

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,)
24.210.401 fee schedule, 24.210.426)
trust account requirements,)
24.210.430 internet advertising rules,)
24.210.601, 24.210.602, 24.210.604,)
24.210.610, 24.210.611, 24.210.624,)
24.210.625, 24.210.635, 24.210.641,)
24.210.660, 24.210.661, 24.210.667)
and 24.210.674 brokers and)
salespersons, 24.210.801,)
24.210.803, 24.210.805, 24.210.807,)
24.210.809, 24.210.812, 24.210.828,)
24.210.829, 24.210.835 and)
24.210.840 property management,)
and the adoption of NEW RULE I)
public participation, and NEW RULES)
II and III course provider)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 17, 2012, 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 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 April 13, 2012, 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. GENERAL STATEMENT OF REASONABLE NECESSITY: Following an in-depth biennial rule review by the board and a volunteer task force as required by 2-4-314, MCA, the board is proposing revisions throughout the administrative rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules for accuracy, consistency, simplicity, better organization, and ease of

use. The board has combined amendments over time into this single proposal notice for efficiency in processes and cost savings to the board and licensees.

The 2011 Montana Legislature enacted Chapter 79, Laws of 2011 (Senate Bill 256), an act revising laws relating to real estate brokers and salespersons to clarify the rights and obligations of a supervising broker. The bill was signed by the Governor on March 25, 2011, and became effective October 1, 2011. The board is amending certain rules to align processes and terminology with the 2011 statutory changes and further implement the legislation regarding the temporary transfer of salesperson supervision.

Authority and implementation cites are amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. 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) remains the same.

(2) "Advertising" means information, in whatever form, used to promote real property for sale, lease, rent, exchange, or purchase, or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer or seller at the individual's request shall not be deemed advertising for the purpose of these rules.

(3) and (4) remain the same.

(5) "Agricultural," "farm," and "ranch" shall include real estate parcels over ~~30~~ 40 acres in size, principally used for, or capable and intended for use in, the production of plant or animal crops.

(6) remains the same.

(7) "Cancellation" is the period of time following the release of the salesperson license from the supervising broker, and prior to transfer of the license to another broker, or placed on inactive status.

(7) and (8) remain the same, but are renumbered (8) and (9).

(10) "Course provider" is a board-approved entity that is responsible to the board for the administration of approved education courses in accordance with board laws and rules.

(9) remains the same, but is renumbered (11).

~~(40)~~ (12) "Distance education" is a course or courses in which the instruction does not take place in a traditional classroom setting, but rather, through other media where the teacher and student are separated by distance and sometimes by time.

(13) "Electronic records" may include checks and bank statements.

(14) "Entry-only listing" is a listing in which the seller and the seller's agent have agreed to limit the seller agent's involvement in the transaction process.

(11) remains the same, but is renumbered (15).

(16) "Incapacity" as used in ARM 24.210.601, means being in a condition as a result of accident or illness that renders the person wholly incapable of conducting the business of a supervising broker. A voluntary or anticipated incapacity or an extended absence from the supervising broker's office is not an incapacity.

(17) "Internet" means the Internet, the World Wide Web, or Internet-based electronic information distribution networks, and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless, or other analogous linkages to a computer, computer network or networks, including, but not limited to, Web web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multimedia advertising, links, and/or banner advertisements.

(13) remains the same, but is renumbered (18).

(19) "Licensee" shall include anyone who has been issued a license by the board or who has made application for a license from the board. A former licensee is subject to disciplinary action for conduct engaged in during the period in which they were licensed. For disciplinary purposes, "licensee" also includes anyone with a lapsed or expired license.

(20) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name, license number, and identifying that the advertisement is made by a real estate licensee or by a brokerage company and that the advertisement is made by a real estate licensee.

(21) "Principal" shall include the seller or buyer with whom the agent has a contract in a real estate transaction. It shall include a property owner with whom the agent has a contract in property management activity.

(17) remains the same, but is renumbered (22).

(23) "Routine application" is a complete application, which shows compliance with board rules and no disciplinary issues. All other complete applications are nonroutine.

(18) remains the same, but is renumbered (24).

(25) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons, pursuant to 37-51-302, MCA.

(20) and (21) remain the same, but are renumbered (26) and (27).

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

(29) "Trust funds" are all monies belonging to others and accepted by a licensee, while acting in the capacity of a licensee.

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

IMP: 37-1-101, 37-1-131, 37-1-136, 37-51-103, 37-51-202, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

REASON: The board is amending the definition of "advertising" to include the ability of an agent, upon request from a seller, to disseminate property data information without being required to comply with advertising requirements for property listed by other licensees, or not listed at all. Current rules allow a licensee to make such dissemination of information to a buyer, but not to a seller. The board concluded there is no need to distinguish between buyers and sellers in the provision of property data information, as sellers also need this information. Often licensees need to provide property data information as a way to educate sellers on current market conditions and to outline what a seller might expect in the current market conditions. This dissemination of information is intended to benefit clients and improve the services of the licensee. The board does not intend for general distribution of this information and it should not be considered advertising.

It is reasonably necessary to amend the definition of "agricultural" and increase the number of acres from 30 to 40, that qualify land parcels as agriculture. This amendment is necessary to mirror the qualifying number of acres under the small tract trust indenture requirements, which was previously amended to 40 acres.

The board is adding the definition of "cancellation" to address confusion and questions as to what triggers a "cancelled" status for a licensee and to align with statutory requirements in 37-51-309, MCA. A "cancelled" license is not disciplinary in nature, although some licensees or members of the public have mistakenly interpreted it that way.

The board is defining "course provider" to align with proposed New Rules II and III in this notice, that set forth requirements for course provider registration.

It is reasonably necessary to establish a definition of "electronic records" to conform to modern accounting practices. Because it is common for modern trust account records to be held electronically, the board is amending existing rules to allow certain additional electronic documents to be used for trust accounts. This change will allow licensees to use current business practices of maintaining electronic documents to fulfill their trust accounting requirements. The board does not intend for the new definition to limit all records to electronic records and will continue to allow submission of paper records.

The board is adding the definition of "entry-only listing" to clarify a new business model, which has come into practice in recent years. In an entry-only listing, the agent and the client have agreed to services, which are something less than the full services formerly required of and provided by agents. The board does not allow such reduction in services to be unlimited and some minimal services are still required under Montana law. It is also necessary to define this term to align with the amendments to ARM 24.210.641(5)(av), which are proposed to clarify the statutory and rule requirements an entry-only listing agent must comply with when engaged in an entry-only listing.

In conjunction with the 2011 passage of SB 256, the board determined it is reasonably necessary to add the definition of "incapacity." In adopting new rules to allow for temporary transfer of salesperson supervision, the board anticipates there will be both expected and unexpected reasons for transfer of supervision, including when a broker unexpectedly becomes incapacitated. This term will identify the unexpected condition that would require temporary supervision of salespeople by a supervising broker, other than the salesperson's supervising broker of record. The

board does not intend for this term to include anticipated incapacities or absences such as a planned surgery or vacation.

It is reasonable and necessary to amend the definition of "licensee" to eliminate recent confusion by some who did not understand that a lapsed or expired license is still considered a license that may be subject to board discipline. This definition will more clearly reflect the statute, 37-1-141, MCA, allowing boards to take disciplinary action against individuals with lapsed or expired licenses.

In response to a number of recent questions concerning identification requirements in advertising, the board is amending the definition of "licensee identification" to clarify these requirements. The purpose of license identification is to ensure that, as a matter of public protection, the public, consumers, and other licensees know who is offering the real estate services. Therefore, when advertising and soliciting business from the general public, the advertisement must clearly identify the licensees, or the advertisement must identify that it is being offered by a brokerage. This amendment coincides with proposed amendments to ARM 24.210.641(5)(ag).

The board is amending the definition of "principal" to include the principal in a property management transaction. The current definition only contemplates a principal relationship with a buyer or seller, but a principal relationship can also exist with a property owner in the case of property management.

The board determined it is reasonably necessary to establish a definition of "routine application." Under 37-1-101, MCA, the department is required to issue and renew routine licenses as defined by the board. The board had not previously established a definition in rule, and this new definition will provide direction to department staff as to which licenses the department is authorized to issue without requiring board review.

The board is establishing a definition of "trust funds" to include all money that belongs to someone else and is received by a licensee during the course of their licensed activity. Those trust funds may be held by the broker or property manager in a trust account. The parties to a real estate transaction can designate an alternative holder, but they are still considered trust funds.

24.210.401 FEE SCHEDULE (1) through (7) remain the same.

(8) Broker change of place of business or each salesperson	
change of broker <u>or transfer of cancelled license</u>	45
<u>(9) transfer of supervision to a single temporary supervising broker</u>	<u>25</u>
<u>(10) late filing of temporary supervising broker notification</u>	<u>50</u>
(9) remains the same, but is renumbered (11).	
(10) <u>(12) Placing active <u>or cancelled</u> license on inactive status</u>	10
(11) through (16) remain the same, but are renumbered (13) through (18).	
(17) <u>(19) Predetermination, equivalency, or waiver application fee</u>	50
(18) (20) Each additional course hour-option <u>hour option</u> from one course outline	20
<u>(21) Individual CE request application (per course)</u>	<u>25</u>
<u>(22) Late filing of individual CE request application (per course)</u>	<u>100</u>
<u>(23) Instructor/course development course</u>	<u>\$100 per course</u>
(19) remains the same, but is renumbered (24).	

AUTH: 37-1-131, 37-1-134, 37-51-203, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-308, 37-51-309, 37-51-311, 37-51-502, MCA

REASON: The board determined it is reasonably necessary to amend (8) to specify that a salesperson transferring or inactivating a license that has been returned to the board by a supervising broker for cancellation is required to pay either the supervision change or the inactivation fee. Although the process is not new and those fees are currently collected from licensees in "cancelled" license status, this rule never clearly defined the requirement to pay those fees.

The board is adding (9) to establish a fee to cover costs associated with tracking the temporary transfer of salespeople from their broker of record to a temporary supervising broker. This transfer is for a specific period of time, and will involve the transfer of most or all of a broker's salespeople to a temporary supervisor on one transfer. It is also necessary to add (10) to set a late fee for failing to timely file a temporary change of supervision. The late fee is intended as a punitive fee that will deter late filing of temporary changes and as such, is not commensurate with the associated costs.

The board is amending (19) to add a fee for equivalency and waiver applications as both are unique applications that require additional administrative processing time and board review to determine if the applicant meets the licensing requirements via alternative means. Under 37-1-134, MCA, all boards must set and maintain fees commensurate with the related program costs and this proposed fee will cover the additional expenses incurred in the processing of these applications.

It is reasonably necessary to add (21) and set a fee for individual continuing education (CE) request applications which allow licensees to seek board approval for CE when the course may fall within the current topic requirements for education, but the provider has not sought board approval of the course. The education director's review and approval of these applications has become more time consuming as more licensees use out-of-state or alternative providers to obtain their CE. This fee will offset the expenses incurred in processing these applications.

The board is adding (22) to set a late filing fee for individual CE request applications. The board is placing a deadline for requesting review of these alternative education courses in ARM 24.210.667, and rather than refusing to review courses that are not submitted timely, the board will assess a late fee. This late fee is intended as a punitive fee that will deter late filing of individual CE requests and as such, is not commensurate with the associated costs.

It is reasonably necessary to add (23) and set a per-course fee for a board-sponsored instructor and course development courses. These courses are intended to improve the education offered through prelicensing education and CE by improving the knowledge and skills of the instructors teaching those courses. The proposed new fees will affect approximately 440 individuals and result in \$20,125 in additional annual board revenue.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (4)(e) remain the same.

(f) No payments of personal indebtedness of the broker shall be made from a trust ~~account funds~~;

(g) Money held in the trust account, which is due and payable to the broker, must be withdrawn within ten business days after such money becomes due and payable to the broker;

(h) remains the same.

(i) Maintenance of a trust account shall include the broker or designated broker, keeping at the broker or designated broker's office, a complete record of all funds received and disbursed, in the following manner:

(i) ~~a bank proof of deposit slip~~ showing the date of deposit, amount, source of the money, and where deposited;

(ii) remains the same.

(iii) if checks are used, trust account checks shall be numbered and all voided checks ~~retained~~ recorded. The checks shall denote the broker's business name, address, and should be designated as "trust account";

(iv) and (v) remain the same.

~~(vi) the record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;~~

~~(vii) (vi) for disbursements, the record must include the date, the each payee, and the amount;~~

(vii) no disbursement from the trust account shall be made until the deposit has been verified; and

(viii) remains the same.

(j) A chronological record shall be kept to show the receipts and the disbursements as they affect a single, particular transaction. The record must include the names of the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each entry;

(k) remains the same.

(l) Trust account records and related real estate documents, including sales contracts, leases, and options, agency agreements, closing statements, and other real estate related documents shall be maintained for ~~five~~ eight years from the date of receipt of any funds or property;

(m) The board is authorized to examine each broker's trust account and related real estate documents. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative;

(n) remains the same.

(5) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in said trust account, with the exception that a broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker. Personal funds

may be distributed to the broker or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(6) remains the same.

(7) All licensees shall ensure that all ~~real estate~~ trust funds which they receive are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of ~~the broker's or salesperson's (whichever is earlier)~~ receipt of the money, unless otherwise agreed to by the parties. If funds are delivered to a designated holder, the licensee must obtain documentation of receipt by the designated holder. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.

(8) remains the same.

(9) All required trust account records may be maintained electronically, but must be maintained in a manner that permits auditing.

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

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, 37-51-324, 37-51-503, MCA

REASON: The board determined it is reasonably necessary to amend the trust account rule to clarify that the broker's personal debt may not be paid from trust funds, whether or not the trust funds have been deposited into a trust account. This has always been the requirement and the board is amending the rule to address confusion and clarify the prohibition.

The board is amending (4)(i) to require the identification of monies disbursed from the trust account, as well as money received into the account. The board concluded that tracking disbursed trust money and linking it to a principal or property is necessary to ensure complete information about trust account funds. The board is also amending this section to require proof of deposit, but not the actual deposit slip, to allow for electronic record-keeping.

The board is amending (4)(i)(iii) to no longer require that if checks are used, all voided checks must be retained. Electronic banking is becoming more common in the industry and additionally, most financial institutions do not retain checks of any kind for any significant period of time. Additionally, licensees may perform mostly electronic transfers or print their own checks using their computer record-keeping system, rather than traditional preprinted checks. There are many reasons a check might be voided and the licensee would not have the ability to retain the check. The board determined that recording all voided checks is sufficient to account for any missing check numbers.

The board is removing the redundant requirement that deposit records contain the date, name of the party giving the money, and name of the principal as it is already required in (4)(i)(v). The board is amending (4)(i)(vi) to require identification of each payee in disbursements, since multiple payees can be included

in a single electronic disbursement. The board is adding (4)(i)(vii) to require that deposited funds are verified prior to disbursement to eliminate a possible overdraft of the trust account. The board holds the broker responsible when a trust account goes negative due to nonsufficient funds charges or payment and this verification will ensure the funds are available.

It is reasonably necessary to amend this rule to require that the transaction ledgers are maintained chronologically to enable licensees to determine if funds for a single transaction were sufficient to fund the transaction obligations.

The board is amending (4)(l) to identify the related real estate documents that must be maintained and available for audit. Although the related document requirements are currently established in policy and procedure, the board is now specifying them in rule to provide clarity and direction for licensees on the necessary documents and the requirement that brokers must produce those documents. The board is also increasing from five to eight years the length of time the trust account records and related documents must be maintained to eliminate confusion for licensees. The longer retention period is reasonably necessary as the documents and records are required when investigating complaints and auditing for compliance with board law and rules. Additionally, eight years coincides with statute of limitations on written contracts.

It is reasonably necessary to amend (4)(m) and clarify that documents relating to the trust account may also be examined by the board or the board's designee to ensure compliance with disclosure and trust account requirements. This amendment clarifies an existing requirement and sets current practice into rule.

The board is amending (5) to put brokers on notice of how personal funds in a trust account must be tracked. It is a requirement that all funds must be tracked and it has been consistent practice to require that brokers maintain a personal funds ledger in addition to client ledgers, but it has never been specified in rule.

It is reasonably necessary to amend (7) and remove the delineation of who receives the trust funds for the three-day calculation. No matter who receives it, all money must be deposited within three days of receipt, unless delivered to a designated holder or as otherwise agreed to by the parties. The board is also amending this section to clarify that delivery to the designated holder must comply with existing rules or with terms agreed to by the parties, and that documentation of the delivery is necessary to ensure licensees are appropriately and timely delivering trust funds to the designated holder.

24.210.430 INTERNET ADVERTISING RULES (1) remains the same.

(2) All Internet advertising shall truthfully and accurately describe the real property or service advertised. Real property advertisements shall identify the city, town, or county in which the real property is located. A specific street address is not required.

(3) through (3)(g) remain the same.

(h) Licensee identification should be visible as part of the advertising message when using multimedia advertising (e.g., ~~Web based~~ web-based, executable e-mail, attachments, etc.).

(i) remains the same.

(4) Licensees' Internet advertising may include real properties on which neither the licensee nor the brokerage company is the listing agent, so long as the listing agent has offered cooperation and has consented to Internet advertising by the licensee engaging in the Internet advertising, and the owners of the property have consented to the same. The offer of cooperation and consent to Internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the Internet advertising, are both participating (provided the multiple listing system gives the listing agents the option of prohibiting Internet advertising of some or all of their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them. The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given. Licensees' Internet advertising of real properties, on which neither the licensee nor the brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent or brokerage company, ~~including the office mailing address or e-mail address~~. The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such property data may be formatted differently and be condensed and further advertised if the advertisement contains the following statement or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property." No licensee shall be responsible for errors or misrepresentations of others, who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation.

(5) All Internet advertising must be current as of the date of the advertisement and must be updated ~~promptly~~ within seven days in the event of material changes to the listing, such as its expiration, termination, or amendment, and/or in the event of material changes to the information otherwise found in the Internet advertising. Internet advertising shall indicate the date on which it was created and last updated.

(6) remains the same.

(7) When a ~~third-party~~ third party controls or manages the web site or medium displaying the Internet advertising, on behalf of a licensee, the licensee is responsible to assure such Internet advertising and the ~~third-party~~ third party comply with the provisions of this rule.

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

IMP: 37-1-131, 37-51-102, 37-51-103, 37-51-301, 37-51-321, MCA

REASON: The board determined it is reasonably necessary to amend (2) regarding Internet advertising rules. Current business practice allows an owner to opt out of an Internet posting of their address information. Following amendment, licensees must still identify the property by city, town, or county, but the licensee will need to include a specific street address if the owner has opted out of such disclosure.

The board is amending (4) to delete the requirement that licensees include the office or e-mail address of the listing agent in their Internet advertising when neither the licensee nor the licensee's brokerage company is the listing agent. This situation occurs when a licensee and another agent share information regarding the other agent's listing. In those circumstances, it is sufficient to disclose that the property is listed by another agent or brokerage company. The consumer does not receive any additional protection by requiring the inclusion of the listing office address or e-mail address, as long as the site owner complies with all disclosure requirements. The licensee posting the information must provide their own contact information to the consumer, whether they are the listing office or not.

The board determined it is reasonable and necessary to amend (5) and address ambiguity on the meaning of "promptly." The amendment clarifies the board's intent regarding the licensee's responsibility to update Internet information within seven days of any material change.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) Any time that a salesperson's association with the supervising broker is terminated, the supervising broker shall immediately ~~mail~~ return the salesperson's license to the board office with a letter noting the termination. The supervising broker remains the supervising broker for the salesperson, until the license and release are received by the board.

(2) A dispute between a salesperson and the supervising broker shall not be cause for failing to immediately ~~mail~~ return the salesperson's license to the board office.

(3) A salesperson whose license has been cancelled because of termination of association with their supervising broker, must properly notify the board of any new supervising broker relationship, or the desire to place the license on inactive status and pay all required fees within ten days of the board receiving the termination of association.

(4) A licensee shall not practice with a cancelled license. A license shall remain cancelled until transferred to a new supervising broker or placed on inactive status.

~~(3)~~ (5) When required in writing to do so by a salesperson formerly associated with a supervising broker, the supervising broker shall promptly provide the former salesperson with a certified statement on the form prescribed by the board, identifying all real estate transactions in which the salesperson was involved in connection with the salesperson's association with the supervising broker, within the three years preceding the request.

~~(4)~~ (6) Upon termination of a salesperson's association with the salesperson's supervising broker, the supervising broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the supervising broker, and that the listings and pending transactions are the responsibility of the supervising broker.

(5) remains the same, but is renumbered (7).

~~(6)~~ (8) Supervising brokers are responsible for the performance of salespeople under the supervising brokers' supervision. If a complaint is submitted

to the Board of Realty Regulation, alleging improper conduct on the part of a salesperson, a copy of the complaint shall be provided to the supervising broker who shall also provide a response to the complaint.

~~(7)~~ (9) Supervising brokers must provide ongoing real estate training to all salespeople under their supervision, in order to assure competent practice of the profession.

~~(8)~~ (10) A listing ~~obtained~~ agreement negotiated by a salesperson is not effective valid until it is reviewed, signed, and dated by the supervising broker.

~~(9)~~ (11) Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction, prepared by salespeople under their supervision, are appropriately prepared and executed.

~~(10)~~ (12) A broker shall not sign the application of a salesperson, unless the broker and salesperson will be in lawful association, through employment contract or otherwise.

(13) Principals and agents to a particular transaction may consent to communication directly with each other's client.

(14) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired broker license or supervising broker endorsement must transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising broker's broker license or supervising broker endorsement has expired. Failure to transfer to a new supervising broker within ten days will result in cancellation of their active license. A salesperson shall not conduct licensed activity during this unsupervised period.

(15) A supervising broker must immediately inform the broker's supervised salespeople that the supervising broker's broker license or supervising broker endorsement has expired.

(16) An active, licensed salesperson may be temporarily associated with a supervising broker, other than the existing supervising broker of record listed on the salesperson's pocket card, as follows:

(a) The temporary transfer of supervision must be in writing and include:

(i) authorization of the transfer of supervision of the salesperson by the existing supervising broker, including the name and signature of the existing supervising broker;

(ii) acceptance of responsibility for the performance of the salesperson by the temporary supervising broker, including the name and signature of the temporary supervising broker;

(iii) the names of all salespersons transferring to the temporary supervising broker, which may be less than all of the salespersons under the supervision of the existing supervising broker; and

(iv) the effective beginning date and termination date of the temporary transfer.

(b) An existing supervising broker supervising more than one salesperson may temporarily transfer said salespersons to different temporary supervising brokers. Each individual salesperson may only have one temporary supervising broker at any given time.

(c) An existing supervising broker may not transfer temporary supervision of a salesperson for more than 60 days in any 12-month period, and any individual

salesperson may not be temporarily supervised by anyone for more than 60 days in any 12-month period. This limit may not be extended without written approval by the board, which must be based on good cause. A temporary supervising broker may exceed 60 days of temporary supervision in any 12-month period. A temporary supervising broker is not the "broker of record" of any salesperson who is temporarily transferred to the temporary supervising broker.

(d) The existing supervising broker may terminate the temporary transfer of supervision prior to the effective termination date by providing notice to the temporary supervising broker. Written notice shall also be provided to the board.

(e) A temporary supervising broker must supervise the salespeople for the agreed length of time and may not transfer supervision to any broker, other than the original existing supervising broker of record.

(f) Temporary transfers of supervision may be extended beyond the effective termination date subject to the limitation of ARM 24.210.611.

(g) The written transfer of supervision must be provided to the board no later than the three business days prior to the effective beginning date of the temporary transfer of supervision. A late filing will result in a late fee assessed against the existing supervising broker regardless of cause.

(17) In the event of the death or unanticipated incapacity of a salesperson's supervising broker (both existing and temporary):

(a) The salesperson may not practice real estate until the salesperson's license is transferred to a different supervising broker.

(b) The salesperson must inform the board of the death or incapacity within ten days of the existing supervising broker's death or incapacity.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ARM 24.210.611. However, the authorization set forth in ARM 24.210.611 shall not be required.

(18) A salesperson who does not wish to be supervised by a temporary supervising broker may place their salesperson license on inactive status or transfer their license to another supervising broker as provided in ARM 24.210.601.

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

IMP: 37-1-131, 37-51-202, 37-51-301, 37-51-305, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: In accordance with the biennial rule review, the board is amending this rule to address ongoing confusion created by ambiguity within the current rule. The proposed amendments outline current board processes, clarify changes in broker responsibilities, and specifically delineate the required actions of supervising brokers regarding the termination of a salesperson's association with a supervising broker.

The board is adding (4) to address licensee confusion by underscoring the prohibition of a cancelled licensee from practicing, until the license is transferred to a new supervising broker. This amendment clearly states that a cancelled license remains cancelled, until the licensee takes a specific action.

It is reasonably necessary to amend (10) to clarify for licensees and the public that when a listing agreement is secured by a salesperson, the listing is not valid and cannot be enforced unless and until it is reviewed, signed, and dated by the

supervising broker. The board concluded that the current rule is not clear that, without a broker signature, a valid contract does not exist.

It is reasonably necessary to add (13) to clarify that principals and agents can agree that the agent may speak directly with the other principal to a transaction. Currently, there is confusion whether this type of communication may occur. It is only allowable if the parties agree and a licensee may not communicate with the other principal to a transaction if the other principal has an agent and there has been no prior agreement to allow this communication. This concept is most common in entry-only listings as is being defined in this rule notice.

The board is adding (14) and (15) to specify the requirements for both salesperson and supervising broker when the supervising broker's license or supervision endorsement is allowed to expire. A salesperson may not conduct licensed activity without having a properly licensed supervising broker in place. These requirements will help ensure that the salespeople will either transfer to a properly licensed supervising broker or place their license on inactive status.

The board is adding (16) through (18) to further implement the statutory changes in Senate Bill 256 that provide for the temporary transfer of salesperson supervision.

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

(3) The board may, from time to time, review and amend the examination type, format, and the score upon which the pass or fail determination is made.

~~(4) For the broker examination, the pass-fail score is 80 percent.~~

~~(5) For the salesperson examination, the pass-fail score is:~~

~~(a) 80 percent for the uniform examination portions; and~~

~~(b) 70 percent for the state examination portion.~~

~~(6) All test scores may be scaled and equated for the specific examination either by the board or by the testing agency that provides or administers the examination. Candidates for licensure must take a board-approved examination and make a passing score as determined by a psychometrically sound, criterion-related method associated with assessment of minimal competence. The method used shall be published prior to the administration of the examination.~~

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

IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-202, 37-51-302, 37-51-303,
MCA

REASON: It is reasonably necessary to amend this rule to more accurately reflect how the pass point is actually determined, rather than stating a specific passing percentage. Each examination is a unique examination. Each question is weighted by performance difficulty so that each examination, although unique, is the same difficulty. This process utilizes psychometric formulas to ensure that different examinations are constructed using the same criteria. This method of determining the pass point is reflective of the actual scoring process used by the exam service and is psychometrically supported as the acceptable method.

24.210.604 SUPERVISING BROKER ENDORSEMENT (1) and (2) remain the same.

(3) To maintain the supervising broker endorsement, a broker shall complete four hours each licensure year of ~~board-approved~~ 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~~ Only brokers with ~~the~~ a current supervising broker endorsement or who are attempting to reinstate an expired endorsement may get credit for completing supervising broker continuing education.

(5) through (7) remain the same.

(8) A supervising broker endorsement cannot be placed on inactive status. In order to maintain the endorsement, the supervising broker must complete the supervising broker continuing education annually. Failure to complete the supervising broker continuing education will result in the endorsement lapsing, expiring, and terminating.

(9) A supervising broker endorsement that has terminated cannot be reinstated. A broker will be required to meet the current requirements to obtain the supervising broker endorsement again.

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

IMP: 37-1-131, 37-1-141, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-303, MCA

REASON: The board is amending (4) to remove the 2008 implementation date for brokers getting credit for supervising broker CE since this date has passed. The board is also amending this section to clarify that only current supervising brokers and those brokers attempting to reinstate an expired supervising broker endorsement can get credit for attending a supervising broker CE course. Current rules require that a broker must complete supervising broker education prior to reinstatement of an expired supervising broker endorsement.

It is reasonably necessary to add (8) and reiterate current practice that a supervising broker endorsement may not be placed on inactive status, and must be renewed, or it will expire and terminate. To obtain an endorsement, the broker must take an eight-hour education course. The only requirement to maintain a supervising broker endorsement on active status is to complete a four-hour CE course annually. The board notes that there would be no benefit for a broker to place the endorsement on inactive status. To reactivate after being inactive for two years, the broker would have to complete eight hours of back education. There can also be no fee charged to a broker in connection to the supervising broker endorsement. Thus, to track active versus inactive supervising broker endorsements would require expenditure of unreimbursed board resources.

24.210.610 PREDETERMINATION FOR LICENSING (1) Any applicant with prior disciplinary actions, open legal matters, a criminal conviction, or a deferred sentence may, but is not required to, make application for a predetermination prior to completing the examination and required course of education for the sole purpose of

determining whether the applicant's qualifications, other than examination and education, are sufficient.

(2) through (4) remain the same.

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

IMP: 37-1-135, 37-1-137, 37-1-203, 37-1-307, 37-1-319, 37-51-202, 37-51-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address applicant confusion regarding the board's predetermination of applications for licensure. The predetermination process is not intended for the usual routine applicant. The predetermination occurs before a potential license applicant undergoes the expense and effort of completing the prelicensing education and passing the licensing examination. The board intends it as an opportunity for potential applicants (with past legal or other issues that might bear on their qualifications or ability to obtain a license) to have the board review those past issues and determine whether those issues, by themselves, would be a reason to not approve an application for licensure. A predetermination is not a final determination that a potential applicant will be licensed. This predetermination application process is not intended for new applicants who do not have prior issues that might prevent them from being licensed.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND

BROKER (1) Applicants for license must make application on forms approved by the board and accompanied by the required fee, ~~and must include a recent 2" x 2" photograph for identification of the applicant.~~

(2) through (9)(b)(iii)(A) remain the same.

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

(C) through (9)(f) remains the same.

(g) In order to claim credit for a transaction, the applicant must have taken an active role in the transaction as determined by the board, except that a supervising broker may claim supervision points as provided in (9) above.

(h) No more than one credit total per side per transaction may be claimed by a team or its members.

(10) The board will review all nonroutine applications.

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

IMP: 37-1-131, 37-1-304, 37-51-202, 37-51-302, 37-51-303, MCA

REASON: The board is amending (1) to eliminate the unnecessary requirement for an applicant's photograph as part of the application. The board concluded that the picture of the exam candidate that is already included in the exam results is acceptable for licensee identification.

It is reasonably necessary to amend (9) to clarify that an applicant for a broker license must have taken an active part in a transaction before claiming credit to meet the experience requirement. The board concluded that it is not enough for a

broker to be a member of a team of licensees or just a member of an office, but must have actually performed significant duties in a transaction before claiming experience credit. The board recently received a number of questions on this issue and the amendment will address any confusion.

The board is also amending (9) to limit the experience requirement allowable per transaction to one total point so that a team of licensees or members of an office may not each claim whole experience credit for a single transaction. The board concluded that each transaction is one point and cannot be shared by multiple licensees in a total amounting to greater than one point.

It is reasonable and necessary to add (10) and clarify for the public and applicants that the board has not authorized the department to issue licenses for any nonroutine applications without prior board review, as is the current practice. The board is proposing to define routine application at ARM 24.210.301 in this notice. All other applications not meeting the definition are to be considered nonroutine and require board review.

24.210.624 INACTIVE LICENSES (1) through (4) remain the same.

(5) An inactive licensee may not receive compensation for real estate activity not earned while the license was active. If a transaction is initiated prior to the date of inactive status, but closes after the date of inactive status, the licensee may receive compensation.

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

IMP: 37-1-319, 37-51-103, 37-51-202, 37-51-204, 37-51-301, 37-51-306, 37-51-308, MCA

REASON: The board is amending (5) to address questions concerning when an inactive licensee can be paid. Compensation is allowed as long as the activity being compensated for was completed before the licensee went inactive. This addition will clearly identify when a salesperson or broker may receive compensation while their licenses are on inactive status.

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS (1) and (1)(a) remain the same.

(b) provide evidence of completing 24 hours of continuing education within the ~~proceeding~~ preceding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; ~~and~~

(c) provide evidence of completing the previous license year core course in addition to the continuing education, and

(c) remains the same, but is renumbered (d).

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

IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-308, 37-51-311, MCA

REASON: It is reasonably necessary to amend this rule to correct the inaccurate use of the word "proceeding" that was discovered during the biennial review. The

board always intended that the time period referenced is the 24-month period before application for reactivation.

The board is adding (1)(c) to specify that licensees going from inactive to active status licensure must complete the core course in addition to the CE requirements. The board implemented the annual board-mandated core course requirement for active brokers and salespersons in late 2011. This amendment clarifies that this requirement applies when moving from inactive to active status.

24.210.635 RENEWALS (1) and (2) remain the same.

(3) A cancelled salesperson license may not be renewed. The license must be placed on inactive status or transferred to a supervising broker before it can be renewed.

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

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

IMP: 37-1-141, 37-1-319, 37-51-202, 37-51-309, MCA

REASON: The board is amending this rule to address licensee confusion by clarifying that, according to statute, a salesperson's license released by a supervising broker is cancelled and not eligible for renewal. An inactive license may be renewed, but a canceled license may not. A cancelled license indicates the licensee has essentially abandoned the license. To demonstrate a salesperson's intent to maintain the license, the salesperson must first timely transfer it to another supervising broker or place it on inactive status and must do so before the salesperson is eligible to renew.

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

(t) when acting as a buyer agent, disclosing to a buyer client who is a principal the to a real estate transaction, the name of a competing client who is also making an offer on the same property or disclosing the amount, terms and or provisions of a the competing principal's client's offer when a buyer's broker has more than one principal making offers on the same property;

(u) through (x) remain the same.

(y) violating the Residential Lead-Based Paint Disclosure Program of Title X, section 1018 of the United States Code;

(z) failing, while managing property for owners acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of 37-51-607, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828. Incidental property management duties shall not require compliance with ARM 24.210.828(3)(u);

(aa) remains the same.

(ab) violating the state and federal ~~human rights~~ fair housing statutes;

(ac) through (af) remain the same.

(ag) failing to disclose in advertising either:

(i) the licensee's name, license number, and identifying that the advertisement is made by a real estate licensee; or

(ii) that the advertising is made by a brokerage company. If the company name does not include "realty" or "real estate," the advertising must include the phrase "a real estate agency";

(ah) failing to comply with Internet advertising is subject to the provisions of ARM 24.210.430;

(ah) through (aj) remain the same, but are renumbered (ai) through (ak).

~~(ak) (al) a licensee shall not engage~~ engaging in or conduct conducting business as a real estate licensee, or ~~advertise~~ advertising as a real estate licensee, ~~or engage in or conduct~~ conducting the business of a real estate licensee at a time when the licensee's real estate license has expired, is cancelled, or is on inactive status;

~~(al) (am) acting as~~ offering real estate guidance, direction, or advice to a buyer agent without a written buyer broker agreement;

(am) through (ap) remain the same, but are renumbered (an) through (aq).

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

~~(ar) (as) failing to account for or misappropriation of funds being held in trust;~~

(at) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education;

(au) failing to document any agreement allowing an agent's principal to negotiate directly with an opposing agent;

(av) failing as a listing agent on an entry-only listing to comply with all other statute and rule requirements of a real estate licensee;

(aw) failure to document compliance with 37-51-105, MCA, prior to or contemporaneously with an offer for the purchase and sale, rental, or lease of inhabitable real property;

(ax) when applying for a broker license, claiming more credit for transactional experience than actually earned; or

(ay) as a supervising broker, failing to immediately inform the broker's supervised salespersons that the supervising broker's license or endorsement has expired.

(6) The revocation, suspension, or other disciplinary treatment of any other professional or occupational license or privilege, held by the licensee in this state or another state jurisdiction, may be grounds for license discipline in this state, if the board determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity.

(7) Real estate licensees are responsible for the actions of their employees who aid or assist the real estate licensee in the performance of real estate functions. At no time may an unlicensed employee perform an activity for which a license is required.

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

IMP: 37-1-137, 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-301, 37-51-302, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, 37-51-503, 37-51-508, 37-51-512, MCA

REASON: The board determined it is reasonably necessary to amend (5)(t) to address questions concerning what type of information can be released by a buyer agent to multiple competing clients. The board is amending to this rule to clarify that a buyer agent cannot disclose the name of a potential buyer or the terms of the offer, but can disclose the fact that a competing offer exists.

The board is amending (5)(z) to clarify that a salesperson or broker acting as a property manager must comply with certain property management statutes and rules when performing property management duties. Real estate salespersons and brokers are authorized by statute to conduct property management, even without a separate property manager license and the board concluded that it is important for these licensees to understand the need to comply with property management requirements while performing those duties.

It is reasonable and necessary to amend (5)(ab) to specifically identify the state and federal statutes a licensee is required to follow. The state and federal human rights acts contain many subjects that are not relevant to real estate licensee activity. The board concluded that it is appropriate for licensees to comply with the portion of those statutes dealing with fair housing and it is unprofessional conduct for a licensee to violate those statutes.

The board is amending (5)(ag) to specify the type of disclosure required in advertising to address confusion about advertising disclosure and the requirement to identify who is placing advertising. The board believes this amendment will clarify the requirements to encourage licensees to make the proper disclosures and so consumers will know that a real estate licensee placed the advertisement.

The board is amending (5)(ah) to clarify that licensees must comply with advertising rules established exclusively for the Internet when placing Internet advertising. The Internet is a unique advertising medium and holds its own set of requirements to ensure the consumer is adequately informed when viewing Internet advertising by a licensee.

It is reasonably necessary to amend (5)(al) to clarify that it is unprofessional conduct to advertise or otherwise conduct business as a licensee, when the real estate license is expired, cancelled, or inactive. The board is adding a "cancelled" license to align with 37-51-309, MCA, which references license cancellation.

The board is amending (5)(am) to clarify that it is unprofessional conduct to act as or conduct business as a buyer broker without first securing a written buyer broker agreement. The proposed amendment identifies some specific activities that definitely require a written buyer broker agreement in place. While the board does not intend this to be an exhaustive list, and does not establish a specific time frame in which the buyer broker agreement must be signed, the board believes this clarification will be helpful to guide licensees.

It is reasonable and necessary to add (5)(at) to notify licensees that it is unprofessional conduct to indicate on the renewal form that they have met the continuing education (CE) requirements if they have not done so. The board notes that oftentimes licensees indicate the completion of CE when they intend to complete it before the renewal date, but then fail to meet that deadline. The board sees this as renewing when not qualified and falsification of the renewal form, and notes that this can result in license discipline.

The board is adding (5)(au) to clarify that to avoid potential license discipline, a licensee must document any agreement between the licensee and the principal that the principal may negotiate directly with the opposing agent, rather than all negotiations going through the principal's agent. As this is becoming a more common practice, the board is attempting to identify minimum requirements for this type of agreement. Failing to obtain such a written agreement could result in potential discipline for the opposing agent for interfering with a contract. The board concluded it is essential that the agent document the agreement and maintain that documentation as proof for the agent to communicate directly with the licensee's client, as well as the client's authorization of direct communication with other agents.

It is reasonably necessary to add (5)(av) and specify that entry-only listing agents must comply with all applicable laws and rules, except those waived by the principal, and that failure to do so is unprofessional conduct. The entry-only listing agent is a relatively new business model and the board wants to ensure that licensees implementing this business model understand the obligations to their principals.

The board is adding (5)(aw) to include as unprofessional conduct licensees' failure to document compliance with sexual and violent offender disclosure requirements. Currently, 37-51-105, MCA, requires compliance with the disclosure requirements, but there is no mandated means of demonstrating compliance. Disputes often come down to the word of one person against another. While the board will not dictate a particular form of documentation, a licensee must have the ability to demonstrate compliance through documentation.

It is reasonably necessary to add (5)(ax) and specify that it is unprofessional conduct for a broker applicant to claim credit for transactions in which the applicant did not actively participate to earn the experience credit. The board concluded that this is not merely a falsification of an application, but that overstating the experience of a broker applicant works to deceive the board and is unprofessional conduct.

The board is adding (5)(ay) to provide that it is unprofessional conduct for a supervising broker to fail to notify the salespersons under their supervision that the supervising broker failed to renew their supervising broker endorsement. The board determined that this notification will alert the salespersons that they must stop practicing and either transfer their license to a broker with a valid endorsement or place their sales licenses on inactive status. The supervising broker has a responsibility to their salesperson and it is unprofessional conduct to fail to communicate their legal inability to continue to supervise the sales staff.

It is reasonable and necessary to amend (6) to clarify that disciplinary action by any recognized licensing entity, not just another state, may be grounds for discipline by the board. Because Montana shares a border with Canada, it is conceivable that a Montana license applicant could have been disciplined by a Canadian province. That disciplinary action should be given an equal weight as a disciplinary action taken by another state.

The board is adding (7) to notify licensees that even though they may employ unlicensed persons to perform tasks, the licensee remains responsible for their employees' actions. The board is also reiterating that unlicensed employees may not be delegated duties that require a license, no matter the level of licensee supervision. The board often receives inquiries regarding the activities of unlicensed

assistants and concluded that this amendment will help clarify licensees' responsibilities when employing unlicensed individuals.

24.210.660 PRELICENSING EDUCATION -- SALESPERSONS AND BROKERS (1) through (3) remain the same.

(4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.

~~(4)~~ (5) Advanced nationally recognized designation courses may be submitted and may be approved, in part, to fulfill specific topics of the broker prelicensing education requirement.

(5) through (7) remain the same, but are renumbered (6) through (8).

~~(8)~~ (9) Approved instructors must have one year of experience in real estate education, and:

(a) remains the same.

(b) advanced training on instruction methods and adult learning; ~~and~~

~~(c) one year's experience in real estate education.~~

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

(a) through (c) remain the same.

~~(d) construction and land development;~~

(e) through (l) remain the same, but are renumbered (d) through (k).

(l) general trust accounting for real estate licenses;

(m) through (t) remain the same.

~~(10)~~ (11) ~~Effective January 1, 2003, the~~ The 60 hours of ~~board approved~~ board-approved broker prelicensing education will consist of the following modules:

(a) through (d) remain the same.

(e) professional conduct; ~~and~~

(f) real estate and property management trust accounting; and

(f) remains the same, but is renumbered (g).

~~(11)~~ (12) Courses must be designed so that no more than ten minutes per ~~hour~~ 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

~~(12)~~ (13) The applicant must attend 90 percent of ~~each~~ the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

(13) remains the same, but is renumbered (14).

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

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

REASON: The board determined it is reasonably necessary to add (4) to clarify that applicants are responsible for ensuring that the prelicensing courses they take are approved by the board for Montana or meet licensing requirements. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to taking the course, the licensee risks having the course disallowed.

The board is reorganizing (9) to clearly set forth the requirement for one year of experience in real estate education for precicensing instructors. The board intends that all precicensing instructors have, at a minimum, one year of experience in real estate education. It is not acceptable to the board for an instructor to simply have a bachelor's degree in a field associated with the subject being taught. Additionally, the instructor must hold either a satisfactory bachelor's degree or have advanced training on adult instruction methods and learning. While not a new requirement, the current rule format creates confusion among applicants.

The board is amending the course topics required in the sales precicensing course by adding general trust account requirements and eliminating construction and land development. The board determined it is necessary for all licensees to have a good understanding of trust account requirements and how to comply with current law and rules, even though the responsibility for maintaining the trust account lies with the broker. Construction and land development are more specialized areas of real estate and are more advanced topics than needed for entry-level precicensing courses.

The board is amending (11) by striking the 2003 effective date for the broker precicensing education as this effective date has passed and has no application to current rules. The board is also amending (11) by adding property management trust accounting to the mandatory topics covered in the broker precicensing education course. This addition puts more emphasis on brokers learning the intricacies of trust accounting for both real estate and property management, since brokers are licensed to practice in both areas and may supervise salespersons who perform both real estate and property management duties.

The board determined it is reasonably necessary to amend (12) and (13) and clarify attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendments clarify that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) ~~Effective January 1, 2007, all All~~ new sales licensees will receive an interim license that will ~~expire~~ terminate October 31 of the year of the initial license date.

(2) ~~Effective January 1, 2007, all All~~ new sales licensees are required to complete the ~~board mandated~~ board-mandated new licensee mandatory continuing education requirement, commonly known as the 12-hour rookie course, by the renewal date as set by ARM 24.101.413, following their original license issue date.

(3) remains the same.

(4) The new licensee mandatory continuing education does not replace the 12-hour continuing education requirement, which begins with the second year of licensing.

(5) remains the same.

AUTH: 37-1-131, ~~37-1-306~~, 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: The board is amending this rule by striking the 2007 effective date for the new licensee continuing education as this effective date has passed and has no application to current rules. The board is also amending (1) to clarify that an interim license "terminates" if a licensee fails to meet the new licensee mandatory continuing education. An "expired" license carries a specific meaning pursuant to 37-1-141, MCA, and to use that term may misinform interim licensees that "expired" interim licenses may be reinstated as is allowed with regular licenses. However, interim licenses may not be reinstated. If an interim licensee fails to comply with the mandatory new licensee continuing education requirement, the interim license terminates and the licensee must reapply.

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 (4) remain the same.

(5) The licensee must attend 90 percent of each the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

(6) remains the same.

(7) By August 1 of each year, the board will identify topics in which the 42 required hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

(8) remains the same.

(9) No licensee shall repeat a course for credit in the same reporting year, without the course receiving prior board approval.

(10) remains the same.

(11) Course and instructor evaluation forms, approved by the board, must be provided and may be collected by a board representative and forwarded to the board office.

(12) remains the same.

~~(13) All approved education must be available to all licensees.~~

(14) (13) All continuing education ~~instructors or their designee~~ course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

~~(15) (14)~~ Instructors or their designee The course provider must report all education attendance in a format approved and provided by the board.

~~(16)~~ (15) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval ~~or withdrawal of the instructor approval.~~

~~(17)~~ (16) All continuing education courses must be taken and completed within the reporting period. ~~No carry over hours will be accepted from one reporting period to another.~~

(18) through (20) remain the same, but are renumbered (17) through (19).

(20) Licensees completing continuing education in another jurisdiction or completing education that the licensee believes meets the topic requirements of the board, but which was not previously submitted to the board for approval, may submit an individual course application for approval consideration.

(21) The completed individual course application and accompanying fee must be filed with the board office within 30 days after completion of the course. Failure to timely file the application will result in a late filing fee.

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: The board determined it is reasonably necessary to amend (5) to clarify the attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendment clarifies that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

The board is amending this rule to eliminate the specific hour requirement reference from (7). The board has already set the continuing education (CE) hour requirements in (2) and it is not necessary to duplicate them here.

It is reasonably necessary to amend (9) to allow credit for duplication of course attendance, with prior approval from the board, under certain unique circumstances. The board acknowledges that the design and content of a course could be of a nature that licensees receive different information each time they complete the course. Prior board approval to repeat the same course during the same reporting period is necessary for a licensee to receive credit, and will only be approved under unique circumstances. A licensee may not apply by an individual continuing education request application and receive credit twice for completing the same course twice. The approval must be requested by the course developer.

The board is deleting (13) to no longer require that all courses be available to all licensees. This amendment will allow attendance at courses that are limited to a specific target audience. An example is the board "Rookie" course, which is only available to new sales licensees during their first licensing year. The board notes that at times, attendance by others may cause disruption in the education.

It is reasonably necessary to amend this rule to require that course providers report licensee hours rather than course instructors. The board notes that in most

cases, course instructors are hired by a course provider to offer instruction and do not monitor attendance or award attendance credit. Referring to the course provider will include those instructors that do offer courses and monitor attendance.

The board is removing the prohibition on carry over hours from (16). This prohibition already appears in (6) and restating it is redundant and unnecessary.

It is reasonably necessary to add (20) and (21) to identify who may file individual course applications and establish the filing requirements. There are instances when licensees complete education they believe is equivalent to Montana board-approved education. In those instances, they may apply for course review by submitting an application, attaching necessary documents, and paying an administrative fee. Because of the staff workload necessitated by the annual requirement for continuing education and the need to eliminate the large volume of individual course applications submitted during the final days prior to renewal deadline, the board will require licensees to file complete applications within 30 days of course completion. The board anticipates that this requirement will provide adequate time for course review and help ensure that proper credit is awarded to licensees. If applications are submitted enough in advance, licensees will have enough time to take additional courses if a submitted course is denied credit. Failure to meet the filing requirement will result in a late filing fee.

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.

(4) Courses must be designed so that no more than ten minutes per hour 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(5) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) remains the same.

(b) courses which lead to designations or certifications by ~~board recognized~~ board-recognized trade or professional associations.

(6) remains the same.

(7) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

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: It is reasonably necessary to amend (4) to clarify that ten-minute breaks are for each 60-minute period of time, not for each "hour" as defined by the board. This clarification is necessary because the board's definition of an "hour" of education is 50 minutes of instructional time. The board notes that instructors, at their discretion, may teach for longer periods of time and combine break times, allowing for longer breaks.

The board is adding (7) to clarify that licensees are responsible to ensure that courses they take are approved by the board for Montana or meet continuing education requirements for Montana. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. It is up to licensees to make sure they are taking courses that will satisfy Montana licensing requirements. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending, the licensee risks having the course disallowed.

<u>24.210.801 FEE SCHEDULE</u> (1) through (13) remain the same.	
(14) Individual CE request application (per course)	<u>25</u>
(15) Late filing of individual CE request application (per course)	<u>100</u>
(16) Instructor/course development course	<u>\$100 per course</u>
(14) remains the same, but is renumbered (17).	

AUTH: 37-1-134, 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: As these fees are also set forth in ARM 24.210.401, please see the reasonable necessity following that rule in this notice.

24.210.803 PROPERTY MANAGEMENT DEFINITIONS The terms used in this chapter shall have their common meaning as used in the property management industry and, unless the content otherwise requires, the following meanings shall also apply:

(1) "Salaried employee" as used in Title 37, chapter 51, part 6, MCA, means an individual employed by an owner to manage the property of that owner. This term does not include an unlicensed real estate or property management secretary or the holder of a similar position employed to manage many owners' property for a single broker or property manager. ~~Property manager is one who is engaged in property management as defined in 37-51-602, MCA.~~

(2) "Board" means the Board of Realty Regulation provided in ~~2-15-1867~~ 2-15-1757, MCA.

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA
IMP: 37-51-102, 37-51-602, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate the redundant definition of "property manager," as it is already included in statute. The board is also clarifying the definition of a "salaried employee" as it

applies to property management. The board is amending (2) to correct an inaccurate citation to the statute that creates the board.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) Each property manager will maintain a trust account which will be designated by the words "trust account," wherein all deposits, rent payments, or other trust funds received by the property manager, on behalf of any other person, shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, ~~third party~~ third party, or any other person, as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account. Property managers must maintain all required ledgers for each trust account.

~~(2) Trust funds must be deposited in an insured account in a financial institution located in Montana.~~

(3) remains the same, but is renumbered (2).

~~(4)~~ (3) Funds deposited in a property manager trust account, in connection with a property management transaction, shall not be commingled with the property manager's personal funds or other funds in the trust account, with the exception that the property manager may deposit and keep a sum not to exceed \$1000 in the trust account from the property manager's personal funds, including the interest earned on the trust account, which accrues to the property manager. Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(5) and (6) remain the same, but are renumbered (4) and (5).

(a) When the property management agreement is terminated, but the rental agreement is still in effect, and the licensee is holding funds deposited by a tenant, the licensee shall ~~promptly and in writing advise~~ notify the tenant in writing within five business days that the funds and current tenant files, including lease and condition reports, will be transferred to the property owner or the owner's designee within 30 days of the notification. The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.

(b) The property manager shall ~~timely~~ must transfer funds and current tenant files, including the lease and property condition reports, pursuant to the notice to the tenant.

(7) remains the same, but is renumbered (6).

~~(8)~~ (7) Except for personal funds referenced in ~~(4)~~ (3), no payments of personal indebtedness of the property manager shall be made from such trust account funds.

(9) and (10) remain the same, but are renumbered (8) and (9).

(a) ~~a bank proof of deposit slip~~ proof of deposit slip showing the date of deposit, amount, source of money, and where deposited;

(b) remains the same.

(c) if checks are used, trust account checks must be numbered and all voided checks ~~retained~~ recorded. The checks must denote the property manager's business name, address, and must be designated as "trust account";

(d) and (d)(i) remain the same.

~~(ii) a record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;~~

~~(iii) (ii) for disbursements, the record must include the date, the each payee, and the amount;~~

(iii) no disbursement from the trust account shall be made until the deposit has been verified;

(iv) remains the same.

~~(11) (10)~~ A chronological ledger must be kept for each tenant showing all rents, deposits, and disbursements. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

~~(12) (11)~~ A chronological record must be kept for each property owner showing all income, expenses, and disbursements. The record entries must clearly identify the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, the payee, and the amount must be shown. A running balance must be shown after each entry.

~~(13) (12)~~ The trust account must be reconciled monthly, except in the case where there has been no activity during that month.

~~(14) (13)~~ Every property manager shall keep all records required by ~~(10) (9)~~ and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than ~~five~~ eight years from the date the property management agreement terminates.

(15) remains the same, but is renumbered (14).

~~(16) (15)~~ The board is authorized to examine each property manager's trust account and all related records. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The property manager is required to fully cooperate with the board representative.

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

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA

REASON: The board is amending (1) and specify that property managers are required to maintain all ledgers for each trust account. The board concluded that it is not acceptable for property managers to have a single ledger for multiple accounts. Additionally, having a separate ledger for each account assists the board's auditor to more easily identify separate funds.

The board is striking (2) to remove redundant language. The requirement that all property management trust funds must be deposited in an insured account in a financial institution located in Montana, is already included in (3) of this rule.

It is reasonably necessary to amend (3) to specify how personal funds in a trust account must be tracked. It is a requirement that all funds must be tracked and it is common practice for the board's auditor to require brokers to maintain a personal funds ledger, in addition to client ledgers, in order to track personal funds. However, this was never before specified in rule. This amendment will notify brokers of how personal funds must be accounted for and tracked. Additionally, it is essential that certain identifying information is included in the record, so funds can be linked to a particular property.

The board is amending (5) to clarify the requirements for property managers to notify existing tenants of a change in property management. The property manager must notify the tenant that a change in management has taken place, and that all funds and a copy of the tenant files held by the property manager will be transferred to the property owner or the new management entity. To avoid confusion as to how long "promptly" is, the board is specifying that written notice must occur within five days of the change. The amendment further specifies that the property manager must follow through and transfer the funds and files pursuant to the notice to the tenant.

It is reasonably necessary to amend (7) and specify the prohibition of paying personal indebtedness from trust funds, whether the trust funds have been deposited into the trust account or not. This has always been prohibited and the board is simply seeking to add clarity.

The board is amending (9) to require proof of deposit, but not the actual deposit slip, to allow for electronic record-keeping. The board is also amending this section to no longer require the retention of all voided checks, if checks are used. Electronic banking is becoming more common in the industry and additionally, most financial institutions do not retain checks of any kind for any significant period of time. Additionally, licensees may perform mostly electronic transfers or print their own checks using their computer record-keeping system, rather than traditional preprinted checks. There are many reasons a check might be voided and the licensee would not have the ability to retain the check. The board determined that recording all voided checks is sufficient to account for any missing check numbers.

The board is removing the redundant requirement in (9)(d)(ii) that deposit records contain the date, name of the party giving the money, and name of the principal as it is already required in (d)(i). The board is amending this section to require identification of each payee in disbursements, since multiple payees can be included in a single electronic disbursement. The board is adding (9)(d)(iii) to require that deposited funds are verified prior to disbursement to eliminate a possible overdraft of the trust account. The board holds the property manager responsible when a trust account goes negative due to nonsufficient funds charges or payment and this verification will ensure the funds are available.

It is reasonably necessary to amend this rule and require that transaction ledgers and records are maintained chronologically to enable licensees to determine if funds for a single transaction were sufficient to fund the transaction obligations. The board is amending (13) from five to eight years the length of time the trust account records and related documents must be maintained to eliminate confusion for licensees. The longer retention period is reasonably necessary as the documents and records are required when investigating complaints and auditing for

compliance with board law and rules. Additionally, eight years coincides with statute of limitations on written contracts.

It is reasonably necessary to amend (15) and clarify that documents relating to the trust account may also be examined by the board or the board's designee to ensure compliance with disclosure and trust account requirements. This amendment clarifies an existing requirement and sets current practice into rule.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS (1) A property management licensee who changes the office location ~~or affiliation~~ must notify the board office in writing within ten business days of the change. The proper fee must accompany such notice. The board office will then issue a corrected pocket card for the remainder of the renewal year.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-605, MCA

REASON: The board is amending this rule to clarify that property management licensees must notify the board of changes in office location to align with 37-51-605, MCA, that requires property managers maintain a fixed office in Montana and notify the board of address changes.

The board is also striking the unnecessary requirement for property managers to notify the board of changes in affiliation, as the board does not license, register, or track property managers' affiliation.

24.210.809 PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS (1) through (3) remain the same.

(4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.

(4) through (6) remain the same, but are renumbered (5) through (7).

(7) (8) Approved instructors must have one year of experience in the practice of property management or property management education and:

(a) remains the same.

(b) advanced training on instruction methods and adult learning; ~~and.~~

~~(c) one year of experience in property management education.~~

(8) through (9)(f) remain the same, but are renumbered (9) through (10)(f).

(g) definitions and terms commonly used in the industry;

(h) through (j) remain the same.

(11) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(12) The applicant must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: The board determined it is reasonably necessary to add (4) to clarify that applicants are responsible for ensuring that the preclicensing courses they take are approved by the board for Montana or meet licensing requirements. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending it, the licensee risks having the course disallowed.

The board is reorganizing (8) to clearly set forth the requirement for one year of experience in property management or property management education for preclicensing instructors. The board intends that all preclicensing instructors have, at a minimum, one year of experience in property management or property management education. It is not acceptable that instructors simply have a bachelor's degree in a field associated with the subject being taught. Additionally, the instructor must hold either a satisfactory bachelor's degree or have advanced training on adult instruction methods and learning. While not a new requirement, the current rule format creates confusion among applicants.

The board is amending the course topics required in the property management preclicensing course by adding common terms. The board concluded that it is essential for licensees to know the terms and definitions of their industry.

The board determined it is reasonably necessary to add (11) and (12) and clarify attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendments clarify that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

(1) An applicant for a property management license must:

~~(a) submit a completed original application on forms approved by the board and pay the required fees;~~

~~(b) provide the account number and bank name where the property management trust account is held; and~~

~~(c) provide a recent 2" x 2" photo of the applicant.~~

(2) remains the same.

(3) Applicants for licensure as a property manager must submit proof of completing a ~~board approved~~ board-approved property management preclicensing course obtained within a period of 24 months, immediately preceding the date of the submission of the application.

(4) remains the same.

(5) The board will review all nonroutine applications.

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

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: The board is amending (1) to eliminate documentation that is no longer necessary for a property management application. The board no longer needs the property manager's trust account information since the licensee's compliance with trust account requirements may be verified via a signed statement. The board is eliminating the unnecessary requirement for an applicant's photograph as the board concluded that the picture of the exam candidate that is already included in the exam results is acceptable for licensee identification.

It is reasonable and necessary to add (5) and clarify for the public and applicants that the board has not authorized the department to issue licenses for any nonroutine applications without prior board review, as is the current practice. The board is proposing to define routine application at ARM 24.210.301 in this notice. All other applications not meeting the definition are to be considered nonroutine and require board review.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(m) remain the same.

(n) violating the residential tenants' security deposits laws of ~~title~~ Title 70, chapter 25, MCA;

(o) violating the landlord and tenant residential and commercial laws of ~~title~~ Title 70, chapter 26, MCA;

(p) violating the Montana Residential Mobile Home Lot Rental Act of ~~title~~ Title 70, chapter 33, MCA;

(q) violating the Residential Lead-Based Paint Disclosure Program of ~~title~~ Title X, section 1018 of the United States Code;

(r) through (v) remain the same.

(w) failing, as a licensee, to repay the recovery account for any amounts paid from the account, based on an unsatisfied judgment against the licensee;

(x) through (z) remain the same.

(aa) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act; or

(ab) failing to respond to a request from the board;

(ac) engaging in or conducting business as a property manager, or advertising as a property manager, or engaging in or conducting the business of a property manager at a time when the licensee's license has expired, is on inactive status, or has been cancelled; or

(ad) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education.

(4) and (5) remain the same.

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

IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-1-319, 37-51-202, 37-51-508, 37-51-512, 37-51-601, 37-51-607, MCA

REASON: It is reasonably necessary to amend (3)(ac) to clarify that it is unprofessional conduct to advertise or otherwise conduct business as a licensee, when the property management license is expired, cancelled, or inactive. A license is required to performed licensed activity and it is unprofessional conduct for someone to perform those activities without a valid, current, and active license.

It is reasonable and necessary to add (3)(ad) to notify licensees that it is unprofessional conduct to indicate on the renewal form that they have met the continuing education (CE) requirements if they have not done so. The board notes that oftentimes licensees indicate the completion of CE when they intend to complete it before the renewal date, but then fail to meet that deadline. The board's data system identifies all licensees who have not met the education requirements, including those that incorrectly affirm completion when they have not met the requirements. The board sees this as renewing when not qualified and falsification of the renewal form, and notes that such conduct can result in license discipline, which involves significant time, effort, and expense.

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- PROPERTY MANAGER (1) All new property management licensees are required to complete 12 hours of new licensee mandatory continuing education by the second renewal date as set by ARM 24.101.413₁ following their original license issue date. Six of those hours must consist of:

(a) through (c) remain the same.

(2) New property managers will receive an interim license that ~~expires~~ will terminate on the second renewal date as set by ARM 24.101.413₁ following their original license issue date.

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

IMP: 37-1-306, 37-1-319, 37-51-603, MCA

REASON: The board is amending (2) to clarify that an interim license "terminates" if a licensee fails to meet the new licensee mandatory continuing education. An "expired" license carries a specific meaning pursuant to 37-1-141, MCA, and to use that term may misinform interim licensees that "expired" interim licenses may be reinstated as is allowed with regular licenses. However, interim licenses may not be reinstated. If an interim licensee fails to comply with the mandatory new licensee continuing education requirement, the interim license terminates and the licensee must reapply.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each active licensee is required to annually complete a board-mandated core education course of the length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in ~~subsection~~ (2), except as provided in ~~(17)~~ (16) and ~~(18)~~ (17).

(2) and (3) remain the same.

(4) The licensee must attend 90 percent of ~~each~~ the first hour and 100 percent of each additional hour of the approved course time in order to receive credit

for attendance. Reasonable accommodations will be made for people with medical conditions.

(5) remains the same.

(6) By August 1 of each year, the board will identify topics in which the 42 required hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

(7) No licensee may repeat a course for credit in the same reporting period, without the course receiving prior board approval.

(8) through (10) remain the same.

~~(11) All approved education must be available to all licensees.~~

~~(12) (11) All continuing education instructors or their designee course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.~~

~~(13) (12) Instructors or their designee~~ The course provider must report all education attendance in a format approved and provided by the board.

~~(14) (13) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval or withdrawal of the instructor approval.~~

~~(15) (14) All continuing education courses must be taken and completed within the reporting period. No carryover~~ carry over hours will be accepted from one reporting period to another, except as provided in ARM 24.210.829.

(16) through (18) remain the same, but are renumbered (15) through (17).

(18) Licensees completing continuing education in another jurisdiction or completing education that the licensee believes meets the topic requirements of the board, but which has not previously been submitted to the board for approval, may submit an individual course application for approval consideration.

(19) The completed individual course application and accompanying fee must be filed with the board office within 30 days of completion of the course. Failure to timely file the application will result in a late filing fee.

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: The board determined it is reasonably necessary to amend (4) to clarify the attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendment clarifies that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

The board is amending this rule to eliminate the specific hour requirement reference from (6). The board has already set the continuing education (CE) hour requirements in (2) and it is not necessary to duplicate them here.

It is reasonably necessary to amend (7) to allow credit for duplication of course attendance, with prior approval from the board, under certain unique circumstances. The board acknowledges that the design and content of a course could be of a nature that licensees receive different information each time they complete the course. Prior board approval to repeat the same course during the same reporting period is necessary for a licensee to receive credit, and will only be approved under unique circumstances. A licensee may not apply by an individual continuing education request application and receive credit twice for completing the same course twice. The approval must be requested by the course developer.

The board is deleting (11) to no longer require that all courses be available to all licensees. This amendment will allow attendance at courses that are limited to a specific target audience. An example is the board "Rookie" course, which is only available to new sales licensees during their first licensing year. The board notes that at times, attendance by others may cause disruption in the education.

It is reasonably necessary to amend this rule to require that course providers report licensee hours rather than course instructors. The board notes that in most cases, course instructors are hired by a course provider to offer instruction and do not monitor attendance or award attendance credit. Referring to the course provider will include those instructors that do offer courses and monitor attendance.

It is reasonably necessary to add (18) and (19) to identify who may file individual course applications and establish the filing requirements. There are instances when licensees complete education they believe is equivalent to Montana board-approved education. In those instances, they may apply for course review by submitting an application, attaching necessary documents, and paying an administrative fee. Because of the staff workload necessitated by the annual requirement for continuing education and the need to eliminate the large volume of individual course applications submitted during the final days prior to renewal deadline, the board will require licensees to file complete applications within 30 days of course completion. The board anticipates that this requirement will provide adequate time for course review and help ensure that proper credit is awarded to licensees. If applications are submitted enough in advance, licensees will have enough time to take additional courses if a submitted course is denied credit. Failure to meet the filing requirement will result in a late filing fee.

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL (1) and (2) remain the same.

(3) Courses must be designed so that no more than ten minutes per hour 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(4) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) remains the same.

(b) courses which lead to designations or certifications by ~~board-recognized~~ board-recognized trade or professional associations.

(5) remains the same.

(6) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

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: It is reasonably necessary to amend (3) to clarify that ten-minute breaks are for each 60-minute period of time, not for each "hour" as defined by the board. This clarification is necessary because the board's definition of an "hour" of education is 50 minutes of instructional time. The board notes that instructors, at their discretion, may teach for longer periods of time and combine break times, allowing for longer breaks.

The board is adding (6) to clarify that licensees are responsible to ensure that courses they take are approved by the board for Montana or meet continuing education requirements for Montana. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. It is up to licensees to make sure they are taking courses that will satisfy Montana licensing requirements. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending, the licensee risks having the course disallowed.

5. The proposed new rules provide as follows:

NEW RULE I PUBLIC PARTICIPATION (1) The Board of Realty Regulation adopts and incorporates by reference the public participation rules of the Department of Commerce, as listed in ARM Title 8, chapter 2, except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in licensing decisions and other contested cases as allowed by law.

AUTH: 2-3-103, 37-51-203, MCA

IMP: 2-3-103, MCA

REASON: Neither the board or the department currently have public participation rules. Statute requires the board to adopt coordinated rules for public participation. It is reasonable and necessary to adopt by reference the public participation rules of the Department of Commerce, to which the board was administratively attached prior to 2001, except that the board does not adopt the portion of Department of Commerce rules that seem to allow public participation in licensing decisions. Neither will the board allow the public to participate in disciplinary decisions. No other law requires public participation in board licensing or disciplinary decisions, and the board is of the opinion that these decisions are the board's alone. The public will still be allowed to observe the workings of the board as allowed by law.

NEW RULE II COURSE PROVIDER (1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-204, 37-51-302, MCA

REASON: The board determined it is reasonably necessary to adopt New Rules II and III to broadly outline the licensure requirements for course providers and the duties of course providers. These new rules will be set forth in subchapter 6 for brokers and salespersons, and in subchapter 8 for property managers.

These new rules, in conjunction with other amendments in this notice, shift the responsibility for the administration of all approved continuing education courses from the instructor to the course provider. A course provider, as defined in ARM 24.210.301 in this notice, is not necessarily the same person/entity who teaches the course. A course provider arranges for the education and then typically hires an instructor to actually teach. It is the general practice for a course provider to be the responsible party and the instructor is merely a paid expert, rather than the course administrator. In the rare case where those duties are performed by the course instructor, that instructor will also serve as the course provider and should be registered as such.

NEW RULE III COURSE PROVIDER (1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-204, 37-51-302, 37-51-603, MCA

6. 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., April 25, 2012.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web 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.

8. 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 dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 3, 2011, by regular mail.

10. 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 March 12, 2012