

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

In the matter of the amendment of)
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)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 2, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 June 26, 2009, 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 realestate@mt.gov.

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

24.210.301 DEFINITIONS (1) through (10) remain the same.

(11) "Entry-only listing" is a listing that requires the listing agent to enter the listing into a listing service, but does not require any other representation or negotiation obligation from the listing agent.

(11) through (22) remain the same but are renumbered (12) through (23).

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 adopt a definition of an entry-only listing, a limited type of listing available between licensees and sellers. The new definition will provide clarity in the proposed amendments to the unprofessional conduct rule at ARM 24.210.641.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (10) remain the same.

(11) If the seller and the seller agent agree that prospective purchasers and their agents may speak directly to the seller, the terms of that agreement must be contained in the listing agreement and shall also be included in any listing information available to other agents and consumers (MLS, newspapers, TV, etc.).

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

IMP: 37-1-131, 37-51-202, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: The board is amending this rule to require notification to anyone who might participate in a transaction where the seller and the seller agent have agreed to limit the licensee's involvement in the transaction process. To ensure a buyer agent doesn't violate 37-51-321(1)(l), MCA while working with a new entry-only listed property, the buyer agent and other potential consumers must be aware of the existence of the entry-only terms that would require all purchasing inquiries to be made directly to the seller rather than the entry-only listing agent. The amendment will give notice to any licensee representing another party that they are able to communicate with the seller directly without violating 37-51-321(1)(l), MCA.

24.210.635 RENEWALS (1) through (3) remain the same.

(4) All continuing education requirements must be met before a license is renewed.

(4) remains the same but is renumbered (5).

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

IMP: 37-1-141, 37-1-319, 37-51-202, MCA

REASON: The board determined it is reasonably necessary to address confusion and clarify to licensees that meeting all continuing education (CE) requirements is a minimum condition of renewal, per 37-1-141, MCA. The board and department cannot renew a license if the licensee has not complied with the board's continuing education requirements set forth in rule.

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

(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; ~~or~~

(ao) failing as a listing agent of an entry-only listing, to include in the listing agreement the ability for a buyer agent to negotiate directly with the seller.

(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 is amending this rule to add failure of a licensee to provide notice of the limited duties of the listing agent when entering into an entry-only listing

as unprofessional conduct. Entry-only listings are a newly recognized activity under the current scope of licensed activity. The board concluded that failure to include this information in the listing agreement could cause uncertainty for the buyer agent as to talking directly to the seller, which, without a waiver, is a violation of 37-51-321(1)(l), MCA. The board is amending ARM 24.210.601 to require the relevant information in such a listing agreement and is amending this rule to align with that requirement.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) remains the same.

(2) Courses completed after the renewal deadline will result in a late renewal and penalty regardless of when the licensee submits the renewal application.

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

~~(5)(6) No mandatory hours may be carried over except as elective credits.~~

~~For the reporting period beginning January 1, 2007, no No carry over hours will be recognized or allowed.~~

(6) through (15) remain the same but are renumbered (7) through (16).

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: To address confusion among licensees, the board is amending this rule to clarify and reinforce the timeframe for meeting CE requirements and the ramifications late CE completion has on the licensee's renewal. Complying with the CE requirements as a condition to renew is established in 37-1-141, MCA, and failure to comply with those requirements prior to the renewal deadline results in an untimely renewal.

The board is amending (6) to remove unnecessary implementation language from the rule. The board hasn't allowed carryover CE since January 2007 and is now striking the past implementation date.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) and (2) remain the same.

(3) A course may be advertised for credit only after a completed course application has been submitted to the board office accompanied by all required attachments and fees. Courses not submitted for approval may not be advertised for credit. After a course submission, but prior to approval, the course may be advertised if all advertising includes the statement that the course is "pending approval". This advertising must appear in comparable font size and color as the rest of the advertising. A course is not "pending approval" unless a completed course application has been submitted to the board office accompanied by all required attachments and fees.

(3) through (5) remain the same but are renumbered (4) through (6).

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify when CE courses may be advertised for credit. The board received information that some course providers were advertising courses as approved when the courses had not even been submitted to the board for approval. This caused confusion for licensees and created the risk of licensees passing up legitimate courses for those that never receive board approval, and then having a deficit in CE credits at renewal. The board is amending this rule to clarify when and how course providers may advertise CE courses that are pending board approval.

4. 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 realestate@mt.gov, and must be received no later than 5:00 p.m., July 10, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department and board 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.

6. 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 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 realestate@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. 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 June 1, 2009