

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.210.301 definitions, 24.210.611) ON PROPOSED AMENDMENT
licensure, 24.210.641 unprofessional) AND ADOPTION
conduct, adoption of NEW RULE I)
supervising broker endorsement, and)
NEW RULE II citations and fines)

TO: All Concerned Persons

1. On September 4, 2008, at 9:00 a.m., a public hearing will be held in B-07, 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 Realty Regulation (board) no later than 5:00 p.m., on August 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 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 dlibsdrre@mt.gov.

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

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) through (6) remain the same.

(7) "Closed transaction" means a transaction in which parties have performed all duties in the agreement. In the case of a lease, it would be at the signing of the lease.

(7) through (20) remain the same but are renumbered (8) through (21).

(22) "Transaction" means a listing, sale, or lease.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-51-202, MCA

REASON: The board determined it is reasonable and necessary to amend this rule by adding definitions for the transaction activity acceptable for broker licensure. Qualifications for a broker license include completion of closed transactions and

defining the term will enable applicants to determine at what point their transaction activity qualifies to obtain a broker license.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) through (3) remain the same.

(4) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a ~~certified~~ license verification from that licensing jurisdiction is required before a Montana license will be issued.

(5) through (6)(a) remain the same.

(b) submit for the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson," evidence acceptable to the board that the salesperson has ~~performed functions as a licensee as follows:~~ obtained a total of 30 points in any combination of point types within the past 36 months prior to the date of application. Point types and values are as follows:

(i) transaction points:

(A) one point for each closed residential real estate transaction, no more than five leases;

(B) three points for each closed farm, ranch, agricultural, or commercial transaction, no more than five leases; or

(C) upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

(ii) education points:

(A) three points for an associate degree in real estate;

(B) three points for Certified Commercial Investment Member (CCIM) or Council of Real Estate Broker Managers (CRB);

(C) five points for a bachelor degree or higher in business management;

(D) five points for a law degree; or

(E) five points for a bachelor degree or higher in real estate.

(iii) supervision points are obtained through supervision of real estate activity for any broker who has supervised real estate activity a minimum of 36 months:

(A) one point for each year of real estate brokerage supervisory experience, maximum of three points;

(B) one point for each licensed real estate full time equivalent (FTE) supervised within the last 36 months, maximum of ten points; or

(C) one point for every five transactions supervised in the last 36 months, maximum of 15 points.

(iv) educator points are obtained by being an approved real estate educator in a jurisdiction:

(A) one point for each instructor day (minimum of six hours) within the past 36 months, maximum of ten points.

~~(i) 30 closed real estate property transactions in the last three years from the date of application for a residential applicant, no more than five of which can be leases;~~

~~(ii) ten closed real estate transactions within the last three years for an agricultural, farm, ranch, or commercial applicant. No more than two commercial transactions other than listings and/or sales may be used; or~~

~~(iii) a combination of (6)(b)(i) and (ii).~~

~~(iv) Upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.~~

(c) through (e) remain the same.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-302, MCA

REASON: It is reasonably necessary to amend this rule to eliminate the requirement that applicants licensed in other jurisdictions provide certified license verification from the other jurisdictions. Many states are no longer providing certified verification and are relying more on web site verification. The amendment will address problems encountered by some applicants when certified statements are not available from every jurisdiction.

The board is amending this rule to identify the new method for determining if a broker applicant meets the statutory requirement of being actively engaged as a licensed real estate salesperson. Numerous broker applicants have appeared before the board with many years of sales experience, but due to Montana's rural nature were unable to meet the requirement of 30 closed transactions. The amendment will allow applicants to combine and submit experience in transactions, supervision, and education, and will provide an alternative method for broker applicants to prove qualification as an actively engaged salesperson.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(l) remain the same.

~~(m) failing, as a seller's agent, to continue to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates, unless the seller has waived this participate in negotiations as defined in 37-51-102, MCA. A licensee may not abrogate this obligation in writing. ;~~

(n) failing, as a seller's agent, to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates unless the seller waives these obligations in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller. ;

(o) failing, as a buyer agent, to participate in negotiations as defined in 37-51-102, MCA. A licensee may not abrogate this obligation;

~~(n) (p) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted or the buyer broker agreement terminates unless the buyer waives these obligations in writing. Buyer agents have no obligation to continue are not obligated to show properties to their clients buyer after an offer has been accepted unless otherwise directed in writing to do so by the buyer;~~

(o) through (ac) remain the same but are renumbered (q) through (ae).

~~(ad) (af) failing to respond to a request from the board; or~~

~~(ae) (ag) a licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business~~

of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status;

(ah) acting as a buyer agent without a written buyer broker agreement;

(ai) acting as a seller agent without a written listing agreement;

(aj) acting as a dual agent in a transaction if the licensee is a principal;

(ak) acting as a seller agent in a transaction if the licensee is the buyer in the same transaction;

(al) acting as a buyer agent in a transaction if the licensee is the seller in the same transaction;

(am) submitting a competing offer as a principal in a transaction with the licensee's client; or

(an) failing to account for or misappropriation of funds being held in trust.

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonable and necessary to amend this rule for clarity and formatting consistency among all sections. The board is adding to unprofessional conduct the failure of buyer and seller agents to participate in negotiations. Negotiation is included in the definitions of broker and salesperson at 37-51-102, MCA, and the board is amending this rule to align with the practice definitions. The board is amending (5)(p) of this rule to achieve consistency between similar requirements on seller agents in (5)(n). The board never intended to have different requirements between seller and buyer agents regarding the necessity to submit offers and counter offers.

It is reasonably necessary to add specific conflict of interest situations the board considers unprofessional conduct. The amendment will put licensees on notice that these acts are a violation of current responsibilities set forth in 37-51-313 and 37-51-314, MCA.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. Section 24 of the bill was codified at 37-51-324, MCA, to provide penalties for noncompliance by real estate brokers and property managers with trust account provisions. The board is adding (5)(an) to reinforce 37-1-316(14), MCA, and to implement the legislation by adding the failure to account for trust funds or the misappropriation of funds as unprofessional conduct.

4. The proposed new rules provide as follows:

NEW RULE I SUPERVISING BROKER ENDORSEMENT (1) A supervising broker endorsement will be issued to any broker completing the supervising broker pre-endorsement course.

(2) An out-of-state broker shall complete the supervising broker pre-endorsement course before being issued the supervising broker endorsement.

(3) To maintain the supervising broker endorsement, a broker shall complete four hours each licensure year of board approved education in the area of supervising broker continuing education as designated by the board. This education will be part of the overall continuing education requirement.

(4) After October 31, 2008, only brokers with the supervising broker endorsement may get credit for completing supervising broker continuing education.

(5) A supervising broker who obtains the endorsement by grandfathering may complete the supervising broker pre-endorsement education course and receive continuing education credit one time.

(6) Failure to complete the four-hour supervising broker continuing education requirement shall result in the lapsing, expiration, or termination of the supervising broker endorsement pursuant to 37-1-141, MCA.

(7) A lapsed or expired supervising broker endorsement may be renewed pursuant to 37-1-141, MCA.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-204, 37-51-302, MCA

REASON: The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws and creating a license endorsement for supervising real estate brokers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board determined it is reasonably necessary to propose this new rule to implement the legislation by setting forth the qualifications for obtaining initial supervising broker endorsement and for maintaining the endorsement.

NEW RULE II CITATIONS AND FINES (1) Citations issued by the department may be presented to the broker or property manager responsible for the maintenance of the trust account personally or mailed by certified mail.

(2) A broker or property manager who receives a citation has five business days from the receipt of the citation to either pay the fee or file a written dispute. Failure to either pay the fine or file a written dispute within five business days is unprofessional conduct and subject to board discipline.

(3) Significant violations shall be forwarded to the complaint screening panel. Significant violations may include:

- (a) an excessive number of violations in a single audit;
- (b) repeat violations; or
- (c) a single, severe violation.

AUTH: 37-1-319, 37-51-203, MCA

IMP: 37-51-324, MCA

REASON: The board is proposing this new rule to implement 37-51-324, MCA, as enacted by the 2007 Montana Legislature, providing for department employees to issue citations for trust account violations found during compliance audits. The rule specifies the issuance of citations, the licensee's options upon receipt of a citation, and the board's ability to address significant trust account violations.

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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., September 12, 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.realestate.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 Realty Regulation 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 Realty Regulation 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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrre@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, apply and have been fulfilled. The primary bill sponsor was notified on July 30, 2007, by regular mail.

9. Barb McAlmond, Program Manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
CINDY WILLIS, 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 August 4, 2008