

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of)	NOTICE OF PUBLIC HEARING
ARM 24.207.401 fees, 24.207.402 adoption)	ON PROPOSED AMENDMENT
of USPAP, 24.207.403 regulatory reviews,)	
24.207.501 examination, 24.207.502)	
application requirements, 24.207.504)	
through 24.207.507 education requirements,)	
24.207.508 and 24.207.509 experience,)	
24.207.510 scope of practice, 24.207.517)	
trainee requirements, 24.207.518 mentor)	
requirements, 24.207.520 renewals,)	
and 24.207.2101 continuing education)	

TO: All Concerned Persons

1. On August 12, 2008, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on August 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonable and necessary to amend the rules throughout to comply with ARM punctuation and formatting requirements. The board is amending the rules to replace out-of-date terminology with current language and to achieve better organization and consistency in language use. The board has found equivalency courses to be inconsistent and substandard and has not previously accepted any USPAP equivalent courses. Therefore, the board is also amending the rules to delete all equivalency course provisions. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) through (1)(c) remain the same.

(d) course approval per course payable by course provider ~~400~~ 200

(e) course renewal approval per course ~~50~~ 100

(f) through (m) remain the same.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, ~~37-54-201~~, 37-54-202, 37-54-212, 37-54-302, 37-54-310, ~~37-54-403~~, MCA

REASON: It is reasonably necessary to amend this rule to increase fees for the review and approval of education courses. Per 37-1-134, MCA, the board must set fees commensurate with associated costs. The board is raising these fees in response to the increased staff time required to review and approve these courses. The board estimates the fee increases will affect 100 applicants for initial course approval and 50 applicants for renewal course approval, and result in a \$15,000 annual increase in board revenue.

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as Uniform Standards of Professional Appraisal Practice (USPAP), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2006~~ 2008 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2006~~ 2008 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

~~(3) A copy of the revised USPAP will be sent to each licensee each time a revised version of USPAP is adopted and incorporated by reference by the board.~~

~~(4)~~(3) Copies of USPAP and USPAP FAQ may be obtained from The Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005-3317, or may be reviewed in the board office at 301 South Park, Helena, MT 59620-0513.

AUTH: 37-54-105, MCA

IMP: 37-54-105, 37-54-403, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update references to the most current versions of the professional standards and the frequently asked questions publication of the Appraisal Standards Board of The Appraisal Foundation, as required by 37-54-403, MCA. The board is deleting (3) from this rule as it is no longer necessary for the board to provide updated copies of the USPAP to licensees. The USPAP course is now required every two years and education providers provide licensees the current version at that time.

24.207.403 REGULATORY REVIEWS (1) The board may request, by a random selection, that licensed or certified real estate appraisers submit a copy of an appraisal report for review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation.

(2) remains the same.

AUTH: 37-54-105, MCA

IMP: 37-1-136, 37-54-416, MCA

24.207.501 EXAMINATION (1) and (2) remain the same.

(a) licensed residential - 75 percent;_i

(b) certified residential - 77 percent;_i and

(c) and (3) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-302, MCA

24.207.502 APPLICATION REQUIREMENTS (1) and (2) remain the same.

(3) The applicant shall submit ~~original or certified documents~~ documentation in support of the application. ~~The board may permit such documents to be withdrawn upon substitution of a true copy.~~

(4) The board shall review ~~fully completed~~ applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be acknowledged with a statement regarding incomplete portions.

(5) Application must also include work product that is applicable to the level of licensure sought:

(a) licensure level - single family residential appraisals are required;

(b) certified residential - two to four family income producing residential appraisals are required;

(c) general certification - nonresidential report with all approaches to value with income approach, cost approach, and sales comparison approach are required.

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending this rule to clarify the application process and reduce staff time in requesting duplicate work product. While not new application requirements, the board is adding (5) to address confusion among applicants by clearly stating the work product that is required for each level of licensure.

24.207.504 QUALIFYING EDUCATION REQUIREMENTS (1) Educational and training courses must receive prior approval by the board. Each course shall be approved for a three-year period only, and must be resubmitted, with all updated information required in (4) ~~below~~, for reapproval at the end of the three-year period.

(2) remains the same.

(a) the course was developed by persons qualified in the subject matter and instructional design;_i

(b) the program content is current;_i

(c) the instructor is qualified with respect to course content and teaching methods;_i or

(d) the number of participants and physical facilities are consistent with the teaching methods;_i and

(e) and (3) remain the same.

(a) universities, colleges, junior colleges, or community colleges accredited by a regional accrediting body accepted by the appropriate agency of the state of Montana;

(b) professional appraisal and real estate related organizations, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102~~(3)~~, MCA;_i

(c) proprietary schools holding valid certificates of approval from the state of Montana; or

(d) such other providers as approved by the board.

(4) To apply for approval a course provider must make application in the manner prescribed by the board and pay the proper fee 30 days prior to offering the course. The application shall include, but not be limited to:

(a) remains the same.

(b) all texts, workbooks, handouts, or other course materials;

(c) instructors and their qualifications, including selection, training, and evaluation criteria;

(d) and (e) remain the same.

(5) A passing score of ~~70 percent~~ for the each course is required.

(6) through (11) remain the same.

(a) accredited colleges or universities;_i

(b) accredited community or junior colleges;_i

(c) real estate appraisal or real estate related organizations;_i

(d) state or federal agencies or commissions;_i

(e) proprietary schools;_i or

(f) and (12) remain the same.

(a) the distance education (online) course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate appraisal services provided by real estate appraiser licensees to the public;

(b) remains the same.

(c) the distance education (online) course provider must be certified by the International Distance Education Certification Center (IDECC) and provide appropriate documentation that the IDECC certification is in effect. Approval will cease immediately should IDECC certification be discontinued for any reason; and

(d) the distance education (online) course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.
(13) Distance education (online) may only total up to 50 percent of qualifying education requirements for each level of licensure.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending (5) of this rule to no longer require a 70 percent passing score for each course. The board recognizes that not all college courses use passing percentages and will accept courses with simple pass/fail scoring. It is reasonable and necessary to amend this rule to clarify that distance education courses are online courses and that these courses may only constitute half of an applicant's qualifying education requirements. The board concluded that to ensure adequate education and qualified applicants, it is necessary to require that at least half of the education be obtained in a classroom setting.

24.207.505 QUALIFYING EDUCATION REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) Applicants for original licensure as a licensed real estate appraiser shall complete at least 90 classroom hours of instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants must demonstrate that their education involves coverage of all topics listed below with particular emphasis on the appraisal appraisals of one- to four-unit residential properties:

- (a) through (m)(ii) remain the same.
- (iii) operating expense ratios;_
- (n) remains the same.
- (o) appraisal standards and ethics; and
- (p) through (2)(b) remain the same.
- (c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours
- (d) through (3) remain the same.

(4) Effective January 1, 2008, applicants for original licensure as a licensed real estate appraiser shall complete at least 150 hours of board approved instruction, 15 hours of which must cover the USPAP as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants shall demonstrate that their education involves coverage of all topics listed in (1) with particular emphasis on the appraisal of one-unit to four-unit residential properties.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as certified residential real estate appraisers shall provide evidence of completion of 120 hours

of board approved instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing.

(2) through (3)(b) remain the same.

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) through (5)(a) remain the same.

(b) 21 semester credit hours covering the subject matter of English composition, principles of economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/spreadsheets), and business or real estate law. In lieu of the required courses, an associate degree will qualify;

(c) a passing score of 70 percent or a pass/fail grade must be achieved for semester credit hours;

(d) semester credit hours must be received from an accredited college; and

(e) online college credits must be received from an accredited college.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board is amending (5) of this rule to address questions from residential certification applicants regarding the education requirements.

24.207.507 QUALIFYING EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION (1) Applicants for certification as certified general real estate appraisers shall provide evidence of 180 hours of board approved instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing.

(2) through (4)(b) remain the same.

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) through (k) remain the same.

(5) To upgrade from a trainee, ~~a or licensed real estate appraiser or a certified residential real estate appraiser~~ to a certified general real estate appraiser, an appraiser applicant may use prior education that also meets the specific criteria identified in (4) and a minimum of 30 semester credit hours covering the requirements of (7)(b) obtained for licensure as a licensed real estate appraiser with the additional 90 hours being obtained from nonresidential courses.

(6) To upgrade from a certified residential real estate appraiser to a certified general real estate appraiser, an appraiser applicant may use prior education obtained for licensure that meets the specific criteria identified in (4) and a minimum of 30 semester credit hours covering the requirements of (7)(b) as a licensed real estate appraiser or residential certification with the additional 60 hours being obtained from nonresidential courses.

(7) and (7)(a) remain the same.

(b) 30 semester credit hours covering the subject matter courses of English composition, economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/spreadsheets),

business or real estate law, and two elective courses in either accounting, geography, agricultural economics, business management, or real estate. In lieu of the required courses, a bachelors degree will qualify.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the education requirements for progression between different levels of licensure. The amendments are necessary to comply with new education requirements for each level of licensure enacted by AQB and effective January 1, 2008.

24.207.508 AD VALOREM TAX APPRAISAL EXPERIENCE (1) Experience credit may be awarded to ad valorem tax appraisers who demonstrate that they use techniques to value properties in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), and effectively use the appraisal process. Applicants will be questioned on appraisal techniques by the board during an oral interview.

(2) and (3) remain the same.

(a) The documentation shall include an experience log which is ~~provided~~ prescribed by the board, completed by the applicant, and attested to by the applicant's supervisor. This form will indicate the type of experience and hours applicable to ad valorem necessary to confirm the necessary experience hours for the designation sought by the applicant, including individual property appraisals, tax appeals, model specifications, and model calibrations.

(b) through (4)(a) remain the same.

(b) Applicants for certification as a certified general real estate appraiser shall hold a Department of Revenue commercial, industrial, or agricultural certification.

(5) Experience accepted under other provisions of applicable statutes or rules such as ARM 24.207.503 may be combined with any portion of the ad valorem experience set forth above.

(6) remains the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, MCA

REASON: The board is adding the reference to ARM 24.207.503 to guide individuals to the other experience requirements in rule and address questions from applicants.

24.207.509 QUALIFYING EXPERIENCE (1) through (1)(g) remain the same.

(h) ~~condemnation~~ eminent domain appraisals.

(2) through (5) remain the same.

(6) All experience submitted to the board must be done in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation that is current at the time the appraisal is completed.

(7) through (11) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

24.207.510 SCOPE OF PRACTICE (1) Real property appraisers must adhere to a specific scope of practice and must comply with the competency provision of the Uniform Standards of Professional Appraisal Practice (USPAP).

(a) The licensed real property classification applies to the appraisal of ~~noncomplex one to four~~ unit residential properties ~~units~~ having a market value less than \$1,000,000 and ~~complex one two~~ to four residential units having a market value less than \$250,000.

(i) through (c)(i) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-201, MCA

REASON: It is reasonably necessary to update this rule to comply with current federal guidelines regarding the scope of practice for real property appraisers.

24.207.517 TRAINEE REQUIREMENTS (1) through (1)(b) remain the same.

(c) have completed ~~45 hours~~ a minimum of 50 percent of approved qualifying education including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP) in the principles of real estate appraisal prior to making application; and

(d) complete ~~an additional 45 hours~~ the remainder of approved qualifying education hours within the next 12 months or the next renewal, whichever is greater.

~~(2) For the purposes of ARM 24.207.503, appraisal experience obtained after October 1, 2003, will be credited only if earned by a licensed trainee. A licensed trainee may claim credit for appraisal experience obtained between October 1, 2000, and September 30, 2003, if the appraisal experience was obtained within the 36 months immediately prior to the individual's licensure as a trainee.~~

(3) remains the same but is renumbered (2).

~~(4)~~(3) A trainee shall maintain an activity experience log for ~~each mentor on forms approved as prescribed~~ by the board for qualifying activity completed in accordance with USPAP.

(5) through (12)(b) remain the same but are renumbered (4) through (11)(b).

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) remains the same.

AUTH: 37-1-131, ~~37-1-141~~, 37-54-105, MCA

IMP: 37-1-131, ~~37-1-141~~, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: The board is amending this rule to update the current format for trainee programs. The education courses now offered with 2008 education criteria are no longer in same hourly format as previously identified in the original trainee program. The board is deleting (2) as obsolete and no longer necessary.

24.207.518 MENTOR REQUIREMENTS (1) ~~Beginning October 1, 2003, a mentor for a licensed real estate appraisal trainee shall:~~ A mentor for a licensed trainee must:

- (a) be a certified residential or certified general appraiser for a minimum of two years; ~~A licensed appraiser mentoring a trainee prior to October 1, 2003, may continue to mentor the licensed trainee for not more than 18 months;~~
- (b) remains the same.
- (i) a mentor shall make application on forms approved by the board and submit two appraisal reports prepared by the mentor in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) standards;
- (ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status;
- (c) remains the same.
- (d) be in good standing with the board and not currently hold a probationary license with the board;
- (e) and (f) remain the same.
- (g) review and sign the activity experience log prescribed by the board of their trainee, certifying its accuracy;
- (h) inspect the first 400 50 properties with each trainee under the mentor's supervision;
- (i) remains the same.
- (j) be limited to mentoring trainees in geographic areas where the mentor is competent to perform appraisals.
- (2) remains the same.
- (3) Any and all disciplinary actions against your license must be disclosed for board review.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, ~~37-54-416~~, MCA

REASON: The board determined it is reasonable and necessary to amend this rule and delete the dates and time table required for the mentor application process as the information is obsolete and no longer necessary.

The board is amending this rule to add provisions regarding probationary licenses and reporting of prior discipline. The board concluded that it is in the best interest of the mentor and the public to ensure mentors demonstrate compliance with professional standards of practice, laws, and rules. Considering past disciplinary actions of a mentor applicant is consistent with information required for initial licensure and renewals.

The board is also amending this rule to decrease the number of required inspections. The board concluded that because of the large size of Montana, it is

unreasonable to require 100 inspections and requiring 50 inspections will still adequately protect the public.

24.207.520 RENEWALS (1) and (2) remain the same.

(3) At the end of their two year education cycle, licensees shall ~~complete and submit an education reporting form at the time of renewal~~ attest to completing the required continuing education.

(4) Incomplete renewal ~~and education reporting~~ forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal date set by ARM 24.101.413.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: The board is amending this rule and ARM 24.207.2101 to simplify the renewal and continuing education processes and facilitate the department's online license renewal system. Licensees will still be required to complete continuing education pursuant to ARM 24.207.2101, however licensees will no longer have to submit forms and documentation of completion of continuing education. Continuing education compliance will be monitored through random audits provided by 37-1-131, MCA, and ARM 24.207.2101.

24.207.2101 CONTINUING EDUCATION (1) through (5) remain the same.

(6) ~~An education reporting form executed under the penalty of perjury of the laws of Montana attesting to the successful completion of the continuing education requirement must be submitted to the board by the date set by ARM 24.101.413 of the licensee's educational reporting cycle.~~

(7) ~~An incomplete education reporting form will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the date set by ARM 24.101.413.~~

(8) and (9) remain the same but are renumbered (6) and (7).

(10) ~~Education reporting forms will be mailed to all real estate appraiser licensees at their last address of record. Failure to receive an education reporting form does not eliminate the reporting requirement.~~

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-303, MCA

IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-303, 37-54-310, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsrea@mt.gov, and must be received no later than 5:00 p.m., August 20, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.realestateappraiser.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsrea@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 7, 2008