

**Volume 1
Issue 2

July 1,
2009**



Governor Brian Schweitzer

Montana

Department of Labor and Industry

Business Standards Division

BOARD OF REALTY REGULATION NEWSLETTER

Education! All the experts agree...education is the one aspect of a licensee's business activities that actually PAYS instead of costs. But all education is NOT created equal!

Let me give you some background. Back in the 80's and 90's the Board of Realty Regulation provided most of the education available, either directly through courses it provided or indirectly through courses it contracted. The "Caravan" is an example of contracted courses. Every year the Board would review application from various education providers and choose one to provide the Caravan. That provider would be charged with presenting 4-6 classes per year at 4-6 different locations.

Today almost all education is provided on the open market. The Board of Realty Regulation establishes a list of topics for which Continuing Education credits are available. The Board, through its Education Director and Education Committee, approves or disapproves courses for the credits. It no longer contracts with any providers, with the exception of the classes it requires as part of the licensing process (i.e. The Rookie Class and Supervising Broker Pre-Endorsement Class).

By August 1st of every year, the Board determines which "topics" are eligible for continuing education credits. At the July meeting the Board will vote to establish those topics for the following year. It is from these topics that providers submit courses requesting continuing education credit approval.

What can be done about "bad instructors" or "bad courses"? The Board is looking into this right now and by the next meeting (July) it may well have a policy in place through which these instructors and courses can be addressed. However, the Board is NOT "judge, jury, and executioner". You, the licensee, will need to file a complaint upon which the Board can act.

That means signing your name!! At a recent class I was approached by a licensee who had an apparent valid complaint against an instructor. When I suggested she file a written complaint, she refused, stating she did not want her name associated with the complaint.

You can't have it both ways!! If you as a licensee want our continuing education for real estate licensees to improve, you need to be willing to put your name on a written complaint. The policy of the Education Committee is NOT to even consider anonymous complaints!

Most instructors "want" your honest feedback. If you have a complaint about a given instructor or his/her class, don't be afraid to "get involved" by submitting a complaint! Speaking as an instructor, I personally would like the opportunity to correct something in one of my classes instead of turning people off.

Pat Goodover

Board Member & Industry Member

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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:
5/09/2011

C.E. "ABE"

ABRAMSON
INDUSTRY MEMBER
MISSOULA, MT
Term Expires: 5/9/2011

CONNIE WARDELL INDUSTRY MEMBER

BILLINGS, MT
Term Expires:
5/09/2011

PAT GOODOVER INDUSTRY MEMBER

GREAT FALLS, MT
Term Expires: 5/9/2012

CINDY WILLIS APPOINTED TO BRR FOR ADDITIONAL TERM

The current chair of the Board of Realty Regulation, Cindy Willis, applied for and was appointed to an additional four year term. Her previous term, which expired on May 9, 2009, was extended to May 9, 2013.

Cindy is an active industry member who works as a buyer broker for and owns Real Estate Buyer Solutions in Polson, Montana. She has been in the real estate business for over ten years.

Board members are appointed to four year terms, with an eight year limit on the amount of total time they can serve. If you are interested in serving on the Board of Realty Regulation, please go to our website www.realestate.mt.gov: Board Info: Apply for Appointment to Board.

2009 BOARD MEETINGS

July 16

Screening Mtg. 1:00 PM
(Closed)

Education Mtg. 2:00 PM

July 17

Adjudication 9:00 AM
Open Mtg 9:00 AM

August 26 (tentative)

Screening Mtg 1:00 PM
(Closed)

Education Mtg. 2:00 PM

August 27 (tentative)

Adjudication 9:00 AM
Open Mtg 9:00 AM

The Honorable Brian Schweitzer, Governor

BOARD ADDRESS & CONTACT INFORMATION

BOARD OF REALTY REGULATION
301 S. PARK, 4TH FLOOR/ PO BOX 200513
HELENA, MT 59620-0513
FAX: 406-841-2323

EMAIL: dlibsdrre@mt.gov

WEBSITE: www.realestate.mt.gov

For real estate licensing questions and information, contact:

Barb McAlmond, Program Manager 406-841-2325
Becky Zaharko, Licensing Tech. 406-841-2354

For information regarding education, contact:
Stacey Fossum, Education Director 406-841-2324

For information regarding audits, contact:
Marilyn Willson, Auditor 406-841-2321

For information regarding complaints, contact:
Teri Ray, Compliance Specialist 406-841-2336

Grace Berger, Executive Officer 406-841-2320

FROM THE EDUCATION DIRECTOR

By: Stacey Fossum, Education Director, BRR

Renewal time (October 31st) is slowly creeping up on us. As you can imagine, instructors, course providers and the Board of Realty Regulation are all extremely busy during the end of October. While all of us do our best to make sure that everything is in order for your renewal to be processed and complete, the majority of the responsibility falls on you, the licensee.

Who are you going to blame when October 29th rolls around and you haven't even started your continuing education? No one but yourself.

Remember that instructors have 20 days to report class rosters to BRR, so waiting until the last minute to complete your CE can result in late fees and other complications. It is your responsibility to take

the classes you need for license renewal in a timely and prudent manner.

In addition, taking all your classes online at the last minute can be disastrous if you or the provider has technical issues. If your computer crashes, if you fail to submit your completion for an online course, or even if you have a medical or family emergency, it also could result in late fees. Planning ahead and getting your CE completed well before October 31st is always the best option.

It is also a good idea to check the status of your CE online to make sure that all the classes you have taken have been accurately reported to BRR (www.continuinged.mt.gov). If you have waited the 20 days the instructors are given to enter class rosters and still do not see the class reported, please contact the course provider or instructor to address the issue.

REQUESTING CREDIT FOR NON-APPROVED CE

BY: Stacey Fossum, Education Director, BRR

For those licensees who take CE in other states or for other professional licenses (such as appraisal, law, or CPA), BRR has a way for you to apply for CE credit in real estate. The Request for Individual CE Credit form can be found online at www.realestate.mt.gov: CE: Forms and does not cost anything to submit.

All classes taken that are not currently approved for real estate CE credit must meet the following standards before they will be approved for credit:

- All classes must meet one of the topics approved by the Board. A list of topics can be found at www.realestate.mt.gov: CE: Approved Topics and Ed. Requirements
- If taken for CE credit in another field (appraiser, law, CPA etc), proof that the course is approved for CE by said field's licensing board.
- If taken out of state, proof that the course is approved for real estate credit by that state's licensing board.

- If taken online, proof that the course is ARELLO approved.

When submitting a Request for Individual CE form, please include the following:

- A complete, detailed, timed course outline.
- Information/background on the course instructor(s).
- If applicable, proof that the course is approved by the licensing board or jurisdiction where it was taken.
- If the course is distance education, proof that the course is ARELLO approved (www.arello.net).
- A signed course completion certificate (this can be sent later if you are getting a course pre-approved).

ONLY COMPLETE REQUEST FOR INDIVIDUAL CE CREDIT FORMS/APPLICATIONS WILL BE ACCEPTED. IF ANY OF THE REQUIRED MATERIAL IS NOT SUBMITTED, THE REQUEST WILL BE DENIED.

WHY DID I GET AUDITED? WHAT DO I NEED?

Real estate licensees get audited for one of two reasons: either their name has been randomly selected from BRR's database or a complaint has been filed against them with the Board. Calling BRR's Auditor, Marilyn Willson, will not trigger an audit, as many believe.

In fact, it is *much* better to call the Auditor (406-841-2321) if you have questions about trust accounting, documentation or record retention *before* you get audited. Not only does it save you stress and money because your files are correct, it also allows us an opportunity to correct misinformation that may get repeated to other licensees.

If you do get audited, make sure you have the following documents in your files:

Seller's Agent

Listing Agreement - MCA 37-51-102 (22)

Agency Disclosure - MCA 37-51-314

Buy/Sell Agreement - ARM 24.210.641(5)(h) & (l)

Radon Disclosure - MCA 75-3-606

Lead Based Paint Disclosure - 40 CFR Part 745;
24 CFR 35 and 42 U.S.C. § 4852d

Megan's Law Disclosure - MCA 37-51-105

Buyer's Agent

Buyer/Broker Agreement - MCA 37-51-102 (7)

Agency Disclosure - MCA 37-51-314

Buy/Sell Agreement - ARM 24.210.641(5)(h) & (l)

Lead Based Paint Disclosure - 40 CFR Part 745;
24 CFR 35 and 42 U.S.C. § 4852d

Megan's Law Disclosure - MCA 37-51-105

**(If you maintain a trust account,
make sure you are following the rules
for trust accounting:**

**TRUST ACCOUNT REQUIREMENTS
ARM 24.210.426)**

MYTHBUSTERS:

All of these questions have been asked of a staff or Board member either in person or over the phone.

My broker told me that if he owned the company, I did not need a license.

If you are performing the duties that a real estate licensee would, you absolutely need to be licensed. Ultimately, it is your responsibility, not your broker's, to be operating within the scope of the law.

This is a great example of the importance of knowing the licensing process and requirements for your profession yourself. If this person had not called to confirm the information they were given, they could have been cited for practicing without a license.

Any real estate office must have at least one Supervising Broker in it.

Only salespeople must have a Supervising Broker on record with the Board. If your office is comprised entirely of brokers, none of you need to have the Supervising Broker endorsement (but you may still get it if you choose).

In fact, as long as the Supervising Broker is performing his or her duties reviewing the transactions of the salesperson under them, the Supervising Broker and salesperson do not even have to be in the same physical location.

DISCIPLINARY ACTION

ALL DISCIPLINARY ACTION IS NOW POSTED IN THE NEWSLETTER

Todd Jensen

Mr. Jensen failed to meet his 2006 continuing education requirement. This is the second time Mr. Jensen failed to meet his CE obligations. Following the complaint process, the Screening Panel of the Board found reasonable cause to believe that Mr. Jensen had violated the following statutes and/or rules:

ARM24.210.641(2)
ARM 24.210.641(3)(ae)
ARM 24.210.667(1)
ARM 24.210.667(3)
ARM 24.210.667(13)
ARM 21.241.667 (14)
MCA 37-1-316(18)
MCA 37-51-321(1)(q)

Mr. Jensen did not request a hearing or enter into a stipulation. The Adjudication Panel accepted the Order Granting Entry of Default and issued a Final Order. Mr. Jensen's license was placed on probation for one year from the date of the Final Order and he received a public censure in the form of a letter of reprimand. He was also ordered to pay an administrative fine of \$1,000 and a late filing fee of \$200.

Stacy DeMaggio-Good

During the performance of a routine audit the Auditor noted Ms. DeMaggio-Good did not have a trust account or other means of holding money belonging to others. Following the complaint process, the Screening Panel of

the Board found reasonable cause to believe that Ms. DeMaggio-Good had violated the following statutes and/or rules:
ARM 24.210.426(1)
MCA 37-1-316(14)
MCA 37-1-316(18)
MCA 37-51-321(1)(u)

Ms. DeMaggio-Good negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for a public censure in the form of a letter of reprimand and placement of her license on probation for a period of six months following the Final Order. During the period of probation her trust account may be audited without additional reason and without notice. Ms. DeMaggio-Good was also ordered to pay an Administrative Fine of \$500. Payment of the fine will be stayed on the conditions that Ms. DeMaggio-Good not violate any Board laws and rules during the time of her probation and that she complete an additional 8 hours of continuing education.

Julie Troy

A complaint was filed by a buyer. Ms. Troy supervised a salesperson representing the buyer, who was also a family member of the complainant/buyer. As a result of an investigation, the Screening Panel determined that a number of documents were either not prepared appropriately or were missing from the transaction. The Screening Panel of the Board found reasonable cause to believe the Ms. Troy had

violated the following statutes and/or rules:

ARM 24.210.601(6)
ARM 24.210.601(9)
MCA 37-1-316(18)

Ms. Troy negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for a public censure. Ms. Troy is also ordered to complete an 8-hour Supervising Broker endorsement course of education and to review and obey all board statutes and rules.

Patricia Keeler

The Board filed a board generated complaint against Ms. Keeler. The complaint alleged that Ms. Keeler altered a purchase agreement by crossing out the name of an agent who had a current buyer broker agreement with the buyers. Ms. Keeler then inserted her own name as agent for the buyers. Ms. Keeler claimed she was instructed to do this by the owner of the agency where both agents worked. No documentation existed to support her claim. The Screening Panel of the Board found reasonable cause to believe Ms. Keeler violated the following statutes and/or rules:
ARM 24.210.641(5)(g)
ARM 24.210.641(5)(i)
MCA 37-1-316(5)
MCA 37-1-316(8)
MCA 37-1-316(18)

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DISCIPLINARY ACTION (CONTINUED)

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Ms. Keeler negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for her license to be placed on probation for 18 months from the date of the Final Order to run concurrently with a separate probationary period. Ms. Keeler will also pay an Administrative Fine of \$1000. Payment of the fine will be stayed on the conditions that Ms. Keeler not violate any Board laws and rules during the time of her probation and that she comply with all other terms of the Stipulation. Ms. Keeler will also complete an additional 12 hours of CE in the areas of *agency, ethics and forms*.

Catherine Tuell

A complaint was filed against Ms. Tuell's property management license by a property owner. As a result of an investigation, the Screening Panel determined that: trust funds were not being deposited in the property management trust account; financial ledgers were not kept according to established board rule; Ms. Tuell didn't have property condition statements as required by the Landlord Tenant Law; and the property was not maintained in a fit and habitable condition. The Screening Panel of the Board found reasonable cause to believe Ms. Tuell violated the following statutes and/or rules:

ARM 24.210.805(3)
ARM 24.210.210(10)
ARM 24.210.828(3)(k)
ARM 24.210.828(5)
MCA 37-1-316(18)

Ms. Tuell negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for a public censure, an Administrative Fine of \$400, placement of her license on probation for one year from the date of the Final Order, re-audit of her trust account at any time; and completion of an additional 8 hours of CE in the subjects of *trust accounts and landlord tenant*.

Perry Deschamps

The Board of Realty Regulation auditor conducted a routine compliance audit. During the audit it was determined that Mr. Deschamps did not have a buyer broker agreement or agency disclosures for recent clients and that files were missing estimated costs and fees. The Screening Panel of the Board found reasonable cause to believe Mr. Deschamps violated the following statutes and/or rules:
ARM 24.210.541(5)(p)
MCA 37-1-316(18)
MCA 37-51-102(6)
MCA 37-51-102(7)
Mr. Deschamps negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Mr. Deschamps to Complete an additional 8 hours

of CE in the area of *contracts and agency* and to pay an Administrative Fine of \$400. Payment of the fine will be stayed on the conditions that Mr. Deschamps comply with all provisions of the Final Order.

Richard Rostad

A complaint was filed by a buyer complaining that Mr. Rostad refunded earnest money on a failed transaction with a personal check that would not clear the bank. Following the complaint process, the Screening Panel of the Board found reasonable cause to believe that Mr. Rostad violated the following statutes and/or rules:
ARM 24.210.426(2)
ARM 24.210.426 (4)(f)
ARM 24.210.426 (4)(h)
MCA 37-1-316(14)
MCA 37-1-316(18)

Mr. Rostad negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Mr. Rostad's license to be placed on probation for a period of one year following the Final Order. He is also to be publicly censured and pay an Administrative Fine of \$500. Payment of the fine will be stayed on the conditions that Mr. Rostad comply with all provisions of the Final Order and complete an additional 4 hours of CE in *trust accounts*.

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DISCIPLINARY ACTION (CONTINUED)

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Samuel Rankin

A complaint was filed by a seller against Mr. Rankin. Mr. Rankin entered into a limited service listing but indicated he was acting as a statutory broker. He also did not have evidence of providing the required agency relationship disclosures. Following the complaint process, the Screening Panel of the Board found reasonable cause to believe that Mr. Rankin violated the following statutes:
MCA 37-1-316(18)
MCA 37-51-314(2)

Mr. Rankin negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Mr. Rankin to receive a public censure; and to pay an Administrative Fine of \$330. Payment of the fine was stayed on the condition that Mr. Rankin comply with all provisions of the Final Order.

Twyla Klundt

A complaint was filed by some buyers who claim they purchased property from Ms. Klundt and were assured they had paid a sufficient price for Ms. Klundt to pay off both the first and second mortgages. However, Ms. Klundt failed to pay off the second mortgage. Following the complaint process the Screening Panel of the Board found reasonable cause to believe that Ms. Klundt violated the following statutes:

MCA 37-1-316(3)
MCA 37-1-316(4)
MCA 37-1-316(5)

Ms. Klundt negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Ms. Klundt to be publicly censured; and pay an Administrative Fine of \$500. Payment of the fine was stayed on the condition that Ms. Klundt comply with all provisions of the Final Order.

Janeen Lembke

The Board filed a complaint against Ms. Lembke for failure to report on her renewal form that legal action had been initiated against her. Following the complaint process the Screening Panel of the Board found reasonable cause to believe that Ms. Lembke violated the following statutes:
MCA 37-1-316(3)
MCA 37-1-316(4)
MCA 37-1-316(5)

Ms. Lembke negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Ms. Lembke to pay an Administrative Fine of \$300.

Georganna Hart

The Board filed a complaint against Ms. Hart for failure to report on her renewal form that legal action had been initiated

against her. Following the complaint process, the Screening Panel of the Board found reasonable cause to believe that Ms. Hart violated the following statutes:

MCA 37-1-316(3)
MCA 37-1-316(4)
MCA 37-1-316(5)

Ms. Hart negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Ms. Hart to pay an Administrative Fine of \$300.

Beverly Luedtke

A Board generated complaint was filed. Ms. Luedtke indicated on her 2009 renewal she had met the CE requirement. However, she did not complete the mandatory CE until after the renewal deadline. Thus, her statement that she had completed her CE was untrue at the time she made the statement. Following the complaint process, the Screening Panel of the Board found reasonable cause to believe that Ms. Luedtke violated the following statutes and/or rules:
ARM 24.210.641(5)(g)
ARM 24.210.641(5)(i)
MCA 37-51-3214(q)

Ms. Luedtke negotiated a Stipulated Settlement with Department Counsel. The Stipulation was accepted by the Adjudication Panel. The Stipulation called for Ms. Luedtke to pay \$100 late renewal fee and an Administrative Fine of \$200.

COURT DECISIONS

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BROKERAGE PRACTICE: Broker's License Revoked for Failure to Supervise Where the Broker was Hospitalized

Farris v. Mississippi Real Estate Comm'n, 2008 WL 2102423 (Miss. App. 2008)
Court of Appeals of Mississippi

Facts: The administrator of the Mississippi Real Estate Commission received a telephone inquiry regarding whether or not it was proper for a closing attorney to issue a commission check to Farris Realty when the sales contract had a Century 21 logo. The Commission found that the Kellys engaged in real estate transactions in Mississippi as nonresident licensees under Farris's broker's license, and Farris was required to supervise their work. The Commission filed a complaint against Farris and the Kellys. Charles Kelly testified that he used the Century 21 contracts, but the Kellys were listed as the selling agents and Farris or Farris Realty was listed as the broker in the contract. The owner of Century 21 was unaware that the Kellys used his forms, and Farris and the Kellys did not know that using the forms was an improper practice. Farris was hospitalized during the transactions in question and was only provided a copy of the closing statement and a commission check and the close of the transactions. The Commission found that the Kellys were involved in improper dealing; Farris, as the responsible broker, failed to supervise the Kellys, and the Kellys acted independently of Farris. As a result, the Commission revoked their

licenses and barred them from reapplying for twenty-four months. The circuit court affirmed the order, and Farris and Kelly appealed.

Issues:

- (1) Did the circuit court err by affirming the Commission's ruling that Farris' and Kelly's actions constituted improper dealing?
- (2) Did the circuit court erred [sic] by affirming the Commission's ruling that Farris failed to instruct and supervise the Kellys?
- (3) Did the circuit court erred [sic] by affirming the Commission's ruling that Kelly acted independently of her supervising broker and performed real estate services without full consent and knowledge?
- (4) Did the circuit court err by affirming the sanctions the Commission imposed upon Farris and Kelly?

Held: Affirmed

Farris and Kelly argued that the Commission's revocation of their licenses was arbitrary and capricious because there was no evidence that they intended to defraud or

misrepresent to anyone that Farris Realty was the broker involved in the transaction, but they did not provide authority that there must be a finding of fraud or malicious intent. Farris and Kelly admitted using contracts that did not comply with Mississippi law, and Farris admitted that he did not supervise Kelly while he was hospitalized. Under Mississippi law, these are unsuitable practices that constitute improper dealing. If Farris properly supervised the Kellys, he would have known about the improper use of Century 21 forms. Farris points to no authority that suggests the Commission must make exceptions for his failure to supervise based on extenuating circumstances. Finally, although Farris and Kelly argue that the sanctions were disproportionate to the violations alleged, and administrative agency is the in the best position to know how to police its own. The court declined to second guess the punishment ordered and held that the circuit court did not err when it affirmed the Commission's imposition of sanctions.



BOARD OF REALTY REGULATION UPCOMING EVENTS CALENDAR

JULY

22nd: BRR Committee/Panel Meetings

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

23rd: BRR Board Meeting

- 8:30 Adjudication
- 9:00 Open Meeting

**ONLY FOUR MONTHS
UNTIL RENEWAL...BE SURE
TO TAKE YOUR CE EARLY!**

AUGUST

21ST-22ND: Rookie Class Missoula, MT

(Be sure to register early, as the class may fill)

26TH: BRR Committee/Panel Meetings

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

27TH: BRR Board Meeting

- 8:30 Adjudication
- 9:00 Open Meeting

SEPTEMBER

17-18th : Rookie Class Billings, MT

(Be sure to register early, as the class may fill)

18th : Supervising Broker Pre-Endorsement Class Billings, MT

(Be sure to register early, as the class may fill)

**RENEWAL NOTICES ARE
MAILED OUT THE FIRST
WEEK IN SEPTEMBER...DID
YOU GET YOURS?**

**IF YOU WANT TO RECEIVE
AN EMAIL NOTICE WHEN
FUTURE COPIES OF THE
QUARTERLY NEWSLETTER
ARE POSTED ON OUR
WEBSITE**

(www.realestate.mt.gov)

**EMAIL (if you haven't
already)**

sfossu@mt.gov

**TO ADD YOUR EMAIL
ADDRESS TO THE MAILING
LIST**

AUDIT ALLSTARS

THE FOLLOWING LICENSEES HAD NO
EXCEPTIONS FOUND DURING
RECENT AUDITS

Cory Robinson
Towne Property Management
Bozeman, MT

Norman Dick
Home Craftsman Property
Management
Bozeman, MT

Kristin Byrd
Byrd Property Management Co.
Bozeman, MT

GREAT JOB!