Water Rights

1. In general, anyone seeking to develop a new water use **MUST** file an application with the Idaho Department of Water Resources (IDWR)

    a. Includes water use tied to a shared/community well

    b. Interested parties may protest and challenge the proposed use due to impacts on existing water rights

2. The Domestic Use Exemption: Certain water uses that are defined as "domestic," are "exempt" and do **NOT** require an application

C. Water Use in Subdivisions

1. Usually one of the following:

    a. Municipal provider: Provide water for all purposes

    b. Community/Shared wells: Private systems provide water to each home and/or common area

    c. Individual domestic wells: Drilled at each residence, provide water for that residence

    d. May also include irrigation entitlement for lawns, gardens, etc.

D. Shared Water Systems/Neighbor Agreements

1. Common for neighbors to share water infrastructure (ditch, well, pipeline, etc.)

    a. Doing so reduces the cost and time commitment associated with managing the infrastructure

    b. Too often, these arrangements are established without a formal agreement

c. While this may work for the original parties, intents and obligations become less clear as the property changes hands, often leading to dispute

2. Prior to sale, it is in a buyer's best interest to verify that an agreement is in place which clearly outlines the rights and responsibilities of the homeowners relative to the shared infrastructure

   a. If such agreement does **NOT** exist, buyers should consider working with a qualified legal professional to draft one

E. Irrigation District Realities: Mandatory Obligations and Due Diligence

1. Under Idaho law, an irrigation district holds the authority to acquire absolute title to a property via a tax deed for unpaid assessments, regardless of how minor the outstanding balance may be

2. Property owners are legally required to pay these assessments even if they never open a headgate or have no physical access to the water, otherwise they risk foreclosure

3. Verification of whether a parcel sits within an irrigation district boundary is a critical piece of pre-closing due diligence to protect buyers from inherited financial liabilities

FOR EXAMPLE...

The Nampa & Meridian Irrigation District is one of the most active districts in Idaho regarding tax deed auctions. Because they serve a high-density area (Boise, Meridian, and Nampa), they often deal with thousands of "urban" parcels where owners are unaware they even owe irrigation taxes.

- In November 2013, **22** properties (collectively valued at over **$2.3 million**) were facing auction due to a collective debt of **$6,780.18**[1].
- In December 2017, **19** properties (collectively valued at over **$3 million**) were facing auction due to a collective debt of **$6,800**[2].
- In November 2019, **19** properties (collectively valued at over **$6.2 million**) were facing auction due to a collective debt of **$4,015.41**[3].

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[1] "22 Properties at Risk Over Delinquent Irrigation Taxes." *KTVB Idaho*, 22 Nov. 2013.
[2] "Properties with Unpaid Irrigation Taxes to be Sold at Public Auction." *Idaho Farm Bureau Federation*, 4 Dec. 2017.
[3] "19 Ada County Properties could be Auctioned due to Unpaid Irrigation District Taxes." Idaho News 6, 21 Nov. 2019.

SECTION II – LEGISLATIVE UPDATES FOR IDAHO WATER LAW

A. 2025 Adjustments from S1083aa (effective July 1, 2025)

1. This legislation was drafted in response to concerns about water supply challenges and the desire to no longer allow unregulated irrigation development (even small development) to continue in Idaho

2. The domestic exemption is now **significantly** limited for new subdivisions in Groundwater Management Areas, Critical Groundwater Areas, or Moratorium Areas:

   a. In-home and livestock use are exempt from the limitations

   b. Any irrigation use (lawns/gardens) requires a permit

   c. Penalties for non-compliance penalties have jumped from a maximum of $300 per year to $500 per 0.1 acre per year

IMPORTANT TO NOTE

Always perform independent due diligence and pull the most current versions of official maps for all transactions. For instructions on accessing the maps for the areas discussed above, scan the QR code at the end of your handout.

2. Developers typically secure an irrigation right for lawns and gardens

3. If a developer has not secured irrigation rights for the property, a buyer may be unable to legally maintain a lawn or garden without a lengthy and expensive permitting process

4. When viewing new lots developed after July 1, 2025:

   a. Buyers should be aware that they need to find out what irrigation rights exist for the property

   b. Licensees should take care to document any discussions or disclosures about these possibilities in the transaction files

3. Local Government Provisions

   a. Requires compatibility for community well systems installed within 1-mile of municipal service area

      - Does **NOT** apply to individual domestic exempt wells

b. Requires that irrigation water remain with the land following development

c. Authorizes consideration of water conditions in planning efforts (like comprehensive plans)

B. 2026 Adjustments from S1222 (effective February 17, 2026)

1. Clarifies that the limitations only apply to subdivisions with final applications on or after July 1, 2025

2. Creates a uniform definition of subdivision, ***ONLY*** *for water management*

a. Idaho Code 50-1301(18) defines a subdivision as a "*tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development*"

- Landowners may split property into parcels of five acres or larger without triggering subdivision requirements, provided the land is for agricultural use

C. Other 2026 Idaho Water Legislation

1. S1304 – Irrigation (effective July 1, 2026)

a. Irrigation districts and canal companies have expanded rights to work within their rights-of-way

2. S1305 – Water Districts (effective July 1, 2026)

a. Authorizes water districts to establish a fixed fee to cover the administrative costs of transferring water right documentation to new owners upon a property sale and allows for an annual charge of up to $250 for watermaster services

3. S1307 – Water (effective July 1, 2026)

a. Unauthorized diversion or damaging can now trigger triple damages. Clients should be aware of the fact that no modifications are to be made to ditches, headgates, or delivery structures without official district approval.

b. Lateral Water Users' Associations have strengthened authority to repair ditches and bill homeowners

c. Most lateral assessments are now due by May 1

d. Unpaid fees can lead to a shut-off of water delivery, which can drastically impact a property's value and landscaping during the summer selling season

4. For more details, review the full bill text or consult with a water rights attorney, a civil engineer, or the Idaho Department of Water Resources

SECTION III – POTENTIAL PITFALLS & IDAHO CASE LAW

A. Omissions and Accountability: The Realities of Disclosure Obligations

1. The Seller Property Disclosure Form

   a. Relying on contractual silence or checking a generic box on a disclosure form does not insulate a transaction from post-closing disputes

   b. Standard real estate forms are only as effective as the specific details included regarding water rights and restrictions

   c. When contract language and disclosure forms are incomplete, it opens the door for buyers to pursue claims of fraud and statutory violations

2. Sellers **MUST** accurately disclose not just the presence of physical infrastructure like pipes and wells, but the actual legal right to use the water flowing through them

3. Idaho courts treat the absence of a verified legal right to a property's water source as a major property defect rather than a minor administrative issue

IDAHO CASE LAW: THE ILLUSION OF IRRIGATION

Humphries v. Becker – Docket No. 41897 – January 22, 2016

THE DISPUTE: In 2009, the Humphries purchased a Cassia County property from Becker. The property included a sprinkler system they believed was supplied by a "Shared Well" on an adjacent lot. After closing, they discovered the Shared Well only provided domestic water; the irrigation system actually drew from a "Farm Well" on a neighbor's property. While the neighbor allowed use of the Farm Well for free, the Humphries had no legal right to the water and could be cut off at any time. They sued for fraud and violations of the Idaho Property Condition Disclosure Act, claiming Becker failed to disclose the lack of a legal irrigation right.

SUPREME COURT ANALYSIS: The Idaho Supreme Court ruled that the lack of a legal right to a water source can constitute a "problem" or "defect" under the Disclosure Act. Simply checking "Private System" on a disclosure form is insufficient if the seller knows no legal right exists. Becker argued she never saw the MLS listing created by her agent, which described the source as a "Shared Well." However, the Court held she could be liable because she was present during the initial meeting with the agent and "should have known" the listing was misleading.

RESULT OF CASE: The Court vacated the summary judgment in Becker's favor, ruling that a jury should decide if she made fraudulent statements or failed in her duty to disclose the true nature of the water system.

TAKEAWAYS: Prioritize total transparency. Instruct sellers to carefully and accurately fill out disclosure forms. Proactively correct errors and refrain from making assumptions that a buyer or seller might rely on.

B. Constructive Knowledge: Visible Evidence and Implied Notice

1. A ditch easement is valid **even if** it is not identified in a recorded document

2. Idaho Code 42-1102(3): Property owners are deemed to have notice of an easement for a ditch, canal, lateral or conduit (buried pipeline) if:

    a. Actual or constructive knowledge exists

    b. The ditch, canal, lateral, drain or conduit of any feature of these items is visible

    c. Any indicators of a buried pipeline are visible

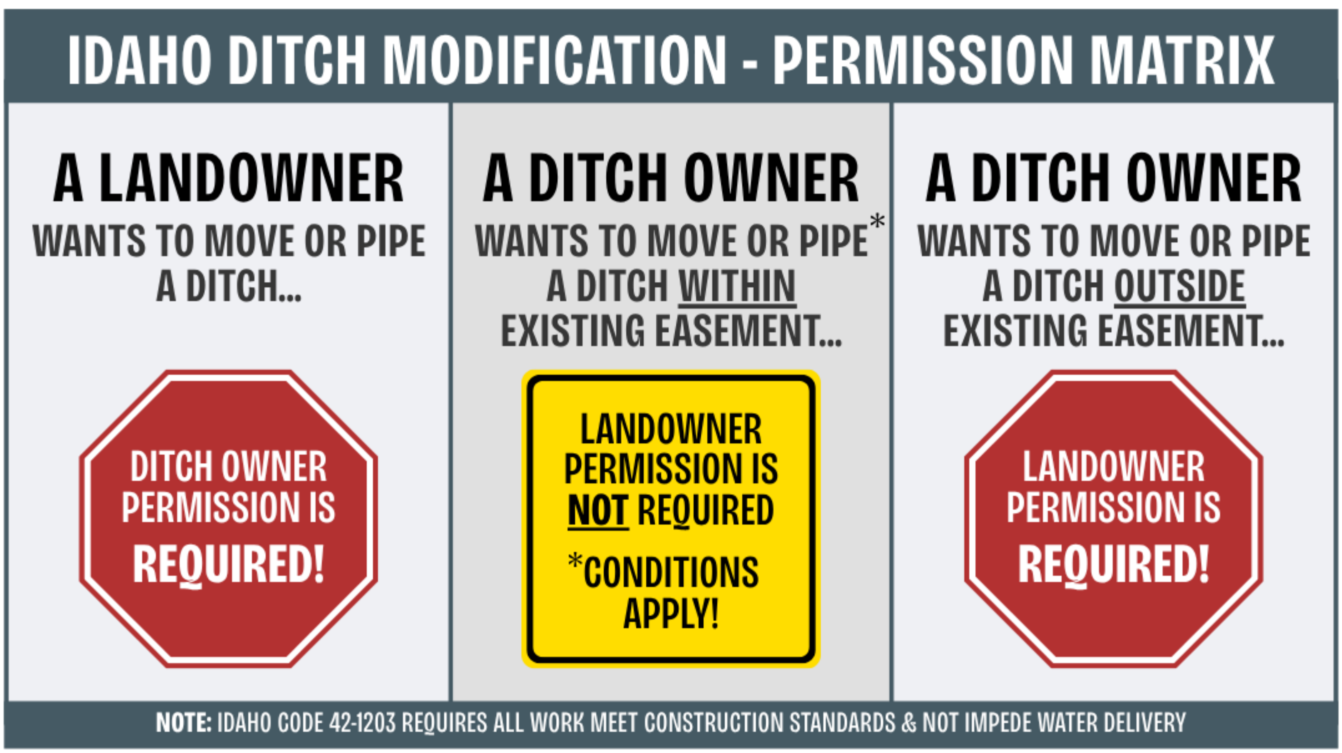
3. This is true even if public records are silent

GROUP DISCUSSION

When showing a property, what are some of the common indicators that the property transaction will involve water rights or ditch easements?

C. Easement Management: Access, Upkeep, and Debris

1. The ditch owner has the right to occupy the ditch, canal, lateral, drain, conduit, embankments, and irrigation structures to operate, clean, maintain, and repair
2. The owner of a ditch can go onto a landowner's property at any time, without notice, to inspect the ditch and this right exists during any season of the year
3. The owner of a ditch can remove debris, like soil, vegetation, trash, from the ditch and leave it on the banks



IDAHO CASE LAW: FROM THE TRENCHES

Hood v. Poorman – Docket No. 48636 – October 27, 2022

THE DISPUTE: The Hoods purchased a property in Cambridge, Idaho, that relied on a four-mile-long irrigation ditch crossing the neighboring lands of the Poormans and Rusty Anderson. The Hoods held an easement (right-of-way) allowing them to enter their neighbors' land to access the ditch. Believing their right-of-way was 200 feet wide and granted them absolute control, the Hoods removed a bridge and two culverts, preventing the neighbors from accessing their own land. They also cut down 100 trees and stripped two acres of dirt and vegetation. After years of conflict, the Hoods sued for an injunction against interference, while the neighbors counterclaimed for trespass and damages.

SUPREME COURT ANALYSIS: The Idaho Supreme Court noted that a visible ditch constitutes notice to the servient estate (landowner) that the dominant estate (ditch owner) has a right-of-way. However, the Court clarified that ditch owners may utilize this right-of-way "only when necessary and in a reasonable manner" to avoid needlessly burdening the landowner. Because the neighbors' culverts did not interfere with the flow of water, the Hoods had no legal right to remove them.

RESULT OF CASE: The Court upheld that the Hoods acted unreasonably by removing the culverts and using the Poormans' private road. While it affirmed damages against the Hoods, it remanded the case to clarify future access rights, ensuring the Hoods maintain ditch access without causing unnecessary destruction.

TAKEAWAYS: Buyers should conduct due diligence to determine use and access rights. Don't assume preferred or historic ditch usage is reasonable. Use formal contracts to define access and usage limits for the ditch owner and the property owner.

IMPORTANT TO NOTE

When a client intends to install a gate, fence, landscaping, or other barrier across a ditch easement, remind them that the ditch owner's **WRITTEN PERMISSION** is required **BEFORE** it can be installed. Always document these conversations in your transaction file and advise clients to seek legal counsel before restricting any ditch owner's access.

D. Contract Language: Rights, Restrictions, and Responsibilities

   1. When water rights/entitlements are **NOT** mentioned in the purchase agreement, the buyer retains the water rights

      a. Silence = conveyance

   b. All water rights/entitlements are conveyed to the new owner **UNLESS** the seller expressly reserves them in the purchase agreement

2. The new owner assumes **ALL** rights and duties associated with the water right/entitlement, including the:

   a. Right to use the water **AND**

   b. Duty to pay any related assessments

IMPORTANT TO NOTE

Be wary of blurring the lines between your responsibilities to the buyer and seller and unauthorized practice of law. When in doubt, a qualified and experienced attorney is the best resource to help draft language to convey water rights and/or easements.

GROUP DISCUSSION

Who remembers how to look up a water right?

SECTION IV – ACTION ITEMS FOR SELLERS, BUYERS, AND BROKERS

A. Seller Responsibilities

1. Identify all water rights/entitlements

   a. Verify paper water rights by locating the water right number on the report

   b. Confirm beneficial use has been documented within the past 5 years

2. Communicate desire to retain any water or water rights

   a. Water rights **MUST** be reserved by explicitly stating so in the deed

b. Confirm with lender that the water rights can be separated or transferred. Some Idaho lenders require prior authorization for water right separation or transfer.

B. Buyer Responsibilities

1. Perform due diligence to verify that water rights exist and are deliverable, as water rights are not automatically included. Title reports often exclude water rights, so don't assume water comes with the house or property!

2. Verify that everything necessary to access and deliver the water is in place and in good working order

   a. Physical equipment, like pumps, headgates, etc.

   b. Request written paperwork, like access agreements, water rights, chain of title, etc.

   c. Cross-reference the physical location of pumps, headgates, and ditches against official records to confirm that the actual water delivery points match the legally designated *Place of Diversion* and *Place of Use*

3. Understand obligations related to the newly assumed water or water rights

   a. Assessments, maintenance, shared well, etc.

4. Update ownership records

   a. When property is conveyed, the ownership records of the water rights/ entitlement **MUST** be updated with the appropriate entity by the new owner

   b. Ownership does **NOT** update automatically

   c. A Notice of Change of Ownership (Form 42-248) **MUST** be filed with IDWR within 120 days of closing

IMPORTANT TO NOTE

Specific documents and verification steps are required by IDWR to ensure legal chain of title remains intact for water and water rights. Title insurance typically excludes water rights. It is **CRITICAL** for buyers to independently verify ownership through IDWR records!

C. Licensee Responsibilities

1. Ensure water rights/entitlements are identified on the purchase agreement as directed by the buyer

2. Ensure the seller provides and/or the buyer has access to documentation pertaining to water rights that the new property owner might want or need, including:

   a. For the irrigation district, the most recent assessment bill

   b. For the canal company, the seller will need any physical share certificates

   c. For any shared access, well agreements, cost-sharing, maintenance agreements, or the like, the seller will need:

      - Copies of the initial agreements
      - Any revisions or amendments that have been made
      - Any records indicating how and when payments, maintenance, access, or distribution have occurred

3. When there is a ditch easement, licensees are obligated to:

   a. Explain the seller's obligation to notify the buyer of the easement's existence

   b. Ensure the buyer understands there is a ditch easement and any implications it may have on their use and enjoyment of the property

   c. Assist a buyer in finding alternative property, if desired

4. If your clients have questions, suggest they contact a water attorney or expert

Looking for some extra information about this section? Scan the QR code to access FAQs, expanded definitions, & helpful graphics!

C2026 – Commission Core 2026

Alexa, Am I Breaking the Law? Legal Boundaries for AI in Real Estate

Learning Objectives:

- Evaluate how to implement AI tools in daily real estate practice in a manner that complies with Idaho license law and aligns with the Designated Broker's supervisory responsibilities

GROUP DISCUSSION

How many of you are currently using AI tools and programs in your real estate practice?

What do you use AI for in your daily real estate business?

Artificial Intelligence (AI) is changing how the real estate industry operates, but it has not changed the legal rules of the profession. While these tools can save time and streamline workflows, they also introduce significant professional and legal liabilities if left unchecked.

No matter how advanced software becomes, it cannot replace sound professional judgment. Under Idaho law, licensees remain entirely responsible for ensuring that statutory duties are met with reasonable care, that sensitive client data remains completely secure, and that all advertising is truthful.

As we look at how Idaho law overlaps with these new tools, remember that your Designated Broker is the ultimate authority. Every brokerage handles technology differently, so always cross-reference these concepts with your specific company policies.

SECTION I – LEGAL REGULATIONS

KNOWLEDGE CHECK

Answer the following questions as directed by your instructor. Remember, this is a baseline check, so if you aren't sure about an answer, give it your best guess! These questions will be discussed in full during and after the upcoming video.

1. **TRUE** or **FALSE**. The Federal government has passed multiple laws to regulate the use of AI and outline acceptable practices.

2. What level of government regulates AI?
   a. Federal
   b. Department of Justice
   c. State
   d. Local

3. List 4 risks related to the use of AI in real estate transactions:

VIDEO CLIP 1

In our first video, attorney Trista Curzydlo discusses regulations surrounding AI in the US. As you watch, identify if any of your answers above are incorrect or need some adjustments. Does Trista's perspective change your opinions or answers? Why or why not?

VIDEO SUMMARY – FEDERAL REGULATIONS

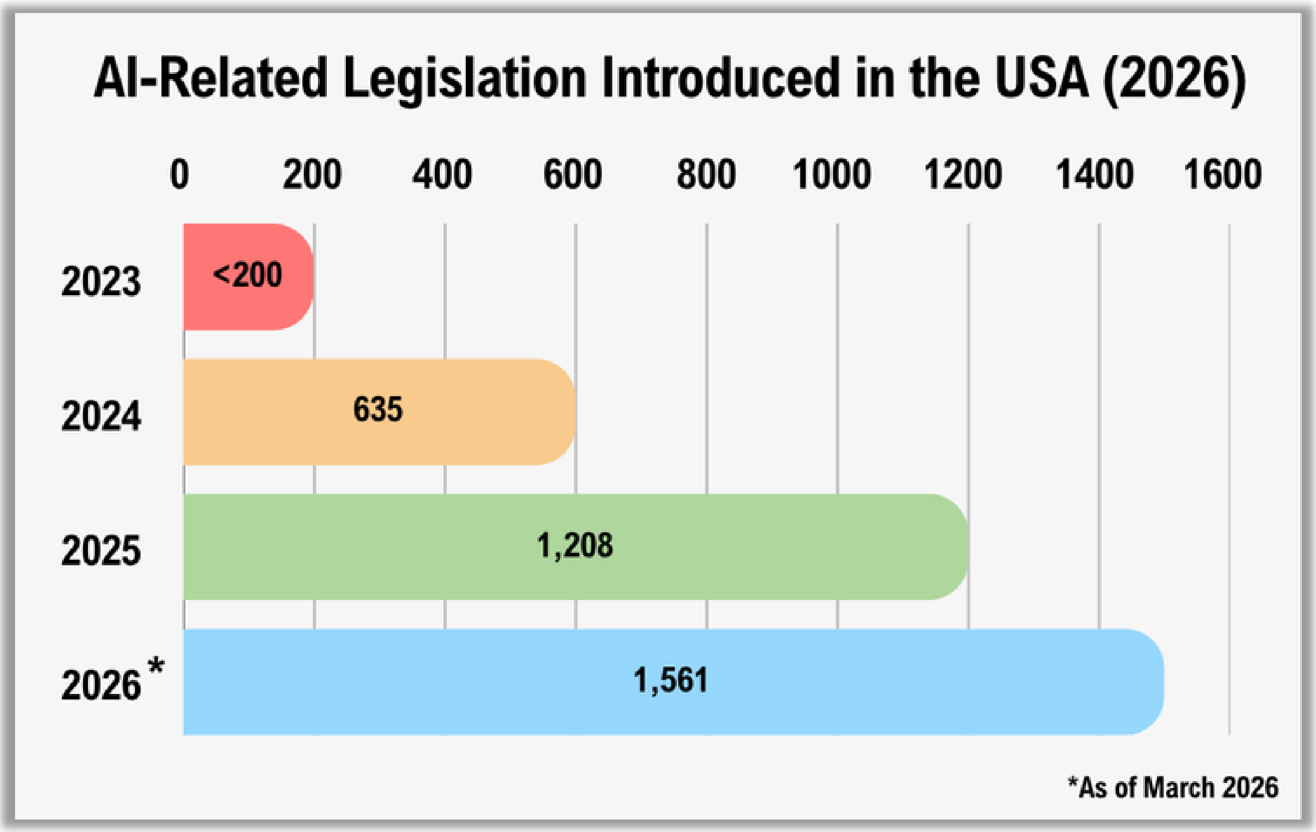
As of May 2026, **NO** comprehensive federal regulation surrounding the use of AI exists in the United States

- Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People (October 2022)
- Executive Order 14110: The Safe, Secure and Trustworthy Development and Use of Artificial Intelligence (October 2023)
- "Joint Statement on Enforcement of Civil Rights, Fair Competition, Consumer Protection, And Equal Opportunity Laws in Automated Systems" (April 4, 2023) and "Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems" (April 2023)
    - Agencies define "automated systems" to mean software and algorithmic processes, including AI, that are used to automate workflows and help people complete tasks or make decisions
    - **These statements make it clear that these agencies will enforce existing law when automated systems are used**
- Executive Order 14179: Removing Barriers to American Leadership in Artificial Intelligence (January 2025)
- Executive Order 14319: Preventing Woke AI in the Federal Government (July 2025)
- Executive Order 14320: Promoting the Export of the American AI Technology Stack (July 2025)
- Executive Order 14365: Ensuring a National Policy Framework for Artificial Intelligence (December 2025)

A. **AI-Related Legislation in the USA**

1. As of March 2026, 45 states introduced AI-related bills during their legislative sessions

    a. In Idaho, 9 AI-related bills were introduced and 3 were signed into law (H727 – Video Voyeurism and Synthetic Media, S1227a – Generative Artificial Intelligence in Education, and S1297a – Conversational Safety Act)



Source: https://www.multistate.ai/artificial-intelligence-ai-legislation

B. **Idaho License Law**

1. Though none of Idaho's 2026 AI-related bills directly apply to real estate, ***existing* Idaho license law *directly applies*** to the use of AI in real estate practice; Specifically:

    a. Idaho Code 54-2002 – Licensure Required

    b. Idaho Code 54-2087 – Duties to a Client

    c. Idaho Code 54-2053 – Advertising

    d. Idaho Code 54-2038 – Designated Broker – General Responsibilities

SECTION II – LICENSEE RESPONSIBILITIES

A. **Idaho Code 54-2002 – Licensure Required**

No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state ***without an active Idaho real estate license****… Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state… shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.*

1. AI does **NOT** hold a real estate license – it is a tool, **NOT** a decision maker

2. You, *the licensee*, are responsible – **NOT** the AI

   a. Licensees remain fully accountable for all content, communications, and representations made to clients and the public

   b. Never rely on AI outputs without verification

B. **Guideline 17 – Real Estate Assistants, Transaction Coordinators, and Office Staff – Licensed and Unlicensed:** *Brokers and licensees must remember that any assistants involved with a transaction must be under the supervision of the licensee of record…The licensee of record must be cognizant of the information that may be shared or forwarded in any emails or text messages.*

When considering hiring any assistant, licensees should have a discussion with their broker, because ultimately, the broker is responsible for the actions of all assistants.

Licensees should also have a conversation with their customer or client to ensure they are aware that a third party may have access to their confidential information.

CASE STUDY 1

A real estate licensee decides to use a chatbot to provide information to customers who contact him through his website. The chatbot is provided with preprogrammed answers to certain questions and has generative capabilities to answer other questions.

For example, if a customer asked, *"What is the listing price for the house at 124 N. B Street?"* The bot would generate a response using the data made available to the bot. If a customer asked, "*Why is the seller at 124 N. B Street moving?"* The preprogrammed response to a question like this is *"There are many reasons why a homeowner may choose to sell their property."*

The data set provided to the bot was originally limited to the information provided by the licensee to the MLS. However, an update to the system allowed the bot access to the notes and e-mails of the licensee to generate more accurate responses.

DISCUSSION QUESTIONS:

- Based on the update allowing the bot access to the licensee's emails and notes, what is the immediate risk here regarding the client's motivation?
- If the licensee's emails contain a message from the seller saying, "We're getting a divorce and desperately need to sell," and the bot shares that to be helpful, which specific statutory duty has been violated?

VIDEO CLIP 2

In **Clip 2**, Trista discusses **Case Study 1**. While you watch, consider your answers to the discussion questions above. Does Trista's perspective change your opinions or answers? Why or why not?

B. **AI Due Diligence**

KNOWLEDGE CHECK

Answer the following questions as directed by your instructor. Remember, this is a baseline check, so if you aren't sure about an answer, give it your best guess! These questions will be discussed in full during and after the upcoming video.

1. Identify **at least 2 of the 4 things** you should consider discussing with your broker before using a particular AI platform in your real estate practice?

2. **TRUE** or **FALSE**. The Terms & Conditions for AI platforms typically do **NOT** change, so it isn't important to re-read them when you are notified of an update.

3. What is digital data encryption *at rest*?
   a. Moving data across the internet to a virtual storage unit
   b. Keeping data safely locked while it sits on a server or computer
   c. Leaving data in plain text for anyone to read
   d. Deleting unused data regularly so that a hacker cannot access it

VIDEO CLIP 3

In **Clip 3**, Trista outlines her recommendations for evaluating whether an AI platform meets professional standards. While watching, review your baseline answers above—noting anything you need to adjust—and consider how her approach compares to your own.

VIDEO SUMMARY – AI WALKTHROUGH CHECKLIST

☐ **Platform –** What platform am I using?

☐ **Purpose –** What is the purpose of this platform? What can this platform do? How am I planning on using it?

☐ **Data Check** – What does this platform do with my data? Does it store or reuse my data? Will my data be used to train the AI?

- Before using any AI platform, licensees should read and understand its Terms of Service and Privacy Policy

☐ **Review Security –** What type of security does this platform offer? Does it offer access controls? Does it encrypt my data? What type of encryption does it use?

- **The Encryption Process** – When you encrypt your data, you are taking that readable information, putting it inside a virtual storage unit, and locking the door. The data is instantly scrambled into a messy jumble of random characters. If a hacker breaks into the facility, all they see is an unreadable, chaotic mess.
- **The Key –** To lock (and unlock) the unit you need a specific key. In the digital world, this key is a complex mathematical code. Only people with the exact matching key can unlock the storage unit and turn that scrambled mess back into readable data.
  - **Encryption at Rest –** This is like your stuff sitting safely locked inside the storage unit on a weekend. Even if someone breaks into the building (like a hacker breaching a server), they can't get past your specific unit's lock.
  - **Encryption in Transit –** This is like moving your stuff from your house to the storage facility in an armored, locked moving truck. If someone pulls the truck over on the highway, they still can't get to what's inside.

SECTION III – AGENCY & CONFIDENTIALITY

CASE STUDY 2

You are introducing the use of AI into your practice, and you decide to use it to make your correspondence "more professional." You meet with a potential client who is interested in selling their home. During this meeting, you gather some information about the potential client, including their:

- Motivation for selling (moving closer to their only child and his family)
- Goal sales price ($1,550,000)
- Absolute lowest acceptable sales price ($1,475,000)
- Property information (previous repairs to the basement, a neighbor who is a jerk about the property line and threatens to sue at least once a month)

The seller reviews and signs the acknowledgement in the Agency Disclosure Brochure but does not sign a listing agreement during the appointment. After, you want to have AI summarize your discussion and generate a letter to the client as a follow-up pitch.

DISCUSSION QUESTION:

- If you took this scenario to your Designated Broker, what do you think their policy would be regarding inputting unlisted property details and client pricing strategies into unsecure AI platforms?

VIDEO CLIP 4

In **Clip 4**, Trista demonstrates how to walk through a platform using the checklist on the previous page. As you walk through the platform with her, identify **AT LEAST TWO** red flags about using the platform, based on the information provided in **Case Study 2**. After the video finishes, discuss your findings with a partner.

VIDEO CLIP 5

In **Clip 5**, Trista discusses the legal risks of entering client data into public AI platforms. While you watch, identify the **three** specific pieces of information that when combined create a searchable digital identifier. Note Trista's primary recommendation for protecting your client's data. After the video finishes, compare notes with a partner.

A. **Idaho Code 54-2083(6) –** *"Confidential client information" means information gained from or about a client that:*

- *Is not a matter of public record;*
- *The client has not disclosed or authorized to be disclosed to third parties;*
- *If disclosed, would be detrimental to the client; and*
- *The client would not be personally obligated to disclose to another party to the transaction*

B. **Idaho Code 54-2087 – Duties to a Client.** Licensees are **REQUIRED** to:

- *Exercise reasonable skill and care;*
- *Promote the best interests of the client in good faith, honesty and fair dealing*
- *Maintain the confidentiality of specific client information…beyond the termination of representation…so long as the information continues to be confidential*

C. **NEVER** input confidential client information into AI platforms unless you are certain the platform protects and does **NOT** store or reuse that data. Examples of confidential client information include:

   1. Client financial information

   2. Transaction details

   3. Personal identifying information

D. Disclosure & Transparency

   1. If AI is used to generate significant client-facing content (listings, market analyses, etc.), licensees should be prepared to disclose that use

   2. Do **NOT** present AI-generated insights as expert analysis without verification

GROUP DISCUSSION

Though the duty of confidentiality is **NOT** owed to customers, why should real estate licensees still be cautious about the information they enter into AI**?**

CLASS ACTIVITY

Let's go back to **Case Study 2**:

You are introducing the use of AI into your practice, and you decide to use it to make your correspondence "more professional." You meet with a potential client who is interested in selling their home. During this meeting, you gather some information about the potential client, including their:

- *Motivation for selling (moving closer to their only child and his family)*
- *Goal sales price ($1,550,000)*
- *Absolute lowest acceptable sales price ($1,475,000)*
- *Property information (previous repairs to the basement, a neighbor who is a jerk about the property line and threatens to sue at least once a month)*

The seller reviews and signs the acknowledgement in the Agency Disclosure Brochure but does not sign a listing agreement during the appointment. After, you want to have AI summarize your discussion and generate a letter to the client as a follow-up pitch.

DIRECTIONS: Write a prompt you could paste into an AI platform to generate the follow-up letter mentioned in **Case Study 2**.

- **Rule 1:** You *cannot* use the names, the exact numbers, the word "basement," or the word "neighbor" in your prompt
- **Rule 2:** You must instruct the AI on the *tone* you want (approachable but professional) and tell it where to leave blanks for your sensitive data

SECTION IV – ADVERTISING

When you use AI to write property descriptions or social media captions, you need to watch out for a major glitch known as a hallucination. This happens when the AI confidently invents details that are completely false, inaccurate, or misleading.

A simple rule of thumb: Treat AI outputs as a rough first draft, and **ALWAYS** manually **VERIFY** every single property feature **before** hitting publish!

VIDEO CLIP 6

In **Clip 6**, Trista discusses AI hallucinations and the risks of virtual staging. While you watch, identify when virtual staging crosses from an acceptable marketing tool into potentially false or deceptive advertising. After the video finishes, discuss with a partner.

A. **Idaho Code 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.*

B. **Guideline 13 – Real Estate Advertising:** *Information is defined as 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."*

For example…misrepresenting the property structure, city, lot size or features of a property on the advertisement.

This may also apply to any images used in an advertisement. Licensees ***SHOULD NOT*** *use images that have been edited in a way that may misrepresent or conceal the current condition of the property.*

CLASS ACTIVITY

Review the listing photos on the screen & determine if the use of image enhancement could be construed as misleading or not. As you review the images, note any changes that cross the line from standard marketing into deceptive advertising under **Guideline 13** (altering permanent fixtures, changing views, or hiding property defects).

C. Practical Applications for Advertising with AI

1. All AI-generated property descriptions, marketing materials, and communications **MUST** be reviewed for accuracy

2. Do **NOT** allow AI to enhance or exaggerate property features beyond what is factual

3. Misleading or false advertising—whether AI-generated or not—is still a violation!

IMPORTANT TO NOTE

AI tools may unintentionally produce biased or discriminatory language. All generated materials **MUST** be reviewed to ensure compliance with Idaho License Law **AND** Fair Housing laws!

SECTION V – BROKER SUPERVISION & ACCOUNTABILITY

GROUP DISCUSSION

What are some considerations that should be evaluated before using AI in real estate practice?

VIDEO CLIP 7

In this final video, Trista discusses the importance of policies regarding generative AI usage. While you watch, identify who bears ultimate legal responsibility if confidential client information is inadvertently leaked through an AI platform.

A. **54-2038. Designated Broker – General Responsibilities**

The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company's business or where representation is conducted.

A designated broker is required to:

- *Supervise and control…the activities of all licensees and unlicensed persons associated with that brokerage company or for whom that designated broker is responsible*
- *Review and approve all real estate agreements…related to listing, selling or purchasing property and brokerage representation agreements*
- *Be reasonably available to manage and supervise the brokerage company during regular business hours and maintain adequate, reasonable, and regular contact with sales associates engaged in real estate transactions*
- *Be reasonably available to the public during business hours in order to discuss or resolve complaints and disputes*

A designated broker shall not allow any person who is not properly licensed to represent that broker as a sales associate, or otherwise, in any real estate business activities requiring a real estate license.

B. Competence & Oversight

1. Use AI only in areas where you can competently review and validate the output

2. If you don't understand it, don't use it

3. Only use AI within the boundaries set by your broker for the brokerage

C. Recordkeeping

1. Maintain appropriate records of communications and materials as required by law or brokerage policy

2. Maintain a document trail for your AI usage

3. Remember to regularly review the Terms & Conditions of the AI platforms, programs, and tools that you use! Key things to look for:

   a. Whether your data is stored or reused

   b. Whether inputs are used to train the model

   c. Ownership of generated content

4. If you wouldn't put it on a public website, don't put it into an AI tool without confirming protections

IMPORTANT TO NOTE

Most people skip the terms and conditions. That's exactly how data leaks and compliance problems happen. If you're putting regulated or client information into a tool you haven't vetted, you're taking a risk you probably wouldn't knowingly accept.

D. Licensees and brokers should plan to have a discussion on the following topics:

1. Broker Direction: Clear definitions of permissible and prohibited AI activities

2. Due Diligence: Vetting tools to ensure compliance with Idaho license law and prevent unlicensed activity

3. Training: Ongoing education for licensees and staff regarding responsible use and data security

4. Supervisory Review: Mandatory human review of all AI-generated materials prior to client use

5. Audit Trail: Retention of records showing licensee review and approval of AI outputs

6. Human Oversight: Preventing automated models from making decisions without manual verification

7. Contracts: Safeguards to prevent the unauthorized practice of law in document preparation

8. Confidentiality: Security controls to protect sensitive consumer data from public AI inputs

9. Disclosure: Transparency protocols for notifying clients when AI assists in transaction processing

10. Error Protocol: Immediate procedures for identifying, correcting, and reporting AI misinformation

IMPORTANT TO NOTE

IREC is currently drafting an official guideline specifically dedicated to the use of Artificial Intelligence in Idaho real estate practice. Help us build this by providing feedback on how you use AI and what potential risks you see that the Commission should address.

Once released, this new guideline will provide clear, practical guardrails and outline the Commission's regulatory expectations regarding data privacy, advertising truthfulness, and broker oversight. Keep an eye on the IREC website for the official release date.

Remember, the personal responsibility of AI usage during real estate transactions is the personal responsibility of licensees and brokers. The adoption of AI in real estate must occur within the framework of Idaho's existing license law.

Technology cannot replace the legal and ethical duties of a licensed professional, nor can it replicate the expertise and critical thinking skills that licensed professionals offer their clients.

SECTION VI – GLOSSARY

TERMS & DEFINITIONS	EXAMPLES
Large Language Model (LLM): An advanced AI system trained on massive datasets to process, summarize, translate, predict, & generate human-like text or code.	ChatGPT Google Gemini Anthropic Claude
Convolutional Neural Network (CNNs): A specialized AI system designed to process, analyze, & classify visual data, like images & videos.	Facial Recognition Medical Imaging Self-driving Cars
Recurrent Neural Network (RNN): A type of AI designed to predict data that occurs in a sequence, like words in a sentence or daily stock prices.	Alexa Siri Google Translate
Reinforcement Learning Model (RLM): An AI system that learns by trial & error, like how a dog learns tricks. Instead of being programmed with rules, the AI performs actions, receives rewards or penalties for its results, & adjusts its behavior to maximize the reward.	AlphaZero (chess) Chatbots Traffic Control
Generative Adversarial Network (GAN): A framework where two AI models compete against each other to create new, realistic data. It consists of a Generator that creates fake data (like images or music) & a Discriminator that evaluates whether the data is real or fake.	Adobe Photoshop Waymo Deepfakes
Decision Tree & Random Forest: A Decision Tree is a flowchart-like model that makes decisions by asking a series of yes-or-no questions, while a Random Forest combines hundreds of different decision trees together to make a highly accurate, group-voted prediction.	Microsoft Office Loan Risk Evaluation Akinator
Generative AI: A type of artificial intelligence that can create brand-new content, like text, images, audio, or code, rather than just analyzing existing data.	ChatGPT Google Gemini Anthropic Claude

*

Interested in hearing how Trista explains the Glossary terms? Scan the QR code to watch!