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MONTANA BOARD OF REALTY REGULATION

Position Statement Re: Continuing Education and Renewal

Adopted by the Board of Realty Regulation October 7, 2011

The Board has noted a trend wherein licensees are making false statements on their renewal forms with regard to continuing education.

Each licensee is currently required to complete 12 hours of continuing education prior to renewing their real estate license. The Board believes this education enhances the professionalism of licensees and contributes to the public's confidence in licensed agents and property managers. In order to renew, a licensee must be able to truthfully affirm that the education has been completed. This is done either on a paper renewal form or on the online renewal system. In either event, the deadline for renewal is October 31 of each year. After October 31, a licensee can still renew their license. Importantly, a licensee can still legally practice for up to 45 days after the renewal date even if they are not yet renewed. However, when they do renew during that 45 day period, they will still need to truthfully affirm that they have completed the education, and they will also be assessed a late fee.

Knowing that they will be assessed a late fee after October 31, many licensees are renewing sooner and falsely stating that they have completed the education. Sometimes, the licensee has every good intention of getting the education completed. Some licensees have no such intention. All licensees need to understand a basic truth about Montana real estate continuing education: the board is aware of all approved education taken by licensees and the board will discover 100% of persons who affirm falsely.

By way of background, it must be explained that every approved educator who offers board-approved education in Montana is required to report every attendee to a board database. That database tallies the number of credits that each licensee has completed. Therefore, the board will know of every instance where someone has renewed but has not taken the required number of credits. When submitting a paper renewal form, the licensee must check a box which states whether they have completed the required 12 hours of education. The statement must be true at the time that the licensee is making the statement. If the licensee answers 'No', the license will not be renewed. The same is true for the online renewal process: If the licensee answers 'No', the licensee will not be allowed to complete the online renewal process. Realizing this, many licensees are falsely stating that they have completed the education so that they can renew their licenses. Some choose to falsify their renewal in the mistaken belief that they would otherwise have to immediately terminate their practice because they did not renew their license on time. Others ostensibly do this in the false hope that they can avoid the late renewal fee. Neither perception is true.

The board initially takes licensees at their word. If they say that they have completed the education on either the paper form or the online form, the license will be renewed. However, the board is aware of every instance where a licensee has less than the required education credits. After the renewal date, the board checks all continuing education. When the board sees from the database that a renewed licensee has too few credits, the board will ask the licensee to explain the discrepancy. Occasionally, there are innocent reasons for a credit shortfall. For example, sometimes, the credits were taken so recently that the credits have not yet been reported. Sometimes, the credits are from educators outside of Montana who are approved by the board but who are not linked to the database. However, if the licensee has no good

reason for the lack of credits and has simply affirmed falsely, the board will file a complaint and send the matter to the board's screening panel in order to decide whether to proceed with discipline.

Most of these licensees truly have no good excuse and a disciplinary matter is commenced. Since the cases are usually cut and dried, there really is no defense and the licensees have to admit their actions. At that point, they will be assessed a fine AND the late fee that they would have paid if they had answered truthfully. They may also have to take education in addition to the usual 12 credits. Further, they will have a disciplinary 'smudge' on their record that will stay there forever. Discipline does not ever come off of the licensee's record. Also, the board reports the matter in its newsletter and is required by law to post discipline online.

The nature of these cases is basically that the licensee has made misrepresentations i.e. lied, to the board. Anyone in the world, including a licensee's clients, can see the discipline. A licensee should think about this before make false statements to the board.

Additionally, these cases are creating an additional unreasonable workload for the screening panel and the board. The board does not see only a dozen of these cases every year. It sees hundreds. The extra time and effort expended by the board and its staff in handling these complaints is an added expense for all licensees. Here's why: The board is not legally able to recoup costs of investigation or prosecution from the offending licensee. Therefore, the expense can only be recovered by increasing all licensees' fees. The board has been diligent about keeping fees stable and licensees will note that it has been some number of years since fees were raised. But increased staff and board time spent on discipline cases and other matters will eventually lead to fee hikes. The board wishes to keep any fee increases as small as possible.

In the past, the board has imposed relatively small fines for these cases – from one hundred to three or four hundred dollars (depending on the specific facts). However, given the huge volume of these cases every year, it appears that the smaller fines are not a deterrent. The board believes it needs to do something to reduce the number of the cases and save the expense for innocent licensees. One way to do that is to reduce the number of discipline cases. The board believes that a harsher stance against falsification cases will reduce their numbers. In turn, that will reduce expense to the board thereby keeping any fee increases to a minimal level. Invariably, other licensees who hear about these falsification cases will ask the board to do something about it.

Therefore, the board has recently discussed the matter and decided that it will start imposing harsher fines for licensees who lie to the board. Offenders can expect to see fines from \$500 to \$1,000 for each offense and may see suspensions and/or revocations for subsequent offenses. It is worth noting that the board is not doing this as a revenue generating function. The board does not keep the fine money. All of it goes to the state general fund. None of the general fund ever comes back to the board. Therefore, the increased penalties really are an attempt to deter improper conduct – not to make money.

Rather than affirm falsely, licensees should simply understand that they need to have the education completed in order to renew even if it means that they will need to pay a late fee. A licensee can still lawfully practice for the first 45 days after the renewal date. In that 45 day 'grace period', they should

complete the education and then renew and pay the fees, including the late fee. Since late fees are not discipline and do not go on any 'record', the licensee maintains a clean record.¹

Licensees who may be tempted to answer the renewal form's continuing education question falsely should take the above information into account. They should not answer, 'Yes' if the statement is untrue at the time the statement is made. Even if the licensee completes the education on the day after renewal, the statement on the day before would be false. One might ask themselves, 'Is it worth the risk?'. In fact, there is no 'risk' at all. It is one hundred percent certain that the falsehood will be discovered. A better question might be, 'Is it worth the consequences?'.

¹. Unrenewed licensees must stop practicing after the 45th day following renewal. Thereafter, they can still renew but, again, they must complete the education and pay the fees.