



Spring

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BOARD OF REALTY REGULATION NEWSLETTER

SIMPLE TIPS FOR AVOIDING COMPLAINTS

By: Stacey Fossum, Education Director

Most of the complaints filed with the Board of Realty Regulation have a recurring theme and are preventable with a little advance planning. The guidelines that follow may seem basic, but these issues often become the reason one of your clients ends up filing a complaint against you.

SPHERE OF COMPETENCY: Be realistic about your abilities and experience. Few licensees are qualified to perform the full scope of activities authorized by licensure. If you are in over your head, associate with a qualified professional or find a way to transfer your client to someone with adequate experience. "I didn't know" will not excuse illegal business practices.

DENIAL: Do not hide or go into denial if you discover you've made a mistake. Many errors can be resolved successfully if you act quickly and honestly, and most clients will be much more understanding about any errors made if you are up front about it.

CLIENT COMMUNICATION: Be accessible to and communicate with clients. Ignoring client communications is the fastest way to trigger a client complaint. If you are already juggling a full load of clients, it may be best to refer new clients to another licensee in your office. It's better to have 10 clients a month who have all of your time and attention than 20 who only have half.

CUT RATE CLIENTS: Beware of the client (usually a friend or relative) who asks you to help him or her out "on the side." Be prepared to give the same care and diligence to this transaction as you would to any of your other clients. Professionals who adjust their standards based upon the nature of the client often lose far more in the end through risk exposure, client complaints and loss of good will. Trying to justify slipshod work with the excuse that "I was just trying to help out a friend/relative" will not save you from disciplinary action.

Remember, a client who is dissatisfied with your work is much more likely to tell other potential clients than a satisfied client.

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BRR MEMBERS, STAFF & UPDATES

BOARD OF REALTY REGULATION Members

The Governor with Senate confirmation appoints board members. Members serve 4 year terms with a 2-term limit.

CINDY WILLIS
BOARD CHAIR
INDUSTRY MEMBER
POLSON, MT
Term Expires: 5/9/2013

JUDITH PEASLEY
PUBLIC MEMBER
SEELEY LAKE, MT
Term Expires: 5/9/2010

SHIRLEY MCDERMOTT
PUBLIC MEMBER
LAUREL, MT
Term Expires: 5/9/2011

LARRY MILLESS
INDUSTRY MEMBER
CORVALLIS, MT
Term Expires: 5/9/2011

C.E. "ABE" ABRAMSON
INDUSTRY MEMBER
MISSOULA, MT
Term Expires: 5/9/2011

CONNIE WARDELL
INDUSTRY MEMBER
BILLINGS, MT
Term Expires: 5/9/2011

PAT GOODOVER
INDUSTRY MEMBER
GREAT FALLS, MT
Term Expires: 5/9/2012

HAVE YOU MOVED? MAKE SURE TO GET YOUR CHANGE OF ADDRESS TO US!

www.realestate.mt.gov :

Forms: General Forms: Change Form

2010 BOARD MEETINGS

April 15th
Screening Mtg.
1:00 PM
(Closed)

Education Mtg. 2:00 PM

April 16
Adjudication 9:00 AM
Open Mtg 9:15 AM

June 3
Screening Mtg
1:00 PM
(Closed)

Education Mtg. 2:00 PM

June 4
Adjudication 9:00 AM
Open Mtg 9:15 AM

The Honorable Brian Schweitzer, Governor BOARD ADDRESS & CONTACT INFORMATION

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Marilyn Willson, Auditor 406-841-2321

For information regarding complaints, contact:

Teri Ray, Compliance Specialist 406-841-2336

Utah Division of Real Estate, FBI Name Top 5 Real Estate Scams in 2010

Reprinted with permission from ARELLO Boundaries Newsletter (March 2010)

State Investigators for the Utah Division of Real Estate and U.S. Federal Bureau of Investigation (FBI) representatives worked together to issue a warning to Utah consumers naming the top 5 real estate scams for 2010. In an FBI press release, the agencies advise consumers that they may have been the victim of a real estate scam if:

- Someone is letting them live in a home for free,
- A builder is offering deep discounts to move into a newly constructed home, or
- A mortgage company has offered to refinance a mortgage for a fee.

The top 5 mortgage scams for 2010 identified by the agencies are:

1. Reverse Mortgage Scams: Reverse mortgages can be a legitimate way for senior citizens to take equity from their homes without a monthly payment. However, con artists convince senior citizens they can live in a home for free, obtain a home loan under the occupant's name and disappear with the equity, leaving the victim to repay the mortgage.

2. Short Sale Fraud: A "short sale" transaction involves a lender agreeing to sell a property for less than the mortgage amount. Fraud occurs when a distressed homeowner finds a prospective buyer and they secretly set a low sale price. Unbeknownst to the lender, the buyer is willing to pay more for the property and the homeowner pockets the difference.

3. Builder Bailouts: Simply put, builder bailouts are "kick-back" schemes. They may be more common in a troubled real estate market where builders may have a surplus of unsold properties. The builder offers excessive

"incentives" to the purchaser. These incentives are disclosed as a down payment which leads the lender to believe there is equity in a home. Under these circumstances, the builder and the buyer are committing fraud.

4. Loan Modifications Scams: FBI Special Agents and state investigators are concerned that homeowners may continue to fall for this scam in 2010. Companies charge up to \$2000, promising to make a homeowner's mortgage payment more affordable. But some homeowners report that they didn't get what they paid for.

5. Affinity Fraud: Affinity fraud is an ongoing concern for the Salt Lake City FBI Field Office and the Utah Division of Real Estate. Fraudsters who promote affinity scams frequently are, or pretend to be, members of a particular religious, ethnic or professional group. They often enlist respected community or religious leaders from within the group to spread the word about the scheme. They convince those people that a fraudulent investment is legitimate and worthwhile. Many times those leaders become unwitting victims of the fraudster's ruse.



When to Return Security Deposits – 10 Days or 30 Days?

By Marilyn Willson, Auditor

In speaking with licensees practicing property management, I have discovered that not all licensees are aware of the statutory requirements regarding the return of Security Deposits. Although the law allows for the tenant to recover damages from the landlord (or landlord's agent) in civil proceedings, an action may also be taken against your real estate license for failing to abide by the Residential Tenants' Security Deposit law. Per ARM 24.210.828 (3)(n), it is considered unprofessional conduct to violate the residential tenants' security deposits law of title 70, chapter 25, MCA. Make sure you make it a priority to understand the laws and rules that affect your profession.

No Cleaning required, No unpaid rent, and No Deductions from the Security Deposit - If there is no cleaning required, no unpaid rent, and no deductions from the security deposit, you must return the security deposit to the tenant **within 10 days**. MCA 70-25-202(2) states, "if after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days."

Deductions from the Security Deposit – If there are damages, you must return the security deposit minus the deductions with an accounting of the damages **within 30 days**. MCA 70-25-202(1) states, "Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of [70-25-201](#) have been followed, with regard to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in [70-25-201](#). Delivery must be accomplished by mailing the list and refund to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address."

It is also important to know what is authorized to be deducted from the security deposit. Please review 70-25-201 M.C.A. to ensure you understand the law and what is allowed to be deducted from the security deposit. There is a link to this statute on our website located at www.realestate.mt.gov: Regs: Statutes.

Carbon Monoxide Detectors –New Law Affecting Property

By Marilyn Willson, Auditor

In the last legislative session, a new law was passed requiring installation of carbon monoxide detectors in each dwelling unit. Are you in compliance? Here is a portion of this statute: **70-24-303 M.C.A. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.**

(1) A landlord: (h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in

accordance with rules adopted by the Department of Justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection, an approved carbon monoxide detector, as defined in [70-20-113](#), and an approved smoke detector, as defined in [70-20-113](#), bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

RULE CHANGES

ALL PROPOSED RULE CHANGES CAN BE FOUND ONLINE AT www.realestate.mt.gov: Regs

The following Administrative Rules were amended as noted below (underlined portion) by the Board of Realty Regulation effective February 16, 2010. Additional rule changes and proposes changes can be found online at www.realestate.mt.gov: Regs.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) through (4) remain the same.

(5) All experience, including transactions, must be presented on board forms.

(6) A waiver applicant must hold a current active license in good standing.

(7) All waiver applicants will be required to pass the state examination.

(5) (8) In addition to (1) through (4) (7), all applicants for licensure as a salesperson must: (a) and (b) remain the same.

(6) (9) In addition to (1) through (4) (7), all applicants for licensure as a broker must: (a) and (b) remain the same.

(c) The experience required by (6)(b) (9)(b) must be legally obtained while licensed as a real estate licensee in this state, or licensed in another jurisdiction.

(d) remains the same.

(e) Transactions in which the applicant only participated as a mortgage broker shall not qualify as experience under (9)(b) or under 37-51-302, MCA.

(e) remains the same but is renumbered (f).

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-131, 37-1-304, 37-51-202, 37-51-302,
MCA MAR Notice No. 24-210-35 19-10/15/09 -
1750-

REASON: The board determined it is reasonably necessary to amend this rule throughout by renumbering for better organization and clarity. The board is adding (5) to require that applicants submit proof of experience on forms provided by the board. Applicants often provide experience documentation that is incomplete or extremely difficult for staff to review and evaluate. Requiring

the use of board forms will shorten the evaluation process and ensure the required information is submitted.

The board recently proposed a rule defining an entry-only listing, which has become a common listing format. However, entry-only listings require next to no involvement by a licensee and as such, do not provide applicants with the experience that the board deems necessary to show an applicant is qualified. Further, while other jurisdictions' real estate boards and commissions do license mortgage brokers, the Montana board does not. Brokers coming from other jurisdictions often submit mortgage transactions as qualifying experience for an endorsement real estate broker license. The board concluded that experience in entry-only listings and mortgage brokering does not qualify a person to be a Montana licensed real estate broker and is amending this rule to clarify this.

Because the board has the ability under 37-1-304, MCA, to waive the exam requirement for out-of-state applicants, the board recently canceled all reciprocity agreements with other states. All out-of-state licensed applicants must now go through the waiver process to qualify for a Montana license, if they wish to rely on their current license status. A waiver is the board's evaluation of an applicant's previous experience. Often, out-of-state applicants are not currently licensed in the other state, are on a status other than active, or are subject to discipline in the other state. The board believes that an applicant's recent, active, and current experience helps ensure qualified Montana licensees and enhances public safety and welfare. Therefore, the board is amending this rule to specify that out-of-state applicants must be currently licensed and in good standing in another state.

The board is adding (7) to specify that although the board may waive some of the licensure requirements for out-of-state licensed applicants, they will not waive the state exam requirement. The board has always required that all waiver applicants must pass the state examination, but had not yet put it into rule.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

RULE CHANGES (CONTINUED)

ALL PROPOSED RULE CHANGES CAN BE FOUND ONLINE AT www.realestate.mt.gov: Regs

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

(r) failing to inform the seller in writing of the estimated costs and fees associated with the sale at the time a listing is taken and when an offer is presented;

(s) through (u) remain the same, but are renumbered (r) through (t).

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

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

(w) violating the Montana Residential Mobile Home Lot Rental Act of Title 70, chapter 33, MCA; 19-10/15/09 MAR Notice No. 24-210-35 - 1751-

(x) violating as a seller's agent, the radon disclosure requirements of Title 75, chapter 3, MCA;

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

(v) through (an) remain the same but are renumbered (z) through (ar).

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA; IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonable and necessary to eliminate from unprofessional conduct the failure of an agent to inform the seller in writing of estimated costs and fees. Because many factors can impact the proceeds, estimated costs and fees are typically unknown to an agent. The board also notes that because any estimate from an agent could be imprecise, there is a great chance of unfair liability against the agent, even when every good faith effort is made to provide accurate information. Rather than subject the agent to unnecessary liability and/or litigation, the board is amending this rule to no longer include the failure to provide written estimates of costs and fees as unprofessional conduct.

The board is amending this rule to add to unprofessional conduct a licensee's violation of several federal and Montana laws. The board intends that violations of all Montana's landlord tenant laws be considered unprofessional conduct, but recently discovered that several of these laws are not included in (5)(w) of this rule as they do not appear in Title 70, chapter 24, MCA. The board is amending this rule to include the provisions as unprofessional conduct.

The board is also adding provisions regarding radon and lead-based paint nondisclosure as unprofessional conduct. These disclosure requirements currently apply to licensees through other statutes and the board concluded that specifying the violations as unprofessional conduct will enhance public safety and welfare.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS (1) through (4) remain the same.

(5) A property manager may maintain more than one trust account, but must notify the board of each and every account by name and number.

(6) through (8) remain the same.

(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 property ledger is owner and tenant ledgers are reconciled, except as exempted in (4).

(10) through (16) remain the same.

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 this rule regarding board notification of property management trust accounts. The board has become more concerned with identity theft and keeping information confidential and is amending this rule to no longer require that property managers notify the board office of all trust accounts maintained. The board notes that such information will be obtained by the auditor through the compliance audit process.

The board notes that property managers are required to keep the owner and tenant ledgers, but not property ledgers. An auditor recently discovered this inaccuracy and the board is amending (9) to reflect the correct ledger requirements.

RULE CHANGES (CONTINUED)

ALL PROPOSED RULE CHANGES CAN BE FOUND ONLINE AT www.realestate.mt.gov: Regs

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 70, chapter 25, MCA;

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

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

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

(n) through (x) remain the same but are renumbered (r) through (ab).

(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 19-10/15/09 MAR Notice No. 24-210-35 -1755-

REASON: The board is amending this rule to add to unprofessional conduct a property management licensee's violation of several federal and Montana laws. The board intends that violations of all Montana's landlord tenant laws be considered unprofessional conduct, but recently discovered that several of these laws are not included in (3)(k) of this rule as they do not appear in Title 70, chapter 24, MCA. The board is amending this rule to include the provisions as unprofessional conduct.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (4) remain the same.

(5) No licensee may repeat a course for credit in the same calendar year reporting period.

6) through (12) remain the same.

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

(14) remains the same.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule to correct an inaccurate reference concerning property management education. Board licenses and education requirements were formerly set on a calendar year basis but were changed to an October 31 renewal and reporting date. The board found that this outdated reference to a calendar year period was inadvertently missed in prior rulemaking projects.

The board is also amending this rule to address potential confusion regarding allowable carryover education. Per ARM 24.210.829, newly licensed property managers must complete 12 hours of specific continuing education within two years of licensure. The board is amending this rule to clarify that while carryover hours are generally prohibited, property managers are subject to this special requirement.

NEW EPA Rule Regarding Lead Based Paint

By Marilyn Willson, Auditor

As of April 22, 2010, a new EPA rule will be in effect requiring all contractors to be certified if they are renovating, repairing, and/or painting certain structures built prior to 1978. This law also

requires that the certified contractors follow specific work practices to prevent lead contamination. To review this new rule and to learn how to become lead-safe certified, view the EPA's website at <http://www.epa.gov/lead/pubs/renovation.htm>.

BOARD OF REALTY REGULATION

UPCOMING EVENTS CALENDAR

APRIL

15TH : BRR Committee/Panel Meetings

- 1:00 PM Screening Panel (Closed)
- 2:00 PM Education Committee

16TH: BRR Board Meeting

- 9:00 Adjudication
- 9:15 Open Meeting

MAY

27th-28th: Rookie and Supervising Broker Endorsement courses:
Hilton Garden Inn,
Bozeman

31st: Memorial Day
(State Holiday)

JUNE

3rd: BRR Committee/Panel Meetings

- 1:00 PM Screening Panel (Closed)
- 2:00 Education Committee

4th: BRR Board Meeting

- 9:00 Adjudication
- 9:15 Open Meeting