

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.210.301 definitions,)
24.210.601 licensing, 24.210.635)
renewals, 24.210.641 unprofessional)
conduct, 24.210.667 and 24.210.674)
continuing education)

TO: All Concerned Persons

1. On June 11, 2009, the Board of Realty Regulation (board) published MAR Notice No. 24-210-34 regarding the public hearing on the proposed amendment of the above-stated rules, at page 928 of the 2009 Montana Administrative Register, issue no. 11.

2. On July 2, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the July 10, 2009, deadline.

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

All comments apply to the entry-only listing rule changes proposed to ARM 24.210.301, 24.210.601, and 24.210.641:

COMMENT 1: A number of commenters opposed the new "entry-only listing" definition. The commenters stated this type of representation is detrimental to consumers, increases the liability of buyer agents, and that the new definition and subsequent regulation would eliminate representation to sellers.

RESPONSE 1: The board concurred with the comments concerning the entry-only listing rules and decided to not amend ARM 24.210.301, 24.210.601, and 24.210.641 at this time. The board referred the matter to the rule review taskforce (taskforce) currently reviewing all board statutes and rules.

COMMENT 2: In opposing the entry-only listing rules, one commenter asked that the rules require the seller agent to disclose this definition in all listing information available on the property, which would allow the buyer agent to negotiate directly with the seller. The commenter stated that proposing the entry-only listing rules in such a piecemeal fashion has resulted in contradictory and confusing provisions that are difficult for the licensee to deal with, and that will likely have a significant impact upon the consuming public. The commenter opined that the proposed rules directly conflict with an earlier legal opinion issued by the board regarding the establishment

of licensee duties. The commenter stated that the rule anticipates information entered into a listing service and inquired what that service might be.

The commenter asked why the agreement to allow a buyer agent to negotiate directly with the seller was required between the seller and the listing agent, instead of between the listing agent and buyer agent. The commenter also questioned whether someone could be found in violation of board statutes for negotiating directly with the seller who has a written outstanding listing agreement and whether a listing agent with an "entry-only" listing had an obligation to ascertain pertinent facts, pass adverse material facts, or update internet information.

RESPONSE 2: The board acknowledged the comments and questions posed and referred the issues to the taskforce.

COMMENT 3: Several commenters stated that the proposed entry-only listing rules are not in the best interest of the consuming public or the real estate industry.

RESPONSE 3: The board decided to examine the issue further and referred the matter to the taskforce.

COMMENT 4: Several commenters stated the proposed entry-only listing rules would harm the professionalism of real estate licensees and increase lawsuits by allowing listing submissions without the attendant liability and responsibility of the licensee. One commenter stated that the only people who want entry-only listings are "cut rate real estate chop houses who don't want the responsibility and want to limit their liability."

RESPONSE 4: The board decided to further study these issues and referred them to the taskforce.

COMMENT 5: One commenter suggested that the proposed amendments to ARM 24.210.601 allowing prospective buyers and their agents to speak directly to a seller appears to permit the seller to waive the statutory prohibition in 37-51-321(1)(l), MCA, against negotiating directly with a represented party.

RESPONSE 5: The board is referring the matter to the taskforce for further study.

COMMENT 6: One commenter suggested that the passage of the rule will result in buyers' agents being accused of taking advantage of sellers and thus would be a step backward for the real estate industry.

RESPONSE 6: The board discussed that, if true, this would be an unintended consequence of the rule changes and referred this matter to the taskforce.

COMMENT 7: A group of commenters suggested that some sellers are unclear on the specifics of the real estate profession, which could result in actions that would be prohibited for an agent. If that happened, there would be no consequences for sellers who deal sharply with buyers and buyer agents.

RESPONSE 7: The board determined they would study this issue further and referred the matter to the taskforce.

COMMENT 8: Some commenters seemed to confuse the Board of Realty Regulation with the Montana Association of Realtors and expressed concern about allowing entry-only listings on organizations established by the MAR (i.e. the MLS).

RESPONSE 8: The board realizes the confusion for some licensees and notes that the comments address issues beyond the board's jurisdiction.

4. The board has amended ARM 24.210.635, 24.210.667, and 24.210.674 exactly as proposed.

5. The board did not amend ARM 24.210.301, 24.210.601, and 24.210.641 as proposed.

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 November 30, 2009