

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

In the matter of the amendment of)
ARM 24.207.501 examination,)
24.207.504 qualifying education)
requirements, 24.207.517 trainee)
requirements, 24.207.518 mentor)
requirements, 24.207.2102 continuing)
education noncompliance and the)
adoption of NEW RULE I complaints)
involving appraisal management)
companies)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On August 31, 2012, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 24, 2012, to advise us of the nature of the accommodation that you need. Please contact Becky Zaharko, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2354; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsrea@mt.gov.

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

24.207.501 EXAMINATION (1) remains the same.
(2) Effective January 1, 2013, an applicant must complete all qualifying education and experience prior to taking the examination.
(2) and (3) remain the same, but are renumbered (3) and (4).

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

REASON: The board determined it is reasonably necessary to amend this rule now to ensure compliance with new regulations promulgated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation that will become effective January 1, 2015. The board is amending this rule to implement the AQB's finding

that examination takers are better prepared to succeed on the examination when they have completed their experience prior to sitting for the test.

24.207.504 QUALIFYING AND CONTINUING EDUCATION REQUIREMENTS (1) through (2)(d) remain the same.

(e) the qualifying education course includes an examination for measuring the information learned.

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

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

(d) remains the same.

(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) through (9) remain the same.

(10) Credit toward the classroom hour requirement may only be granted for qualifying education if the length of the educational offering is at least 15 hours and the individual successfully completes an examination pertinent to that educational offering.

(11) through (13) remain the same.

(14) A webinar is not acceptable for continuing education credit, whether or not the webinar is approved by the Appraiser Qualifications Board (AQB).

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

IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-202, MCA

REASON: The board determined it is reasonably necessary to amend the title and text of this rule to clarify the requirements for both qualifying and continuing education courses. The board has standards and requirements for continuing education in place currently, but had not before stated them in rule. The amendments will set forth these requirements in a single location for simplicity, and will clearly differentiate between qualifying and continuing education when necessary, such as the examination required at the end of qualifying education courses, but not for continuing education courses.

The board is adding (14) to specify that the board will not allow continuing education credit for webinars. The board concluded that webinars do not ensure that licensees are paying attention to the material presented, and believes this change will help ensure that licensees are receiving the ongoing education necessary to maintain licensure. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.207.517 TRAINEE REQUIREMENTS (1) and (1)(a) remain the same.

(b) make application to the board on forms approved by the board; and

(c) have completed ~~a minimum of 50~~ 100 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 the remainder of approved qualifying education hours within the next 12 months or the next renewal, whichever is greater.~~

~~(2) through (6) remain the same.~~

~~(7) A trainee shall submit two copies of two different appraisal reports the trainee completed in accordance with USPAP with the trainee's annual renewal.~~

~~(8) through (11) remain the same, but are renumbered (7) through (10).~~

(11) A trainee shall notify the board within ten days of the occurrence of any change that affects the status of the trainee-mentor relationship.

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

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

REASON: The board is amending (1) to comply with new regulations promulgated by the AQB of the Appraisal Foundation that will become effective January 1, 2015.

The board is deleting (7) to no longer require trainees to submit two appraisal reports at renewal. Because trainees must submit appraisal reports when they apply for appraiser licensure, the board determined that requiring reports at a trainee level adds nothing to the process and does not further protect the public.

The board is adding (11) to require that trainees notify the board when a change in the mentor's status affects the trainee's supervision and ability to gain experience for licensure. The board determined this change is reasonably necessary to help ensure that trainees are supervised at all times. This amendment will also require a trainee to notify the board when the mentor is unable to supervise due to a change in the trainee-mentor relationship, such as a change in the trainee-mentor contractual or employment relationship or the incapacitation of a mentor.

24.207.518 MENTOR REQUIREMENTS (1) through (3) remain the same.

(4) The board may, in its discretion, allow a mentor to provide limited supervision to a trainee with whom the mentor has not inspected a minimum of 50 properties when:

(a) the mentor making this evaluation has personally inspected a minimum of ten properties with the trainee and supervised the trainee, with respect to all corresponding assignments;

(b) the trainee has completed a minimum of 50 assignments related to properties that were personally inspected by a licensee who was approved to be a mentor for the trainee at the time of the assignment and inspection;

(c) the mentor has evaluated all appraisal activity the trainee completed under the mentor's supervision, including the assignments involving properties which the mentor inspected with the trainee;

(d) on the basis of the mentor's evaluation of the assignments completed, while the trainee was under the mentor's supervision, the mentor has determined that the trainee is competent to perform assignments within the minimum criteria of USPAP, with limited supervision by the mentor; and

(e) the mentor and trainee request and receive approval from the board to allow the trainee to complete assignments with limited supervision.

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, MCA

REASON: The board is amending this rule to allow a new mentor to take over the supervision and training of a trainee in the event that a prior mentor is unable to continue these duties. This proposal is intended to provide guidance for trainees and mentors who are involved in such transitions.

This amendment will also ensure that a trainee who has already completed 50 assignments, in conjunction with an inspection by the trainee's mentor, does not have to repeat another 50 assignments with inspections when the trainee's mentor changes. Instead, the trainee can receive limited supervision by the new mentor if the new mentor and trainee comply with these requirements and the limited supervision is approved by the board.

24.207.2102 CONTINUING EDUCATION NONCOMPLIANCE (1) remains the same.

(2) ~~Noncompliance of CE~~ Failure to comply with continuing education requirements mandated by the ABQ Appraiser Qualifications Board (AQB) will be reported to the ASC Appraisal Subcommittee (ASC) National Registry Compliance Database.

AUTH: 37-1-136, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-136, MCA

REASON: The board is amending this rule to align with the AQB requirement that any failure to comply with mandatory continuing education be reported to the national registry. This change was prompted by an AQB audit that suggested the board's previous practice of reporting continuing education issues only when complaints against licensees had been fully adjudicated, was not compliant with AQB guidelines. The amended language will clarify to licensees that the board will report to the national registry database any failure to comply with continuing education requirements.

4. The proposed new rule provides as follows:

NEW RULE I COMPLAINTS INVOLVING APPRAISAL MANAGEMENT COMPANIES (1) The board may share complaints and other information about an appraisal management company with other regulators of the appraisal management company.

(2) An appraisal management company shall report a potential Uniform Standards of Professional Appraisal Practice (USPAP) violation to the board within 30 days of discovering the potential violation.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-1-136, 37-54-507, MCA

REASON: The 2011 Montana Legislature enacted Chapter 270, Laws of 2011 (HB 188), which provided for regulation of appraisal management companies and the relationships between appraisal management companies and appraisers. The bill was signed by the Governor on April 22, 2011, and became effective October 1, 2011. The board is proposing New Rule I to address reporting of complaints involving appraisal management companies and further implement the legislation.

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) 841-2309, or by e-mail to dlibsrea@mt.gov, and must be received no later than 5:00 p.m., September 10, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web 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 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 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) 841-2309; 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 contact 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
JENNIFER MCGINNIS, CERTIFIED
GENERAL, 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 30, 2012