

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 24.210.667 continuing real )  
estate education and 24.210.835 )  
continuing property management )  
education )

TO: All Concerned Persons

1. On May 26, 2011, the Board of Realty Regulation (board) published MAR notice no. 24-210-36 regarding the public hearing on the proposed amendment of the above-stated rules, at page 815 of the 2011 Montana Administrative Register, issue no. 10.

2. On June 16, 2011, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the June 24, 2011, deadline.

3. GENERAL RESPONSE TO ALL COMMENTS: A "Realtor©" is a member of the National Association of Realtors© (NAR). The term is not a generic term to be applied to all licensees. Indeed, the term is copyrighted and may not legally be used by or applied to persons who are not actually "Realtors©". In fact, it is specifically a matter of unprofessional conduct for a Montana real estate licensee to apply the term to themselves if they are not actually a "Realtor©".

The board has noted that the majority of the commenters spoke of what core course education may or may not do for "Realtors©". In some instances, the commenters appeared to be referencing actual "Realtors©," but elsewhere, commenters appears to be referencing all real estate licensees. Further, the board concluded that many commenters clearly confused the board with the Montana Association of Realtors© (MAR).

The commenters almost universally urged the board to do things which are not within the purview or authority of the board. The board does not promote the industry or seek to maximize profits for licensees, which are within the missions of professional associations. The board is only charged with protecting the health, safety, and welfare of the Montana public through the licensure and regulation of real estate licensees. The commenters' confusion about the term "Realtor©", by itself, indicates a strong need for the kind of education that the board is proposing.

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

COMMENT 1: One commenter opposed the annual requirement of a core education course citing the depressed economy and stating that current courses could be improved upon. The commenter suggested the board instead reform the 60-hour

prelicensing education stating that it teaches very little practical real estate and just enables people to pass the test.

RESPONSE 1: The board notes that the 60-hour prelicensing course is a separate issue from the core course concept. Prelicensing is for new licensees, is typically taken only once in a lifetime, and does not address new issues that arise each year. The board's education committee reviewed both reforming the prelicensing class and the core course, and concluded that the core course concept was the better method. Following discussions with the board, local associations and licensees endorsed the core course requirement as it addresses more current topics and ensures that all licensees will get new, selected information and education each year, rather than relying on each licensee to choose among different topics of continuing education (CE).

COMMENT 2: One commenter opposed the core education course since there already exists a variety of available education, much of it at no cost. The commenter opined that there is no excuse for anyone to not get the needed education to be a "Realtor©," and that broker/owners should be more diligent in hiring. The commenter suggested the board should enact stricter licensure requirements instead of requiring more education once someone has a license. The commenter opined that people think it is "cheap and easy" to be a "Realtor©," and initial education should include information about how to run a business, the cost involved, and the responsibilities of independent contractors. Lastly, the commenter promoted a flat prohibition against convicted felons having a license.

RESPONSE 2: The board notes that the point of the core education is not to provide more education at low cost, but to present specific education each year to address certain current concerns. Because it is intended to address specific current issues, the education will cover different topics each year.

The board's statutory duty is to protect the health, safety, and welfare of the Montana public. It is not to teach licensees how to run their businesses. There are professional associations who teach business ideas, but the board does not purport to instruct the associations in those endeavors.

The board has no legal authority to ban convicted felons from licensure. In fact, constitutional and other legal authority holds for the opposite premise. Under Title 37, chapter 1, part 2, MCA, criminal convictions cannot operate as an automatic bar to licensure in Montana. The board can only deny licensure to a convicted felon if the board finds that the offense relates to the practice of real estate and the person has not been sufficiently rehabilitated so as to warrant the public trust.

The board notes that the commenter addressed matters that the board hopes to cover through the core education, like requiring brokers to exercise better supervision over salespersons. To that extent, the board agrees with the commenter and hopes to address these issues through core course education.

COMMENT 3: Two commenters state that as "Realtors©" they oppose the core education course in this economy because it would force "Realtors©" to spend more on education during tough economic times and may push some to quit the business.

RESPONSE 3: The board determined that it is important for all licensees to obtain consistent information. Many local associations do provide CE for its members as part of members' dues and such education is consistent for those members. The board notes that not every licensee is a member of an association and therefore, nonmembers would not get the same information. The board believes that these economic times require more, not less education and more professionalism.

COMMENT 4: One commenter opposed the core course education, stating that it takes more than education for a "Realtor©" to be good. The commenter stated that it also takes "choosing right, choosing honest" to make a good "Realtor©."

RESPONSE 4: The board concluded that this comment is not responsive to the issue of providing a core course, but the board hopes to address the commenter's issues through core course education.

COMMENT 5: One commenter opposed the core education course and asked if the requirement is proposed in response to problems caused by "Realtors©." The commenter was not opposed to learning more or new business aspects, but only if the education has value. The commenter noted that licensees are already required to take an ethics course every four years and complained that the course covers the same information each time.

RESPONSE 5: The board acknowledges that the concept of core education is proposed as a direct result of disciplinary problems and trends seen at screening panels and in audits. The board concluded that an inordinate amount of time is spent on matters that might be avoided with better education through the core courses. The board intends for the courses to be preventative in nature, and will be different each year to address current topics where the board sees problems.

Although a course may be offered more than once, the board does not intend to offer the same courses year after year. The board notes that the commenter appears to confuse the board with a real estate association that requires an ethics course every four years. The board does not require that licensees complete an ethics course every four years.

COMMENT 6: One commenter opposed the core education course and did not understand how the requirement board will help "Realtors©." The commenter suggested that if the core course is necessary, it should be included as part of the mandatory 12 hours of CE currently required, and not an additional requirement. The commenter opined that "Realtors©" should be in the field or office, not sitting in a mandated class being presented with repetitive information.

RESPONSE 6: The board did consider including the core course education as part of the 12 required hours, but determined the core course needs to be in addition to the 12 required hours at this time. That conclusion is supported by survey results from the local and statewide associations, which showed a majority of members supported the core course requirement over and above the required 12 hours.

COMMENT 7: One commenter opposed the core education course, stating that it should be more difficult to obtain a real estate license. The commenter asserted that the prelicensing education merely educates "Realtors©" on how to pass the test and does not teach them how to be professional "Realtors©." The commenter stated that the board should require more education upfront and opined that new licensees are not prepared to write contracts after only a weeklong class and an examination.

The commenter further stated that both CE and training new agents should be the responsibility of the brokerage, and that brokers should supervise new agents better. The commenter also suggested that the state organization should continually seek quality speakers and timely topics, make attendance more convenient, and offer mini education clinics a few times a year, rather than just the Graduate Realtor© Institute (GRI) or the education marathon.

RESPONSE 7: The board notes that the 60-hour prelicensing course is a separate issue from the core course concept. Prelicensing is for new licensees, is typically taken only once in a lifetime, and does not address new issues that arise each year. The board's education committee reviewed both reforming the prelicensing class and the core course, and concluded that the core course concept was the better method. Following discussions with the board, local associations and licensees endorsed the core course requirement as it addresses more current topics and ensures that all licensees will get new, selected information and education each year, rather than relying on each licensee to choose among different topics of continuing education (CE).

The board does not teach the business of real estate, it regulates the professional conduct of licensees. The board agrees that brokers should be responsible for the education and training of salespersons and notes that brokers are already required to supervise new agents. The board continues to see problems with lack of supervision and hopes to address that and other issues through uniform core courses.

The board believes the commenter references those speakers arranged by the state professional association and the board has no input as to those speakers. The board is attempting to present timely topics through the presentation of convenient core course education that will evolve in order to stay abreast of current issues. The board is not charged with teaching new aspects of the real estate business to licensees, but is statutorily mandated to protect the health, safety, and welfare of the Montana public.

COMMENT 8: One commenter advocated a grandfather clause that would exempt anyone licensed a minimum of ten years from any board-mandated core education course. The commenter asserted that licensees with that amount of experience have a wealth of on-the-job training, and the currently required 12 hours is more than adequate to keep licensees updated on current happenings within the real estate field. The commenter stated that the additional burden of the core course is a waste of licensees' time and money.

RESPONSE 8: The board previously considered a grandfathering concept, but strongly disagrees with the concept for long-time licensees. The board screening panel considers disciplinary complaints against long-time licensees at nearly every meeting. The board notes that some long-time licensees may need even more education to refresh them about things they have forgotten, or provide education on things that have only recently come into being. The board is not charged with teaching current happenings in the real estate business, but is statutorily mandated to protect the health, safety, and welfare of the Montana public.

COMMENT 9: Two commenters suggested that the board include the core course as part of the 12 hours of annual CE already required, and that the board make the core courses available online.

RESPONSE 9: The board did consider including the core course education as part of the 12 required hours, but determined the core course needs to be in addition to the 12 required hours at this time. That conclusion is supported by survey results from the local and statewide associations, which showed a majority of members supported the core course requirement over and above the required 12 hours. The board does intend to make the core course available online.

COMMENT 10: One commenter supported the idea of a core education course, but not as an annual requirement. The commenter noted that ethics is required every four years and opined that the core course should only be required every four years, or at most, every two years.

RESPONSE 10: The board believes the commenter has confused the board with a professional association, as the board does not require an ethics course every four years. Further, the board intends that the core course content will not be the same every year.

COMMENT 11: One commenter supported the core course requirement. The commenter opined that merely having a license does not equate to experience or understanding, but such knowledge can come from outstanding education. The commenter suggested the board add an additional eight hours of required core education on the necessary knowledge of real estate agents, including what is a material fact and the various kinds of fraud.

RESPONSE 11: The board appreciates all comments made during the rulemaking process. At this time, the board is not going to increase the core course hours.

COMMENT 12: Numerous commenters supported the proposed requirement of a core course because the additional education will increase the knowledge and professionalism of all practitioners in the state. The commenters further stated that all the state's licensees will receive uniform information that is pertinent to the profession and suggested that it will be important for the board to ensure that the topics selected are timely and relevant for licensees.

RESPONSE 12: The board appreciates all comments made during the rulemaking process.

COMMENT 13: Several commenters supported the core course requirement and requested the board include specific topics of education to emphasize risk management, board regulation, and the state's statutes and rules. The commenters suggested easing the initial broker qualifications, but advocated more stringent examination procedures for new licensees, including additional topics of education, and requiring licensees who have been inactive for more than two years to retake the rookie course to reactivate. The commenters suggested the board form a working group to explore the development of an apprenticeship program.

RESPONSE 13: The board appreciates all comments made during the rulemaking process, but does not believe it is necessary for a licensee who has been inactive for two years to retake the rookie course. The board is currently exploring the possibility of implementing an apprenticeship program and has recently reconfigured the initial broker qualifications. The board is looking to form a working group.

COMMENT 14: Staff discovered a numbering error in ARM 24.210.667(1) that references exceptions provided in sections (18) and (19). That numbering was done in anticipation of another rule package that is currently in the drafting process and that would also affect this section of rules. The references in the rule should actually be (19) and (20), to conform to the existing rules, rather than the anticipated rules.

RESPONSE 14 The board acknowledges the inadvertent numbering error and is amending the rule accordingly.

5. The board has amended ARM 24.210.835 exactly as proposed.

6. The board has amended ARM 24.210.667 with the following changes, stricken matter interlined, new matter underlined:

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) Each active licensee is required to annually complete a board-mandated core education course of a length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in ~~(18)~~ and (19) and (20).

(2) through (20) remain as proposed.

BOARD OF REALTY REGULATION  
C.E. "ABE" ABRAMSON, 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 October 17, 2011