

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.210.401 and 24.210.801 fee)
schedule)

TO: All Concerned Persons

1. On May 9, 2013, the Board of Realty Regulation (board) published MAR Notice No. 24-210-39 regarding the public hearing on the proposed amendment of the above-stated rules, at page 773 of the 2013 Montana Administrative Register, Issue No. 9.

2. On May 30, 2013, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the June 7, 2013, deadline.

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

COMMENT 1: Numerous commenters opposed the fee increases and pointed out that the real estate industry has not fully recovered from the recent economic downturn in the market. The commenters encouraged the board to review ways to curb expenses and payroll, rather than increase revenues. Several referenced the Consumer Price Index (CPI) and stated that it does not correlate to the percentage increase proposed by the board. The commenters stated that a much smaller increase in fees – one which is closer to the increase in CPI – would be reasonable, and that subsequent smaller increases over the next few years would be in order.

Another commenter asserted that the board should have been increasing fees incrementally over the last decade and that failure to do so is gross mismanagement.

Numerous commenters requested that the board cut its expenses and reduce its budget by cutting payroll and evaluating the necessity of certain expenses, including travel, seminars, staff, meetings, per diem, and other "optional" expenses. The commenters further stated that the board has not demonstrated sufficient justification for the fee increases.

One commenter stated the fee increase is only justifiable due to an increase in staff workload. The commenter asked if there had been a reduction in staff, resulting in a heavier workload to individual staff persons, and stated that since licensee numbers were down, there should not be an increase in board workload.

Numerous commenters noted that there appears to be a decrease in board provided services, while expenses keep increasing. The commenters said that the decline in board service does not justify the substantial fee increase. They stated that there should be an equal balance between a rate increase and the services and

products rendered by the board. Commenters requested to know if the fee increase is due to an increase in bureaucracy.

One commenter stated that the board previously had an experienced and capable staff, which is no longer the case because duties are now assigned to pools based on function. The commenter does not believe the pool system is efficient or responsive. The commenter suggested the licensing agencies should be returned to their prior status of independent units, and urged that the board and department consider improving efficiencies before burdening licensees with large fee increases.

RESPONSE 1: The board's budget and expenses are available for inspection by the public. A rational and demonstrable basis exists for a fee increase at this time and not later. It is true that other than the executive director, the board no longer has the same specific staff assigned directly to them. Rather, the board shares department employees in various licensing/investigation/audit units. Under the new structure, those employees only bill the board for time spent directly on board business. Other generalized expenses are also proportioned among the licensing boards based on usage.

Five of the seven board members are real estate licensees themselves. Thus, the board understands and is sympathetic with those opposed to the proposed fee increases. However, the board is amending the rules exactly as proposed.

COMMENT 2: Some commenters encouraged the board to implement alternative practices that would depend less on the complaint/contested case process, thus saving the board money.

RESPONSE 2: The board strives to keep disciplinary expenses as low as possible, while still working within the requirements of law. It may not be readily apparent, but the board does not always file a disciplinary action against a licensee for whom a complaint has been filed. In fact, most complaints result in no discipline at all as they are dismissed. Those dismissed complaints typically are completely unknown to other licensees and the public at large. Many licensees only receive letters of instruction or warning, while others receive simple citations, which are not included in the licensee's disciplinary record.

The board points out that statute dictates whether the board can implement alternatives to disciplinary actions. If discipline is warranted, the board is constrained to follow – and does follow – certain mandatory processes. Due process, providing notice to the public, open meetings, and keeping a public record play key roles in determining how the board addresses disciplinary issues.

Once a complaint is filed, the board is required by law to consider it, though it may eventually be dismissed. Even dismissed cases have a cost in board time, legal time, staff time, etc. Further, by law, none of the costs can be recouped from the individual licensees. Even the fines assessed against licensees are not retained by the board, as statute mandates that fine money goes to the state general fund. Therefore, costs can only be recouped through fees assessed to all licensees. The board is therefore amending the rules as proposed.

COMMENT 3: Numerous commenters expressed opposition to the fee increase, because the board has also increased continuing education (CE) requirements, which adds to the cost for a licensee to maintain licensure.

RESPONSE 3: The board realizes the requirements to maintain a license have increased, resulting in higher costs to the licensee. The board is charged with protection of the public, and as the real estate profession becomes more complex, more CE is needed to stay abreast of the changing real estate transaction environment. The increase in education requirements also increases the board expenses in this area by requiring more oversight, more course approvals, and more board education offerings. The board is amending the rules exactly as proposed.

COMMENT 4: Numerous commenters opposed the current fee increases and proposed the board instead consider a graduated schedule to increase the fees over a period of several years.

RESPONSE 4: The board did previously consider increasing fees incrementally over a period of a few years. Based on the comments submitted in this rulemaking, the board again seriously considered this suggestion at the July 2, 2013 meeting. The board reviewed fiscal projections and noted that having multiple increases would likely lead to more confusion. It was determined that increasing the fee one time was more cost-effective, simpler, and subject to less confusion. The board is amending the rules exactly as proposed.

COMMENT 5: Two commenters believed the increase may result in embezzlement and stated the board's and department's finances and operations should be audited.

RESPONSE 5: The board is subject to regular audits by third parties of both board operations and finances. In fact, very soon, the board will again be reviewed by a legislative interim committee. Further, no board member or current staff holds any monies received in the course of business. Legislative and financial oversight by third parties helps to ensure accountability of staff and board members, and that processes are followed and monies are handled properly.

COMMENT 6: Some commenters supported the proposed fee increases, stating that few licenses in any field are available for as reasonable a fee as real estate licenses. Some commenters believe the fees are so reasonable that they should be even higher and suggested that additional (higher) fees be phased in over the next few years.

RESPONSE 6: The board appreciates all comments made during the rulemaking process and the understanding for why the fees are increasing. The board does not believe that higher fees are appropriate at this time.

COMMENT 7: One commenters questioned the board changing the renewal date from December 31 to October 1 a few years ago, and asked whether the board had made any fee adjustment following the change.

RESPONSE 7: The board notes that the change to the renewal cycle in ARM 24.101.413 occurred when the board rules were transferred to the Department of Labor and Industry in MAR Notice No. 24-101-202, and became effective July 1, 2006. As this rule is not proposed for change in this notice, it is outside the scope of this current rulemaking project.

4. The board has amended ARM 24.210.401 and 24.210.801 exactly as proposed.

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 August 12, 2013