

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

In the matter of the amendment of)
ARM 24.210.426 and 24.210.805)
trust account requirements,)
24.210.430 internet advertising rules,)
and 24.210.601 general license)
administration requirements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 6, 2013, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on April 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

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

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) remains the same.

(2) The broker will not be disciplined for a negative account balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.

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

~~(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 eight years from the date of receipt of any funds or property;~~

(m) (l) 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; and

~~(n)~~ (m) A salesperson, or a broker who has delegated the broker's obligation to maintain a trust account to a designated broker pursuant to (1), shall place all funds for deposit in the custody of the supervising or designated broker in adequate

time for the supervising or designated broker to comply with all trust account requirements.

(5) through (9) remain the same, but are renumbered (6) through (10).

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 is adding (2) to this rule to clearly inform licensees that the board will not hold the licensee responsible for a negative trust account balance as a result of draft deposits that were ultimately dishonored, if the broker has done due diligence in attempting to verify the existence of the funds. The exemption is very limited in scope and requires the licensee to actively attempt to verify the trust funds were deposited before the exemption would apply. The licensee remains responsible for ensuring that fees assessed by the bank are not paid with client trust funds. This amendment is reasonably necessary to address a number of questions received by the board on the ramifications of a negative trust account balance as a result of nonsufficient funds deposits.

The board is relocating the document retention requirement from this rule and relocating it to ARM 24.210.601. The board intends that document retention should occur in all real estate transactions involving a licensee, not just when a broker maintains a trust account. The board concluded that due to its location in the trust account section, the records retention requirement could be misunderstood as only applying to licensees maintaining trust accounts. This move will address this potential for misunderstanding.

24.210.430 INTERNET ADVERTISING RULES (1) Licensees who engage in any form of Internet advertising, including, but not limited to, web sites, blogs, video streaming, and social media, either directly or indirectly, shall comply with the Internet advertising rules set out in this rule. This rule does not apply to traditional forms of advertising or promotion, such as newspaper, television, radio advertisements, yard signs, or direct mailings.

(2) and (3) remain 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.

(a) 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.

(b) 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.

(c) 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.

(d) 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."

(e) 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, or failed to update the information.

(5) and (6) remain the same.

(7) ~~When a third party controls or manages the web site or medium displaying the Internet advertising, on behalf of a licensee, the~~ The licensee is responsible to assure such the accuracy of Internet advertising and the third party comply with the provisions of this rule published or disseminated by another person or another party under the direction of the licensee.

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 (1) and provide examples of the wide variety of Internet advertising opportunities and options available to licensees. The board intends for the rule to be broadly applied and cover all of the advertising examples, as well as other forms of Internet advertising not specifically listed. The board concluded that this amendment will help address licensee confusion in this area.

The board is further dividing (4) into subsections for greater clarity and ease of use for licensees. The board is also amending (4)(e) and (7) to clarify licensee responsibility regarding inaccuracies in Internet advertising that is not originated by the licensee. The amendments explain that the board will hold licensees responsible for inaccurate information published under the licensee's direction and for misrepresentations of others if the licensee fails to update. This amendment will help address licensee confusion as to their responsibility for the accuracy and updating of Internet advertising.

Licensees are responsible for advertising content they can control either directly or indirectly, through an employee, agent, or third party or company that manages or displays the Internet advertising on behalf of the licensee. Internet advertising is becoming more of an issue for real estate licensees as their site information is being "scraped" and posted on other web sites. The board is attempting to clarify what they consider the licensee's area of responsibility, and that

responsibility does not carry over to that "scraped"/reproduced information, unless it is distributed on behalf of the licensee.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) Trust account records and real estate related documents, including sales contracts, leases and options, agency agreements, closing statements, and all other real estate related documents shall be maintained for eight years from the latter of the date of receipt or the date the transaction was completed.

(1) through (15) remain the same, but are renumbered (2) through (16).

~~(46)~~ (17) 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) through (g) remain the same.

(17) remains the same but is renumbered (18).

(a) and (b) remain the same.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ~~(46)~~ (17). However, the authorization set forth in ~~(46)(a)~~ (17)(a) shall not be required.

(18) remains the same, but is renumbered (19).

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: The board determined it is reasonably necessary to amend this rule by adding the records retention requirement currently located in ARM 24.210.426. The board intends for the records retention requirement to apply to all licensees involved in real estate transactions, not just when a broker maintains a trust account. The board concluded that this provision is more appropriately located in this rule.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) remains the same.

(2) The property manager will not be disciplined for a negative account balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.

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

~~(5)~~ (6) All monies belonging to others, which are received by a property manager in a residential lease or rental transaction, must be deposited in the property manager's trust account within three business days. All monies belonging to others, which are received by a property manager in a nonresidential lease or rental transaction, must be deposited into the property manager's trust account within three business days, unless otherwise provided in the lease or rental agreement.

(a) and (b) remain the same.

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

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

~~(8)~~ (9) Money held in the trust account, which is due and payable to the property manager, must be withdrawn within ten business days after such money becomes due and payable, or when the owner and tenant ledgers are reconciled, except as exempted in ~~(4)~~ (5).

(9) through (12) remain the same, but are renumbered (10) through (13).

~~(13)~~ (14) Every property manager shall keep all records required by ~~(9)~~ (10) 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 eight years from the date the property management agreement terminates.

~~(14)~~ (15) All required trust account records may be maintained electronically, but must be maintained in a manner to permit auditing.

(15) remains the same, but is renumbered (16).

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 adding (2) to this rule to clearly inform licensees that the board will not hold the licensee responsible for a negative trust account balance as a result of draft deposits that were ultimately dishonored, if the property manager has done due diligence in attempting to verify the existence of the funds. The exemption is very limited in scope and requires the licensee to actively attempt to verify the trust funds were deposited before the exemption would apply. The board notes that the licensee remains responsible for ensuring that fees assessed by the bank are not paid with client trust funds. This amendment is reasonably necessary to address questions posed to the board on the ramifications of a negative trust account balance as a result of nonsufficient funds deposits.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., May 14, 2013.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's web site at www.realestate.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
C.E. "ABE" ABRAMSON, PRESIDING
OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 1, 2013