

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.207.101 board organization,) PROPOSED AMENDMENT AND
24.207.401 fees, 24.207.406) REPEAL
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 October 15, 2015, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal 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 October 9, 2015, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsirea@mt.gov (board's e-mail).

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

24.207.101 BOARD ORGANIZATION (1) remains the same.

(2) The presiding officer shall preside at all meetings and shall perform such duties as the board may direct. At any meeting at which the presiding officer is absent, the vice presiding officer will serve as the presiding officer.

(3) The board shall hold an annual meeting prior to October 31 of each year for purposes of electing officers from among its members, each for a term of one year, or until a successor has been duly elected and qualified.

(4) Meetings shall be held, after reasonable notice, at the call of the presiding officer or a majority of the members of the board.

AUTH: 2-4-201, 37-54-105, MCA

IMP: 2-4-201, MCA

REASON: The board determined it is necessary to amend this rule to ensure elections are held regularly and to clarify the board's intent regarding the chain of command when the presiding officer is absent. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

<u>24.207.401 FEES</u> (1) through (1)(b) remain the same.	
(c) temporary practice permits for out-of-state licensed or certified appraisers	150 <u>250</u>
<u>(d) temporary practice permit renewal</u>	<u>50</u>
(d) through (l) remain the same, but are renumbered (e) through (m).	
<u>(n) mentor endorsement application fee</u>	<u>200</u>
(m) remains the same, but is renumbered (o).	
(2) through (2)(e) remain the same.	
(f) annual fee for reporting of all engagements	250
(i) annual reporting of all engagements after 30 days	1000
(ii) annual reporting of all engagements after 60 days	2000
(g) through (m) remain the same, but are renumbered (f) through (l).	
(3) remains 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, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend (1)(c) and raise the temporary practice permit fee. The number of temporary practice permits has increased over the last few years, with a large percentage being out-of-state applicants. The board is increasing the fee to be commensurate with the actual costs of processing and regulating these permits. The board estimates that approximately 137 persons will be affected by this fee increase, with a resultant \$13,700 increase in annual revenue.

The board is adding a temporary practice permit renewal fee in (1)(d) to set a fee to cover the costs associated with processing the permit renewals. Although this is not a new process, the board did not initially establish a fee when the temporary registration legislation passed in 2001. Through a review of statutes and rules, the board determined that a reasonable \$50 fee should be charged to cover the work of board staff. The board estimates that approximately two individuals will be affected by this new fee, and that annual revenue will increase by \$100.

The 2015 Montana Legislature enacted Chapter 303, Laws of 2015 (HB 29), an act providing for the regulation of real estate appraiser mentors. The bill was signed by the Governor on April 27, 2015, and will become effective on October 1, 2015. The board is amending this rule by adding (1)(n) to establish a mentor endorsement application fee and further implement the legislation. The board estimates that the new mentor endorsement fee will affect approximately three persons and increase annual revenue by \$600.

The board decided it is reasonably necessary to amend (2) and remove the appraisal management company (AMC) annual fee for reporting of all engagements because it is adopting a new process. The board will audit the AMCs after the renewal period and any AMC found to be noncompliant during the audit will be assessed additional fees or reported to the board at that time. The board estimates that approximately 79 AMCs will be affected by the eliminated fees, and that revenue will decrease by \$23,250. The board notes that this loss of revenue will be offset somewhat by the additional engagement fee charged in the new audit process through the amendments of ARM 24.207.1501 in this notice.

24.207.406 DEFINITIONS (1) remains the same.

(2) "Complete" means a determination by licensing staff that the application form is legible and filled out entirely, the fee and accompanying documentation or further requested information has been received, and the qualifications component has been met.

(a) The qualifications component will include a completed appraisal review prepared by an individual designated by the board, unless the applicant is qualified for a license by reciprocity or is applying for a temporary practice permit or trainee license.

(2) through (4) remain the same, but are renumbered (3) through (5).

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

IMP: 37-1-131, 37-1-304, 37-54-202, 37-54-302, 37-54-403, 37-54-501,
MCA

REASON: The board determined it is reasonably necessary to amend this rule to clearly delineate a "complete" application. The board notes that it has been unclear to many applicants exactly when an application is deemed complete, and this has led to misunderstanding as to when an application may be heard at the quarterly scheduled board meeting.

The board is amending the implementation citations to accurately reflect all statutes implemented through this rule.

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

(3) ~~Effective January 1, 2015, an~~ An applicant shall be required to successfully complete and pass the 2015 or later examination requirements of the AQB.

(4) and (5) 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

REASON: The board determined it is necessary to amend this rule because January 1, 2015 has passed and the date is no longer necessary.

24.207.502 APPLICATION REQUIREMENTS ~~(1) An application for a license or temporary practice permit must be made on a form provided by the board~~

~~and completed and signed by the applicant and include the applicant's state license number, if applicable.~~

~~(2) The application must be typed or legibly written in ink, accompanied by the appropriate application and license fees and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 54, MCA, and rules promulgated thereunder.~~

~~(3) The applicant shall submit documentation in support of the application.~~

~~(4) The board shall review applications for compliance with applicable laws and rules and shall notify the applicant in writing of the results. 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) The board or its designee shall select appraisal reports from the experience log to validate experience and for review in accordance with USPAP. The appraisal reports requested will be commensurate with the level of licensure sought:~~

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

~~(b) certified residential - two to four-unit income-producing residential appraisal reports with all three approaches to value are required; and~~

~~(c) general certification - nonresidential appraisal reports with all three approaches to value are required.~~

~~(1) Applicants for licensure or a temporary practice permit must submit a complete application provided by the department, electronically or by paper, including appropriate fees and all required documentation.~~

~~(2) An applicant for licensure may qualify in one of two methods, either by examination or reciprocity.~~

~~(3) To qualify for licensure by examination, the applicant must complete the following requirements:~~

~~(a) An examination pursuant to ARM 24.207.501;~~

~~(b) Qualifying education for:~~

~~(i) a licensed real estate appraiser pursuant to ARM 24.207.505;~~

~~(ii) a certified residential appraiser pursuant to ARM 24.207.506; or~~

~~(iii) a certified general appraiser pursuant to ARM 24.207.507.~~

~~(c) Qualifying experience pursuant to ARM 24.207.503, 24.207.508, and 24.207.509;~~

~~(d) Applications will be reviewed for compliance with board law and rules and the applicant shall be notified in writing of any discrepancies or incompleteness in the application or required documentation. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary;~~

~~(e) The board will select 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) The applicant shall correct any deficiencies and submit required material within 60 days of notice with no additional application fee. Failure to submit the required materials will be treated as a voluntary withdrawal. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again;

(g) All examination applications are considered nonroutine and must be reviewed by the board; and

(h) Incomplete applications, whether missing information or documentation will not be scheduled for a board meeting. Applications including the appraisal review must be completed for board review at least 15 days prior to the scheduled board meeting or the application will be referred to the next scheduled board meeting.

(4) To qualify for licensure by reciprocity, the applicant must:

(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 the ASC standards;

(b) have no current or pending disciplinary action against any other licenses the applicant holds; and

(c) be listed as AQB compliant on the ASC national registry.

(5) To qualify for a temporary practice permit, the applicant must:

(a) complete the appropriate application and submit fees; and

(b) have an active status with the ASC national registry.

(6) through (8) remain the same.

~~(9) A completed application file must be received in the board office at least 45 days in advance of the next scheduled board meeting date.~~

~~(10) remains the same, but is renumbered (9).~~

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

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

REASON: The board determined it is reasonably necessary to amend this rule to distinguish between applicants who apply for licensure by examination and those who apply by reciprocity. The board also determined it is reasonably necessary to remove (9) because the board has adopted the department's standardized application procedure and this rule conflicts with the new process.

24.207.509 QUALIFYING EXPERIENCE (1) through (8)(a)(ii) remain the same.

(b) multiunit residential (two to four units) 20

(i) and (ii) remain the same.

(c) residential vacant land less than ten acres 8

(i) and (ii) remain the same.

(d) individual residential subdivision sites (per site)

(not to exceed 20 hours - two sites per subdivision) 5

(i) and (ii) remain the same.

(e) land (undeveloped nonresidential tracts, residential multifamily sites, commercial sites,

industrial sites, land in transition, etc.)	20
(i) appraisal report	20 <u>25</u>
(ii) restricted appraisal report	20 <u>25</u>
(f) rural, agricultural, or residential ten to 160 acres	20
(i) appraisal report	20 <u>25</u>
(ii) restricted appraisal report	20 <u>25</u>
(g) rural, agricultural, or residential 161 to 2000 acres	
(i) appraisal report	<u>30</u>
(ii) restricted appraisal report	<u>30</u>
(h) agricultural in excess of 2000 acres	
(i) appraisal report	<u>40</u>
(ii) restricted appraisal report	<u>40</u>
(g) and (h) remain the same, but are renumbered (i) and (j).	
(†) (k) residential multifamily (5-12 units) (apartments, condominiums, townhouses, mobile home parks, etc.)	35
(i) and (ii) remain the same.	
(†) (l) residential multifamily (13+ units) (apartments, condominiums, townhouses, mobile home parks, etc.)	40
(i) and (ii) remain the same.	
(†) (m) commercial single tenant (office building, retail store, restaurant, service station, bank, day care center, etc.)	35
(i) appraisal report	35 <u>40</u>
(ii) restricted appraisal report	35 <u>40</u>
(†) (n) commercial multitenant (office building, shopping center, hotel, etc.)	60
(i) and (ii) remain the same.	
(†) (o) industrial (warehouse, manufacturing plant, etc.)	60
(i) appraisal report	60 <u>70</u>
(ii) restricted appraisal report	60 <u>70</u>
(†) (p) institutional (nursing home, hospital, school, church, government building, etc.)	60
(i) appraisal report	60 <u>70</u>
(ii) restricted appraisal report	60 <u>70</u>
(9) and (10) remain the same.	

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

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

REASON: The board determined it is reasonably necessary to amend this rule to adjust the maximum hours of allowable qualifying experience to permit trainees to receive credit for the entire time it takes to complete a report. The board intends for trainees to continue reporting only actual time spent on the appraisal process, but adjusting the maximum will allow trainees to receive full credit for complicated assignments without having to request a variance. The board notes that this change will align Montana's requirements with those of the surrounding states.

The board is also amending this rule throughout to remove the hours from the general experience categories, as they are already and more appropriately located in the subcategories of appraisal reports and restricted appraisal reports.

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

(i) a mentor shall make application on forms provided by the board, pay the required fee, and submit two appraisal reports prepared by the mentor in accordance with USPAP standards with all three approaches to value; and

(ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status; ~~and~~

~~(iii) mentor applications must be received in the board office 45 days prior to the next scheduled board meeting.~~

(c) through (5) remain the same.

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 remove (1)(b)(iii) because the board has adopted the department's standardized application procedure and the current rule conflicts with this process.

24.207.1501 REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES (1) through (6) remain the same.

(7) Annually, the registered appraisal management company must report to the board ~~the number of engagements it had~~ whether it had more than 200 engagements or 200 or fewer engagements during the previous renewal year ~~no later than November 15.~~ This requirement is subject to audit. The subsequent renewal fee will be based on the appraisal management company's reporting of engagements for the previous renewal year. If the AMC's report of 200 or fewer engagements is found to be inaccurate, the board will notify the AMC and the AMC shall pay an additional engagement fee of \$2500 within 30 days of notification.

~~(a) An appraisal management company that reports its engagements after the deadline in (7) will be assessed additional fees pursuant to ARM 24.207.401.~~

~~(b) Failure to comply with the requirements of (7) on or before January 15 is cause for suspension or revocation of the appraisal management company's registration.~~

(8) and (9) remain the same.

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

IMP: 37-1-131, 37-54-501, MCA

REASON: The board determined it is reasonably necessary to amend this rule because it is adopting a new AMC audit process and to align with amendments proposed to ARM 24.207.401 in this notice. The board will audit AMCs after the renewal period and any AMC found to have exceeded 200 engagements will be required to pay an additional engagement fee. This fee will ensure that AMCs

having more than 200 engagements will pay the full cost of regulating an active AMC instead of the lower fee for less active AMCs. The board estimates that approximately two AMCs will pay the additional engagement fee, and that annual revenue will increase by \$5,000.

24.207.1507 APPRAISAL MANAGEMENT COMPANY RECORD-KEEPING REQUIREMENTS (1) through (1)(d) remain the same.

(e) a list of all engagements, including the name of requesting entity, the appraiser assigned, and the dates assigned and completed; If use of trainees or interoffice transfers is restricted, then the AMC's client or end-user policy must be attached to the engagement letter or contract for services;

(f) through (2) remain the same.

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

IMP: 37-1-131, 37-54-501, 37-54-503, 37-54-504, 37-54-505, 37-54-506, 37-54-508, 37-54-509, 37-54-510, 37-54-511, 37-54-512, 37-54-513, 37-54-515, 37-54-516, MCA

REASON: The board is amending this rule and ARM 24.207.2305 to establish procedures to implement HB 29 on restricting the use of trainees and interoffice transfers and to allow the board to discipline licensees for violating the bill's provisions.

24.207.2305 UNPROFESSIONAL CONDUCT FOR APPRAISAL MANAGEMENT COMPANIES (1) and (1)(a) remain the same.

(b) failing to provide information requested by the board or its designee in relation to an audit, investigation, or complaint; or

(c) violating any of the appraiser independence prohibitions found in 37-54-514, MCA; or

(d) failing to provide to an appraiser a copy of a client's or end-user's policy restricting use of trainees or interoffice transfers.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-137, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-54-105, 37-54-512, 37-54-514, MCA

4. The rule proposed to be repealed is as follows:

24.207.520 RENEWALS found at ARM page 24-23564.

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 repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

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) 841-2305, or e-mail to dlibsdua@mt.gov, and must be received no later than 5:00 p.m., October 23, 2015.

6. An electronic copy of this notice of public hearing is available at www.realestateappraiser.mt.gov (department and board's web site). 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 that 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) 841-2305; e-mailed to dlibsdua@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, apply and have been fulfilled. The primary bill sponsor was contacted on July 1, 2015, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.207.101, 24.207.401, 24.207.406, 24.207.501, 24.207.502, 24.207.509, 24.207.518, 24.207.1501, 24.207.1507, and 24.207.2305 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.207.520 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations are available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdua@mt.gov.

10. Gene Allison, attorney, has been designated to preside over and conduct this hearing.

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 September 14, 2015