

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.207.101 board organization,) REPEAL
24.207.401 fees, 24.207.406)
definitions, 24.207.501 examination,)
24.207.502 application requirements,)
24.207.509 qualifying experience,)
24.207.518 mentor requirements,)
24.207.1501 registration and renewal,)
24.207.1507 record-keeping)
requirements, 24.207.2305)
unprofessional conduct, and the)
repeal of ARM 24.207.520 renewals)

TO: All Concerned Persons

1. On September 24, 2015, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-39 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1405 of the 2015 Montana Administrative Register, Issue No. 18.

2. On October 15, 2015, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the October 23, 2015, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: A commenter noted that the Federal Financial Institutions Examination Council Appraisal Subcommittee's (ASC) policy statement 2.B. 2.c. prohibits a state from charging a temporary practice permit fee exceeding \$250, including one extension fee. The commenter pointed out that amendments to ARM 24.207.401 will establish a temporary practice permit fee of \$250 and a separate \$50 fee for renewal of the temporary permit for a total of \$300.

RESPONSE 1: The board agreed and is amending the rule to eliminate the temporary practice renewal fee. The original temporary practice permit fee will remain at \$250.

COMMENT 2: A commenter noted that proposed changes to ARM 24.207.502 includes new language at (3)(e) that the board will select work product from the experience log that is commensurate with the level of credential sought. The commenter noted that ASC Policy Statement 4. D. 2. a. provides that states must analyze a representative sample of the applicant's work product. The commenter

observed that a representative sample may include work that is not commensurate with the credential level sought.

RESPONSE 2: The board agrees and is amending the rule accordingly.

COMMENT 3: One commenter noted that the ASC does not approve individual appraisers and opined that "strictly abides," as used in ARM 24.207.502(4)(a), may be implemented in a way that creates a higher standard than that of ASC Policy Statement 5. A. The commenter suggested it would be more accurate to require that reciprocal applicants have current and unencumbered licenses in jurisdictions that are in compliance with Title XI as determined by the ASC.

RESPONSE 3: The board agrees and is amending the rule accordingly.

COMMENT 4: One commenter suggested adding the following language to ARM 24.207.510:

"(2) Unless prohibited by the policies of a client or an end user of an appraisal report or by other state or federal law, a real property appraiser performing appraisal services for a Montana licensed appraisal management company is authorized to transfer an appraisal assignment to another licensed or certified real estate appraiser who is on the appraisal management company's appraisal panel if:

- (a) the transferee meets the requirements stated in the engagement documents;
- (b) the transferor notifies the appraisal management company prior to the transfer;
- (c) the transferee is an employee of the transferor; and
- (d) the transferee can complete the appraisal assignment in accordance with the Uniform Standards of Professional Appraisal Practice, assignment conditions and pursuant to the requirements of the board."

RESPONSE 4: The board appreciates the issues the commenter has raised by suggesting the additional language to ARM 24.207.510. However, because the board did not proposed to amend this rule, the suggested language is outside of the scope of the rule notice.

COMMENT 5: A commenter requested that the board only require Appraisal Management Companies (AMCs) to retain evidence of the client's or end-user's policy, rather than the policy itself as a simpler means to confirm compliance. The commenter stated the proposed requirement that AMCs provide an actual client or end-user policy document is burdensome and unnecessary. AMCs have multiple clients and the information technology (IT) changes necessary to accommodate such an inclusion are costly. Many of the AMC client policies are embedded within their contracts with the AMC and not easily extracted. The commenter opined that the current requirements for engagement documents are already expansive enough and additional requirements would be too burdensome. The commenter suggested amending ARM 24.207.1507(1)(e) accordingly.

RESPONSE 5: The board concluded that the proposed language is more protective of the public's interest by allowing the appraiser to determine the appropriate scope of work. The board does not believe that it would be unduly burdensome and is amending the rule exactly as proposed.

COMMENT 6: A commenter objected to the proposed amendment to ARM 24.207.1507(1)(e) to require that AMCs keep and make available engagement lists, including a copy of the actual policy that prohibits inter-office transfers. The commenter stated that the amendments are unnecessarily burdensome and will create inefficiencies and delayed transactions. The commenter stated that the proposed amendments are very unlikely to cause clients and end users to begin permitting inter-office assignment transfers.

The commenter cautioned that the amendments are likely to affect virtually every appraisal transaction performed on Montana properties and opined that many clients are reluctant to provide AMCs with copies of their policies. The commenter asserted that AMCs will find it significantly more difficult and time consuming to convince clients to provide their actual policy documents. If the board amends the rule as proposed, AMCs will be forced to undertake a major effort to try to obtain and organize such policies and build related operational processes, while the number of future interoffice transfers in Montana will not be significantly greater than today.

The commenter suggested the board amend the language of ARM 24.207.1507(1)(e) to only verify that the policies of a client or end user prohibit the use of trainees or interoffice transfers.

RESPONSE 6: See RESPONSE 5.

COMMENT 7: One commenter acknowledged that enforcement of real estate appraisers' professional standards does rest with the board and suggested the board amend the unprofessional conduct rule at ARM 24.207.2305(1)(d) to require that licensees provide copies of a client's or end-user's policy to the board upon request.

RESPONSE 7: See RESPONSE 5.

COMMENT 8: For the reasons stated in COMMENT 6, one commenter urged the board to withdraw the proposed amendments to ARM 24.207.2305(1)(d) if the board further amends ARM 24.207.1507(1)(e) to merely retain evidence of the policies, rather than provide the policies themselves.

RESPONSE 8: See RESPONSE 5.

4. The board has amended ARM 24.207.101, 24.207.406, 24.207.501, 24.207.509, 24.207.518, 24.207.1501, 24.207.1507, and 24.207.2305 exactly as proposed.

5. The board has repealed ARM 24.207.520 exactly as proposed.

6. The board has amended ARM 24.207.401 and 24.207.502 with the following changes, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) through (1)(c) remain as proposed.

~~(d) temporary practice permit renewal~~ 50

(e) through (o) remain as proposed, but are renumbered (d) through (n).

(2) and (3) remain as proposed.

24.207.502 APPLICATION REQUIREMENTS (1) through (3)(d) remain as proposed.

(e) The board will select a representative sample of the applicant's work product from the experience log. ~~The work product requested will be commensurate with the level of licensure sought:~~

~~(i) licensure level - single unit residential appraisals are required;~~

~~(ii) certified residential - two to four unit income-producing residential appraisals are required; and~~

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

(f) through (4) remain as proposed.

(a) have a current and unencumbered license in a jurisdiction where the appraisers are approved by the ASC as eligible to perform appraisals for federally related transactions or a jurisdiction that ~~strictly abides by~~ is in compliance with the ASC standards;

(b) through (9) remain as proposed.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER, CHAIRPERSON

/s/ DARCEE L. MOE

Darcee L. Moe

Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 25, 2016