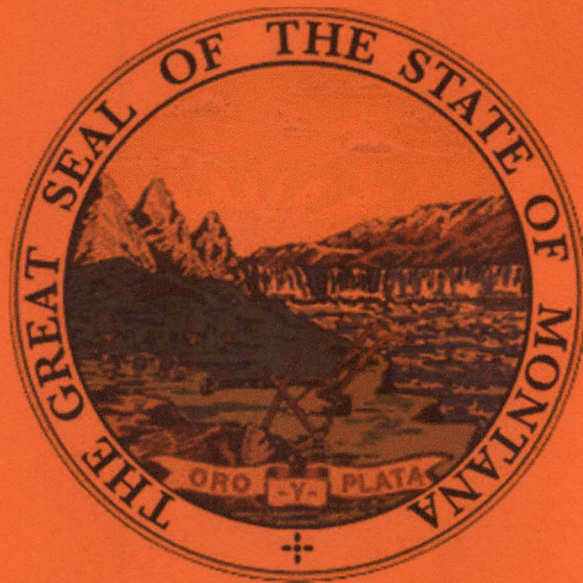


Montana Board of Realty Regulation

Administrative Rules 24.210

Montana Code Title 37 – Chapter 51



Montana Board of Realty Regulation – 24.210

24.210.101 BOARD ORGANIZATION

(1) The board of realty regulation hereby adopts and incorporates the organizational rules of the department of labor and industry as listed in chapter 1 of this title.

24.210.201 PROCEDURAL RULES

(1) The board of realty regulation hereby adopts and incorporates the procedural rules of the department of labor and industry as listed in chapter 2 of this title.

24.210.202 PUBLIC PARTICIPATION

(1) The Board of Realty Regulation adopts and incorporates by reference the public participation rules of the Department of Commerce, as listed in ARM Title 8, chapter 2, except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in licensing decisions and other contested cases as allowed by law.

24.210.301 DEFINITIONS

The terms used in this chapter shall have their common meaning as used in the real estate industry, and unless the context otherwise requires, the following meanings shall also apply:

(1) "Act" shall include a failure to act.

(2) "Advertising" means information, in whatever form, used to promote real property for sale, lease, rent, exchange, or purchase, or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer or seller at the individual's request shall not be deemed advertising for the purpose of these rules.

(3) "Agency" or "agency relationship" shall include those relationships which are expressed in 37-51-102 and 37-51-313, MCA, and specifically do not include the common law of agency.

(4) "Agent" shall include subagent.

(5) "Agricultural," "farm," and "ranch" shall include real estate parcels over 40 acres in size, principally used for, or capable and intended for use in, the production of plant or animal crops.

(6) "Buy" or "buyer" shall include purchase, purchaser, lease, lessee, and like terms.

(7) "Cancellation" is the period of time following the release of the salesperson license from the supervising broker, and prior to transfer of the license to another broker, or placed on inactive status.

(8) "Closed transaction" means a transaction in which parties have performed all duties in the agreement. In the case of a lease, it would be at the signing of the lease.

(9) "Commercial property" shall include real estate that is principally used for, or capable and intended for use in, the production, distribution, or sale of goods or services, and any real estate which has over four residential units when transferred as a group of units.

(10) "Course provider" is a board-approved entity that is responsible to the board for the administration of approved education courses in accordance with board laws and rules.

(11) "Designated broker" is a broker who has been designated by other brokers of a real estate brokerage company to be the broker with the authority for the maintenance of a trust account, if any.

(12) "Distance education" is a course or courses in which the instruction does not take place in a traditional classroom setting, but rather, through other media where the teacher and student are separated by distance and sometimes by time.

(13) "Electronic records" may include checks and bank statements.

(14) "Entry-only listing" is a listing in which the seller and the seller's agent have agreed to limit the seller agent's involvement in the transaction process.

(15) "Hour" of education is equal to 50 minutes of instructional time.

(16) "Incapacity" as used in ARM 24.210.601, means being in a condition as a result of accident or illness that renders the person wholly incapable of conducting the business of a supervising broker. A voluntary or anticipated incapacity or an extended absence from the supervising broker's office is not an incapacity.

(17) "Internet" means the Internet, the World Wide Web, or Internet-based electronic information distribution networks, and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless, or other analogous linkages to a computer, computer network or networks including, but not limited to, web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multimedia advertising, links, and/or banner advertisements.

(18) "Internet advertising" means advertising conducted via the Internet.

(19) "Licensee" shall include anyone who has been issued a license by the board or who has made application for a license from the board. For disciplinary purposes, "licensee" also includes anyone with a lapsed or expired license.

(20) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name, and identifying that the advertisement is made by a real estate licensee or by a brokerage company.

(21) "Principal" shall include the seller or buyer with whom the agent has a contract in a real estate transaction. It shall include a property owner with whom the agent has a contract in property management activity.

(22) "Residential property" shall include real estate having four or less units that are principally used for, or capable and intended for use as, residences, and any single unit in a group of units when transferred as a single unit.

(23) "Routine application" is a complete application, which shows compliance with board rules and no disciplinary issues. All other complete applications are non-routine.

(24) "Seller" shall include vendor, lessor, and like terms.

(25) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons pursuant to 37-51-302, MCA.

(26) "Supervision" shall include substantially day-to-day, active overseeing.

(27) "Third-party" shall include any person who is not the principal or agent.

(28) "Transaction" means a listing, sale, lease, or exchange.

(29) "Trust funds" are all monies belonging to others and accepted by a licensee, while acting in the capacity of a licensee.

24.210.401 FEE SCHEDULE

(1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) Fees are deemed earned by the board upon receipt.

(3) Examination fees are payable to the national testing service under contract with the board.

(4) Original broker license - \$175

(5) Renewal of a broker license - \$175

(6) Original sales license - \$150

(7) Renewal of a sales license - \$ 150

(8) Broker change of place of business or each salesperson change of broker or transfer of cancelled license - \$80

(9) Transfer of supervision to a single temporary supervising broker - \$45

(10) Late filing of temporary supervising broker notification - \$90

(11) Reinstatement of a license suspended or revoked within a license period - \$50

- (12) Placing active or cancelled license on inactive status -\$20
- (13) Activating a license on inactive status - \$80
- (14) Original recovery fund assessment - \$35
- (15) Continuing education course application for approval or renewal - \$130
- (16) Education course instructor application for approval or renewal - \$87.50
- (17) Rookie continuing education course registration - \$175
- (18) Pre-licensing course application for approval and renewal - \$150
- (19) Predetermination, equivalency, or waiver application fee -\$87.50
- (20) Each additional course hour option from one course outline 35
- (21) Individual CE request application (per course) - \$45
- (22) Late filing of individual CE request application (per course) -\$100
- (23) Instructor/course development course \$175 per course
- (24) Additional standardized fees are specified in ARM 24.101.403.

24.210.405 APPLICATION OF RULES--SUBCHAPTER DISTINCTION
(REPEALED)

24.210.406 SEVERABILITY

(1) If any section, subsection, sentence, clause or phrase of these rules be for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of said rules. The Montana Board of Realty Regulation hereby declares that it would have passed and adopted these rules in each section, subsection, sentence, clause or phrase thereof, separately and irrespective of the fact that any one or more of them be held invalid.

24.210.410 PURPOSE OF BOARD

(1) It is the purpose of this board to regulate the licensing of applicants and the practice of licensees in order to safeguard the public interest and require knowledge, competency, accountability, and professional conduct by all licensees doing business in the state of Montana.

24.210.411 BOARD MEETINGS

(1) Board meetings shall be scheduled at a time and place as may be determined by the board.

24.210.412 PUBLIC RECORDS

(1) The public record of the meetings of the board is available for public inspection at the office of the board during usual business hours.

24.210.416 APPLICATIONS FOR EXAMINATION AND LICENSE IN GENERAL -- BROKER AND SALESPERSON

(1) The board may establish procedures for review of applications for licensing or equivalency.

(2) The board may appoint a testing entity to process and conduct any examination required by the board.

24.210.426 TRUST ACCOUNT REQUIREMENTS

(1) Offices or firms having more than one broker may utilize a single trust account.

(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.

(3) A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these trust account requirements whether by the delegating broker or the designated broker.

(4) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed.

(5) If a broker elects to hold trust funds, the broker must comply with the following:

(a) All monies, belonging to others and accepted by the broker while acting in the capacity as a broker, shall be deposited in an insured account at an institution located in Montana;

(b) The name of such account shall be identified by the words "trust account";

(c) Trust funds shall be retained in this trust account until the transaction involved is closed or terminated;

(d) However, trust funds may be disbursed to the closing agent in anticipation of closing upon written agreement of the buyers and sellers. The broker must account for trust account funds at all times;

(e) At the client's instructions, trust funds may be retained in the trust account although there is no purchase, lease, or rental agreement in existence, or when the transaction has been terminated;

(f) No payments of personal indebtedness of the broker shall be made from a trust account or trust funds;

(g) Money held in the trust account, which is due and payable to the broker, must be withdrawn within ten business days after such money becomes due and payable to the broker;

(h) A broker shall not be entitled to any part of the earnest money or other monies paid to the broker in connection with any real estate transaction as part or all of the commission or fee until the transaction has been closed or terminated. If there is a division of forfeited earnest money between the broker and seller, it shall be pursuant to a written agreement between them;

(i) Maintenance of a trust account shall include the broker or designated broker, keeping at the broker or designated broker's office, a complete record of all funds received and disbursed in the following manner:

(i) proof of deposit showing the date of deposit, amount, source of the money, and where deposited;

(ii) monthly bank statements are to be retained and kept on file;

(iii) if checks are used, trust account checks shall be numbered and all voided checks recorded. The checks shall denote the broker's business name, address, and should be designated as "trust account";

(iv) a record which shows the chronological sequence in which funds are received and disbursed;

(v) for funds received, the record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(vi) for disbursements, the record must include the date, each payee, and the amount;

(vii) no disbursement from the trust account shall be made until the deposit has been verified; and

(viii) a running balance must be shown after each entry;

(j) A chronological record shall be kept to show the receipts and the disbursements as they affect a single, particular transaction. The record must include the names of the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each entry;

(k) The trust account must be reconciled monthly;

(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

(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.

(6) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in said trust account, with the exception that a broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker. Personal funds may be distributed to the broker or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(7) A broker may maintain more than one trust account.

(8) All licensees shall ensure that all trust funds which they receive are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of receipt of the money, unless otherwise agreed to by the parties. If funds are delivered to a designated holder, the licensee must obtain documentation of receipt by the designated holder. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.

(9) The broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by the broker, the broker's salesperson, or funds received by the broker as a designated broker pursuant to (1) on behalf of customers or clients.

(10) All required trust account records may be maintained electronically, but must be maintained in a manner that permits auditing.

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) All Internet advertising shall truthfully and accurately describe the real property or service advertised. Real property advertisements shall identify the city, town, or county in which the real property is located. A specific street address is not required.

(3) All Internet advertising shall provide licensee identification. The timing and placement of such licensee identification shall vary, depending upon the nature of the advertisement or promotion, as follows:

(a) Whenever a licensee or brokerage company owns a web page or controls its content, every viewable page should include (or link to) a licensee identification. (A viewable page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.)

(b) E-mail shall include licensee identification at the beginning or end of each message, unless the licensee has previously provided licensee identification to all recipients of the e-mail.

(c) News groups, discussion lists, and bulletin boards shall include licensee identification at the beginning or end of each message.

(d) Licensee identification is not necessary in connection with instant messages if the licensee provided the written licensee identification via another format or medium (e.g., e-mail or letter) prior to providing or offering to provide, licensable services.

(e) Licensee identification is required prior to providing or offering to provide licensable services during a chat session or in text visible on the same web page that contains a chat session if the licensee or brokerage company controls the web site hosting the chat session.

(f) Licensee identification is required prior to the advertising message or in text visible on the same web page that contains a voice over net (VON) session.

(g) Licensee identification is not necessary for audible messaging if it was provided via another medium (i.e., e-mail, letter) prior to providing or offering to provide licensable services.

(h) Licensee identification should be visible as part of the advertising message when using multimedia advertising (e.g., web-based, executable e-mail, attachments, etc.).

(i) Banner ads should link to a web page that has licensee identification, unless the banner ad has licensee identification contained in it.

(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, 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 and failed to update the information.

(5) All Internet advertising must be current as of the date of the advertisement and must be updated within seven days in the event of material changes to the listing, such as its expiration, termination, or amendment, and/or in the event of material changes to the information otherwise found in the Internet advertising. Internet advertising shall indicate the date on which it was created and last updated.

(6) All information, disclosures, statements, and the like required by this rule to be included in a licensee's Internet advertising shall be displayed in a size, color, typestyle, and location that a reasonable person will notice and be able to read.

(7) The licensee is responsible to assure the accuracy of Internet advertising published or disseminated by another person or another party under the direction of the licensee.

24.210.435 INVESTIGATIONS COMMITTEE

(REPEALED)

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.

(2) Any time that a salesperson's association with the supervising broker is terminated, the supervising broker shall immediately return the salesperson's license to the board office with a letter noting the termination. The supervising broker remains the supervising broker for the salesperson, until the license and release are received by the board.

(3) A dispute between a salesperson and the supervising broker shall not be cause for failing to immediately return the salesperson's license to the board office.

(4) A salesperson whose license has been cancelled because of termination of new supervising broker relationship, or the desire to place the license on inactive status and pay all required fees within ten days of the board receiving the termination of association.

(5) A licensee shall not practice with a cancelled license. A license shall remain cancelled until transferred to a new supervising broker or placed on inactive status.

(6) When required in writing to do so by a salesperson formerly associated with a supervising broker, the supervising broker shall promptly provide the former salesperson with a certified statement on the form prescribed by the board, identifying all real estate transactions in which the salesperson was involved in connection with the salesperson's association with the supervising broker, within the three years preceding the request.

(7) Upon termination of a salesperson's association with the salesperson's supervising broker, the supervising broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the supervising broker, and that the listings and pending transactions are the responsibility of the supervising broker.

(8) Listings and pending transactions of a salesperson are the responsibility of the supervising broker upon termination of the association between the salesperson and supervising broker.

(9) Supervising brokers are responsible for the performance of salespeople under the supervising brokers' supervision. If a complaint is submitted to the Board of Realty Regulation, alleging improper conduct on the part of a salesperson, a copy of the complaint shall be provided to the supervising broker who shall also provide a response to the complaint.

(10) Supervising brokers must provide ongoing real estate training to all salespeople under their supervision, in order to assure competent practice of the profession.

(11) A listing agreement negotiated by a salesperson is not valid until it is reviewed, signed, and dated by the supervising broker.

(12) Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction, prepared by salespeople under their supervision, are appropriately prepared and executed.

(13) A broker shall not sign the application of a salesperson, unless the broker and salesperson will be in lawful association, through employment contract or otherwise.

(14) Principals and agents to a particular transaction may consent to communication directly with each other's client.

(15) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired broker license or supervising broker endorsement must request to be placed on inactive status or transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising broker's broker license or supervising broker endorsement has expired. A salesperson shall not conduct licensed activity during this unsupervised period.

(16) A supervising broker must immediately inform the broker's supervised salespeople that the supervising broker's broker license or supervising broker endorsement has expired.

(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) The temporary transfer of supervision must be in writing and must be provided to the salesperson by the broker of record. The writing must include:

(i) authorization of the transfer of supervision of the salesperson by the existing supervising broker, including the name and signature of the existing supervising broker;

(ii) acceptance of responsibility for the performance of the salesperson by the temporary supervising broker, including the name and signature of the temporary supervising broker;

(iii) the names of all salespersons transferring to the temporary supervising broker, which may be less than all of the salespersons under the supervision of the existing supervising broker; and

(iv) the effective beginning date and termination date of the temporary transfer.

(b) An existing supervising broker supervising more than one salesperson may temporarily transfer said salespersons to different temporary supervising brokers. Each individual salesperson may only have one temporary supervising broker at any given time.

(c) An existing supervising broker may not transfer temporary supervision of a salesperson for more than 60 days in any 12-month period, and any individual salesperson may not be temporarily supervised by anyone for more than 60 days in any 12-month period, unless transferred to a new supervising broker of record. This limit may not be extended without written approval by the board, which must be based on good cause. A temporary supervising broker may exceed 60 days of temporary supervision in any 12-month period. A temporary supervising broker is not the "broker of record" of any salesperson who is temporarily transferred to the temporary supervising broker.

(d) The existing supervising broker may terminate the temporary transfer of supervision prior to the effective termination date by providing notice to the temporary supervising broker. Written notice shall also be provided to the board.

(e) A temporary supervising broker must supervise the salespeople for the agreed length of time and may not transfer supervision to any broker, other than the original existing supervising broker of record.

(f) Temporary transfers of supervision may be extended beyond the effective termination date subject to the limitation of (16)(c).

(g) The written transfer of supervision must be provided to the board no later than the three business days prior to the effective beginning date of the temporary transfer of supervision. A late filing will result in a late fee assessed against the existing supervising broker regardless of cause.

(18) In the event of the death or unanticipated incapacity of a salesperson's supervising broker (both existing and temporary):

(a) The salesperson may not practice real estate until the salesperson's license is transferred to a different supervising broker.

(b) The salesperson must inform the board of the death or incapacity within ten days of the existing supervising broker's death or incapacity.

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

(19) A salesperson who does not wish to be supervised by a temporary supervising broker may place their salesperson license on inactive status or transfer their license to another supervising broker as provided in this rule.

24.210.602 EXAMINATION

- (1) License examinations may be held at such times and places determined by the board.
- (2) The rules established by the examination provider shall be obeyed by all persons taking an examination. A violation of the examination provider's rules may result in imposition of any sanction found in 37-1-312, MCA.
- (3) The board may, from time to time, review and amend the examination type, format, and the score upon which the pass or fail determination is made.
- (4) All test scores may be scaled and equated for the specific examination by the testing agency that provides or administers the examination. Candidates for licensure must take a board-approved examination and make a passing score as determined by a psychometrically sound, criterion-related method associated with assessment of minimal competence. The method used shall be published prior to the administration of the examination.

24.210.603 APPLICATION FOR EXAMINATION -- SALESPERSON AND BROKER

(REPEALED)

24.210.604 SUPERVISING BROKER ENDORSEMENT

- (1) A supervising broker endorsement will be issued to any broker completing the supervising broker pre-endorsement course.
- (2) An out-of-state broker shall complete the supervising broker pre-endorsement course before being issued the supervising broker endorsement.
- (3) To maintain the supervising broker endorsement, a broker shall complete four hours each licensure year of board-approved education in the area of supervising broker continuing education as designated by the board. This education will be part of the overall continuing education requirement.
- (4) Only brokers with a current supervising broker endorsement or who are attempting to reinstate an expired endorsement may get credit for completing supervising broker continuing education.
- (5) A supervising broker who obtains the endorsement by grandfathering may complete the supervising broker pre-endorsement education course and receive continuing education credit one time.
- (6) Failure to complete the four-hour supervising broker continuing education requirement shall result in the lapsing, expiration, or termination of the supervising broker endorsement pursuant to 37-1-141, MCA.
- (7) A lapsed or expired supervising broker endorsement may be renewed pursuant to 37-1-141, MCA.

(8) A supervising broker endorsement cannot be placed on inactive status. In order to maintain the endorsement, the supervising broker must complete the supervising broker continuing education annually. Failure to complete the supervising broker continuing education will result in the endorsement lapsing, expiring, and terminating.

(9) A supervising broker endorsement that has terminated cannot be reinstated. A broker will be required to meet the current requirements to obtain the supervising broker endorsement again.

24.210.610 PREDETERMINATION FOR LICENSING

(1) Any applicant with prior disciplinary actions, open legal matters, a criminal conviction, or a deferred sentence may, but is not required to, make application for a predetermination prior to completing the examination and required course of education for the sole purpose of determining whether the applicant's qualifications, other than examination and education, are sufficient.

(2) Application for predetermination of whether the applicant's qualifications, other than examination and course of education, are sufficient shall be made to the board on forms approved by the board and accompanied by the nonrefundable predetermination application fee.

(3) Any approval of an application for predetermination which is made by the board shall remain valid for 90 days.

(4) At the time the applicant has completed the required education and examination, the applicant must submit an application for licensing and pay the required fees, certify in writing the information submitted for predetermination remains current, or provide any changes that may have occurred since the predetermination was filed.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER

(1) Applicants for license must make application on forms approved by the board and accompanied by the required fee.

(2) No application for license will be accepted by the board until the individual has made application for and successfully completed the examination, except as allowed by ARM 24.210.610.

(3) All individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate the examination results.

(4) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a license verification from that licensing jurisdiction is required before a Montana license will be issued.

(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.

(8) In addition to (1) through (7), all applicants for licensure as a salesperson must:

(a) submit proof of completing 60 hours of approved pre-licensing education obtained within a period of 24 months immediately preceding the date of the submission of the application; and

(b) submit the proposed supervising broker's certification of the applicant's good repute and the broker's written acceptance of responsibility for supervising the licensed activities of the salesperson.

(9) In addition to (1) through (7), all applicants for licensure as a broker must:

(a) submit proof of completing 60 hours of approved pre-licensing education obtained within a period of 18 months immediately preceding the date of the submission of the application; and

(b) submit for the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson," evidence acceptable to the board that the salesperson has obtained a total of 30 points in any combination of point types within the past 36 months prior to the date of application. Point types and values are as follows:

(i) transaction points:

(A) one point for each closed residential real estate transaction, no more than five leases;

(B) three points for each closed farm, ranch, agricultural, or commercial transaction, no more than five leases; or

(C) upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

(ii) education points:

(A) three points for an associate degree in real estate;

(B) three points for Certified Commercial Investment Member (CCIM) or Council of Real Estate Broker Managers (CRB);

(C) five points for a bachelor degree or higher in business management;

(D) five points for a law degree; or

(E) five points for a bachelor degree or higher in real estate.

(iii) supervision points are obtained through supervision of real estate activity for any broker who has supervised real estate activity a minimum of 36 months:

(A) one point for each year of real estate brokerage supervisory experience, maximum of three points;

(B) one point for each licensed real estate full-time equivalent (FTE) supervised within the last 36 months, maximum of ten points; or

- (C) one point for every five transactions supervised in the last 36 months, maximum of 15 points.
- (iv) educator points are obtained by being an approved real estate educator in a jurisdiction;
- (A) one point for each instructor day (minimum of six hours) within the past 36 months, maximum of ten points.
- (c) The experience required by (9)(b) must be legally obtained while licensed as a real estate licensee in this state, or licensed in another jurisdiction.
- (d) Closed real estate transactions of property owned by the applicant, by a corporation, partnership, trust, or other entity in which the applicant has an interest or by such an entity which employed the applicant as an employee, shall not qualify as experience under (6)(b), or under 37-51-302, MCA.
- (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.
- (f) In order for a listing to be considered a closed real estate transaction, the listing must have sold.
- (g) In order to claim credit for a transaction, the applicant must have taken an active role in the transaction as determined by the board, except that a supervising broker may claim supervision points as provided in (9) above.
- (h) No more than one credit total per side per transaction may be claimed by a team or its members.
- (10) The board will review all non-routine applications.

**24.210.615 APPLICATION FOR DETERMINATION OF EQUIVALENT EXPERIENCE FOR
BROKER LICENSING**

- (1) A salesperson who has been licensed for the preceding 18 months may apply to the board for a determination that the applicant possesses experience equivalent to that required for broker licensing.
- (2) Applications for determination of equivalent experience shall be made on forms approved by the board.

**24.210.616 WAIVER OF EXPERIENCE REQUIREMENT FOR BROKER LICENSING
PROHIBITED**

- (1) There shall be no waiver of the experience qualifications for a broker license or reciprocity broker license.

**24.210.621 NONRESIDENT LICENSE -- SALESPERSON AND BROKER
(REPEALED)**

24.210.624 INACTIVE LICENSES

(1) A licensed broker or salesperson not engaged in licensed activities may place the licensee's license on inactive status by:

- (a) paying the required fee in accordance with ARM 24.210.401;
 - (b) forwarding the license to the board office for cancellation of the active license; and
 - (c) submitting a written request that the license be placed inactive.
- (d) A salesperson must also forward a release from the salesperson's supervising broker.

(2) A licensee whose license is on inactive status with the board has the sole responsibility to keep the board informed as to any change of the licensee's residency or mailing address during the period of time the real estate licensee remains on inactive status.

(3) In order to avoid lapse, expiration, or termination of the license, an inactive licensee must renew the inactive license each renewal period.

(4) An inactive licensee does not need to report continuing education until converting the license to active status as found in ARM 24.210.625.

(5) An inactive licensee may not receive compensation for real estate activity not earned while the license was active.

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS

(1) For an inactive real estate licensee to become active, the licensee must:

- (a) file a change of address application;
- (b) provide evidence of completing 24 hours of continuing education within the preceding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education;
- (c) provide evidence of completing the previous license year core course in addition to the continuing education, and
- (d) pay the required fee in accordance with ARM 24.210.401.

24.210.629 RECIPROCITY

(1) Subject to 37-51-306 , MCA, the board may enter into an agreement with any other jurisdiction establishing the conditions through which residents of the other jurisdiction may obtain a nonresident license in this state, and establishing terms of nonresident practice in this state, if the other jurisdiction grants Montana resident licensees the same privileges.

24.210.635 RENEWALS

- (1) Each licensee will renew on or before the date set by ARM 24.101.413.
- (2) Renewal notices will be sent as specified in ARM 24.101.414. Active salesperson license renewals will be sent to the address of the salesperson's broker of record. Inactive license renewals will be sent to the licensee's address of record on file with the board. Each licensee is required to renew.
- (3) A cancelled salesperson license may not be renewed. The license must be placed on inactive status or transferred to a supervising broker before it can be renewed.
- (4) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the date as set by ARM 24.101.413, or the late penalty fee as specified in ARM 24.101.403 will be required. An unrenewed license will lapse, expire, or terminate per 37-1-141, MCA.
- (5) All continuing education requirements must be met before a license is renewed.
- (6) The provisions of ARM 24.101.408 apply.

24.210.641 UNPROFESSIONAL CONDUCT

- (1) A licensee involved in any real estate transaction shall comply with the generally accepted standards of practice.
- (2) A licensee shall not act as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313 , MCA.
- (3) Violation of 37-51-321 , MCA, constitutes unprofessional conduct.
- (4) The board may take disciplinary action and impose any penalty found in 37-1-312 , MCA, against any licensee who violates any statute or rule administered by the board.
- (5) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:
 - (a) engaging in activities that constitute the practice of law;
 - (b) failing to advise their principal and any other party to the transaction with whom the licensee is directly working, that outside professional services should be secured when appropriate;
 - (c) engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, or other like person or entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(d) engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(e) failing, when entering into a listing agreement, to promptly verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing;

(f) failing to disclose the fact that the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another;

(g) falsifying documents, placing any party's signature on a document, or altering or amending a document on behalf of any party without authority of a written power of attorney from the party;

(h) advising that an offer or counter offer has been accepted without the licensee having in the licensee's possession a document signed by the party evidencing the party's acceptance;

(i) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

(j) knowingly entering, or willfully continuing in any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or the licensee's principal is to commit any of the following acts:

(i) using or conspiring with others to obtain inflated property appraisals;

(ii) influencing others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA);

(iii) filing an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, HUD or VA regulations; or

(iv) acquiring as an investor, or personally, properties subject to a loan guaranteed or insured by HUD, collect rents thereon, while purposely failing to make mortgage payments on the property;

(k) failing to make reasonable efforts to perform all obligations arising from any agreement entered into;

(l) failing to document in writing and obtain signatures by the parties to all agreements. Licensees shall document in writing, and have signed by the parties, any changes to the terms and provisions of the agreement which occur between the time a buy/sell is executed and the closing of a transaction;

(m) failing, as a seller's agent, to participate in negotiations as defined in 37-51-102, MCA, unless the seller has waived this obligation in writing;

(n) failing, as a seller's agent, to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates unless the seller waives these obligations in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller;

(o) failing, as a buyer agent, to participate in negotiations as defined in 37-51-102, MCA, unless the buyer has waived these obligations in writing;

(p) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted or the buyer broker agreement terminates, unless the buyer waives these obligations in writing. Buyer agents are not obligated to show properties to their buyer after an offer has been accepted unless directed in writing to do so by the buyer;

(q) representing to any lender, guaranteeing agency, or other interested party, either orally or through the preparation of false documents, an amount other than the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(r) failing, as a licensee, to repay the recovery account for any amounts paid from the account based on an unsatisfied judgment against the licensee;

(s) when acting as a listing agent, disclosing the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers. This shall not prohibit the listing agent from disclosing that an offer has been made;

(t) when acting as a buyer agent, disclosing to a client who is a principal to a real estate transaction, the name of a competing client who is also making an offer on the same property or disclosing the amount, terms or provisions of the competing client's offer;

(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;

(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;

(z) failing, while acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of Title 37, chapter 51, part 6, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828, except for the advertising requirements of ARM 24.210.828(3)(u);

(aa) violating the landlord tenant laws of Title 70, chapter 24, MCA;

(ab) violating the state and federal fair housing statutes;

(ac) violating the Americans with Disabilities Act;

(ad) guaranteeing or authorizing a person to guarantee future profits which may result from the resale of real property;

(ae) soliciting, selling, or offering for sale real property by conducting lotteries, raffles, or contests for the purpose of influencing a purchaser or prospective purchaser of real property. Door prizes can be awarded so long as the participant is not required to pay any consideration or enter into any contract arrangement in order to participate in the door prize drawing;

(af) paying a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to any principals or reducing the commission owed by any principals is not considered payment of a commission to an unlicensed person;

(ag) failing to disclose in advertising the licensee's name and identifying that the advertisement is made by a real estate licensee or that the advertising is made by a brokerage company.

(ah) failing to comply with Internet advertising subject to the provisions of ARM 24.210.430;

(ai) failing to disclose their identity as a real estate licensee at first contact;

(aj) failing to comply with all completion and reporting requirements for continuing education as established by the board;

(ak) failing to respond to a request from the board;

(al) engaging in or conducting business as a real estate licensee, or advertising as a real estate licensee, or conducting the business of a real estate licensee at a time when the licensee's real estate license has expired, is cancelled, or is on inactive status;

(am) acting as a buyer agent without a written buyer broker agreement;

(an) acting as a seller agent without a written listing agreement;

(ao) acting as a dual agent in a transaction if the licensee is a principal;

(ap) acting as a seller agent in a transaction if the licensee is the buyer in the same transaction;

(aq) acting as a buyer agent in a transaction if the licensee is the seller in the same transaction;

(ar) submitting a competing offer as a principal in a transaction with the licensee's client;

(as) failing to account for or misappropriation of funds being held in trust;

(at) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education;

(au) failing to document any agreement allowing an agent's principal to negotiate directly with an opposing agent;

(av) failing as a listing agent on an entry-only listing to comply with all other statute and rule requirements of a real estate licensee;

(aw) when applying for a broker license, claiming more credit for transactional experience than actually earned; or

(ax) as a supervising broker, failing to immediately inform the broker's supervised salespersons that the supervising broker's license or endorsement has expired.

(6) The revocation, suspension, or other disciplinary treatment of any other professional or occupational license or privilege, held by the licensee in this state or another jurisdiction, may be grounds for license discipline in this state if the board determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity.

(7) Real estate licensees are responsible for the actions of their employees who aid or assist the real estate licensee in the performance of real estate functions. At no time may an unlicensed employee perform an activity for which a license is required.

24.210.643 CITATIONS AND FINES

(1) Citations issued by the department may be presented to the broker or property manager responsible for the maintenance of the trust account personally or mailed by certified mail.

(2) A broker or property manager who receives a citation has five business days from the receipt of the citation to either pay the fee or file a written dispute. Failure to either pay the fine or file a written dispute within five business days is unprofessional conduct and subject to board discipline.

(3) Significant violations shall be forwarded to the complaint screening panel. Significant violations may include:

(a) an excessive number of violations in a single audit;

(b) repeat violations; or

(c) a single, severe violation.

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE

(1) The board, in its discretion, may impose disciplinary action against a licensee violating any law or rules of the board. The board shall decide on a case-by-case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

- (a) the seriousness of the infraction;
- (b) the detriment to the health, safety, and welfare of the people of Montana; and
- (c) past or pending disciplinary actions relating to the licensee.

(2) In addition to any sanction provided in 37-1-312 , MCA, the board may impose one or more of the following sanctions against a licensee who violates one or more of the laws or rules of the board:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding one year;
- (d) placing a licensee on probation;
- (e) public or private reprimand or censure of a licensee;
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper;
- (g) limitation or restriction of the scope of the license and the licensee's practice;
- (h) deferral of disciplinary proceedings or imposition of disciplinary sanctions; or
- (i) ordering the licensee to successfully complete appropriate training.

(3) When a license is revoked or suspended, the license must immediately be surrendered to the board.

(4) Any order of license discipline, when final, including those reached by settlement agreement, may be published.

24.210.651 REINSTATEMENT

(1) Unless a specific period of suspension or revocation is set out in any final order of the board, a suspension shall be for one year and a revocation shall be permanent.

(2) As a condition to the reinstatement of a suspended license, in addition to any other conditions allowed by law, the board may require the applicant to take and pass a qualifying examination, or course, or both as determined by the board.

24.210.660 PRE-LICENSING EDUCATION -- SALESPERSONS AND BROKERS

- (1) Request for approval of a pre-licensing education course and instructor approval must be made on forms approved by the board and submitted 60 days prior to the initial course offering date.
- (2) Expiration of course approval or instructor approval is three years from the date of approval, but may be revoked for cause.
- (3) Distance education courses may be approved if the board determines that:
 - (a) an appropriate and complete application has been filed and approved by the board;
 - (b) the distance education course meets the content requirements as established under this rule;
 - (c) the distance education course is certified by the Association of Real Estate License Law Officials (ARELLO) and the course provider has provided appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and
 - (d) the distance education course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.
- (4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.
- (5) Advanced nationally recognized designation courses may be submitted and may be approved, in part, to fulfill specific topics of the broker pre-licensing education requirement.
- (6) Instructors teaching more than 25 percent of a pre-licensing course must be approved by the board as pre-licensing instructors.
- (7) The course provider is responsible for the actions and representations of all instructors who aid or assist in the instruction of the pre-licensing education course.
- (8) No more than eight hours of instruction may be offered per day. Examination time does not count as hours of instruction.
- (9) Approved instructors must have one year of experience in real estate education, and:
 - (a) a bachelor's degree in a field traditionally associated with the subject matter being taught; or
 - (b) advanced training on instruction methods and adult learning.
- (10) Pre-licensing course to obtain a sales license must consist of the following topics:
 - (a) practices, principles, and essentials of real estate;

- (b) real estate law;
- (c) taxation;
- (d) property management and leasing;
- (e) ethics and standards of practice;
- (f) estimating closing costs, escrow, and closing and settlement practices;
- (g) finance;
- (h) hazardous waste or environmental issues;
- (i) agency;
- (j) contract law and documents;
- (k) state rules and regulations;
- (l) general trust accounting for real estate licenses;
- (m) forms of ownership;
- (n) title and transfer of title;
- (o) recording acts;
- (p) negligence or misrepresentation (risk management);
- (q) real estate security instruments;
- (r) fair housing;
- (s) Regulation Z; and
- (t) landlord tenant law.

(11) The 60 hours of board-approved broker pre-licensing education will consist of the following modules:

- (a) business management;
- (b) contracts;
- (c) financial management;
- (d) liability pertaining to real estate practice;

- (e) professional conduct;
- (f) real estate and property management trust accounting; and
- (g) property management.

(12) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(13) The applicant must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

(14) A board representative may, at no charge, audit all board-approved courses for rule compliance.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS

(1) All new sales licensees will receive an interim license that will terminate October 31 of the year of the initial license date.

(2) All new sales licensees are required to complete the board-mandated new licensee mandatory continuing education requirement, commonly known as the 12-hour rookie course, by the renewal date as set by ARM 24.101.413, following their original license issue date.

(3) A new license will be issued upon completion of the new licensee mandatory continuing education required by this rule.

(4) The new licensee mandatory continuing education does not replace the 12-hour continuing education requirement, which begins with the second year of licensing.

(5) All licensees are required to submit the renewal form and renewal fee by the date set by ARM 24.101.413 of their license renewal year.

24.210.666 COURSE PROVIDER

(1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

24.210.667 CONTINUING REAL ESTATE EDUCATION

- (1) Each active licensee is required to annually complete a board-mandated core education course of a length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in (18) and (19).
- (2) In addition to the board-mandated core education course, each active licensee is required to complete a minimum of 12 hours of continuing real estate education every year.
- (3) A licensee must complete the board-mandated core education course that contributes to the professional competency of the licensee in their real estate practice.
- (4) Courses completed after the renewal deadline will result in a late renewal and penalty regardless of when the licensee submits the renewal application.
- (5) The licensee must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.
- (6) The required hours shall be in real estate related courses approved by the board.
- (7) By August 1 of each year, the board will identify topics in which the required hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.
- (8) No carry over hours will be recognized or allowed.
- (9) No licensee shall repeat a course for credit in the same reporting year, without the course receiving prior board approval.
- (10) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.
- (11) Course and instructor evaluation forms approved by the board must be provided and may be collected by a board representative and forwarded to the board office.
- (12) A board representative may, at no charge, audit all board-approved courses for rule compliance.
- (13) All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.
- (14) The course provider must report all education attendance in a format approved and provided by the board.
- (15) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval.

- (16) All continuing education courses must be taken and completed within the reporting period.
- (17) The board may grant continuing education credit to board members for actively preparing and participating in board meetings. Credit will be limited to no more than three hours of credit per meeting.
- (18) A licensee completing board-mandated core education courses beyond the core course completed for professional competency required in (3), may apply one course toward meeting current continuing education requirements. The core course completion certificate(s) must be provided to the board office in order to receive continuing education credit.
- (19) A licensee with both a real estate and property management license must complete both board-mandated core education courses, but may apply one course toward meeting the current continuing education requirement by providing the core course completion certificate(s) to the board office.
- (20) Licensees completing continuing education in another jurisdiction or completing education that the licensee believes meets the topic requirements of the board, but which was not previously submitted to the board for approval, may submit an individual course application for approval consideration.
- (21) The completed individual course application and accompanying fee must be filed with the board office within 30 days after completion of the course. Failure to timely file the application will result in a late filing fee.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL

- (1) Requests for approval of a continuing real estate education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.
- (2) The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause.
- (3) A course may be advertised for credit only after a completed course application has been submitted to the board office accompanied by all required attachments and fees. Courses not submitted for approval may not be advertised for credit. After a course submission, but prior to approval, the course may be advertised if all advertising includes the statement that the course is "pending approval." This advertising must appear in comparable font size and color as the rest of the advertising. A course is not "pending approval" unless a completed course application has been submitted to the board office accompanied by all required attachments and fees.
- (4) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.
- (5) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:
- (a) courses approved by another jurisdiction's real estate licensing authority; or

(b) courses which lead to designations or certifications by board-recognized trade or professional associations.

(6) Distance education courses may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under ARM 24.210.667;

(c) the distance education course is certified by the Association of Real Estate License Law Officials (ARELLO) and the course provider has provided appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules.

(7) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL

(1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended instruction with payment of the required fee.

(2) The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Approval may be revoked for cause.

(3) Approved instructors must have:

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally-recognized instructor designation.

(4) Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers, may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee.

24.210.801 FEE SCHEDULE

(1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services provided to property management licensees and listed below. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) No part of the fees paid in accordance with the provisions of this chapter is refundable. Fees are deemed earned by the board upon receipt.

(3) Examination fees are payable to the national testing service under contract with the board.

(4) For each original license - \$60

(5) For each annual renewal - \$75

(6) For each change of place of business or affiliation - \$45

(7) Reinstatement of a license suspended or revoked within a license period - \$ 50

(8) For placing an active license inactive - \$10

(9) For activating an inactive license - \$45

(10) For each original recovery account assessment - \$35

(11) Continuing education course application - \$75

(12) Education course instructor application for approval or renewal 50

(13) Pre-licensing course -\$150

(14) Individual CE request application (per course) - \$25

(15) Late filing of individual CE request application (per course) - \$100

(16) Instructor/course development course - \$100 per course

(17) Additional standardized fees are specified in ARM 24.101.403.

24.210.803 PROPERTY MANAGEMENT DEFINITIONS

The terms used in this chapter shall have their common meaning as used in the property management industry and, unless the content otherwise requires, the following meanings shall also apply:

(1) "Salaried employee" as used in Title 37, chapter 51, part 6, MCA, means an individual employed by an owner to manage the property of that owner. This term does not include an unlicensed real estate or property management secretary or the holder of a similar position employed to manage many owners' property for a single broker or property manager.

(2) "Board" means the Board of Realty Regulation provided in 2-15-1757, MCA.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS

- (1) Each property manager will maintain a trust account which will be designated by the words "trust account," wherein all deposits, rent payments, or other trust funds received by the property manager, on behalf of any other person, shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, third party, or any other person as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account. Property managers must maintain all required ledgers for each trust account.
- (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.
- (3) All funds belonging to others and accepted by the property manager must be deposited in an insured account in a financial institution located in Montana. The account must be identified by the words "trust account."
- (4) Funds deposited in a property manager trust account, in connection with a property management transaction, shall not be commingled with the property manager's personal funds or other funds in the trust account, with the exception that the property manager may deposit and keep a sum not to exceed \$1000 in the trust account from the property manager's personal funds, including the interest earned on the trust account, which accrues to the property manager. Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.
- (5) A property manager may maintain more than one trust account.
- (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) When the property management agreement is terminated, but the rental agreement is still in effect, and the licensee is holding funds deposited by a tenant, the licensee shall notify the tenant in writing within five business days that the funds and current tenant files, including lease and condition reports, will be transferred to the property owner or the owner's designee within 30 days of the notification. The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.
 - (b) The property manager must transfer funds and current tenant files, including the lease and property condition reports, pursuant to the notice to the tenant.

(7) Maintenance of the trust account will be the responsibility of the property manager. Property managers are responsible for all funds accepted by them or their property management staff.

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

(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 (5).

(10) Maintenance of a property management trust account shall include the property manager keeping at the property management office a completed record of all funds received in the following manner:

(a) proof of deposit showing the date of deposit, amount, source of money, and where deposited;

(b) monthly bank statements are to be retained and kept on file;

(c) if checks are used, trust account checks must be numbered and all voided checks recorded. The checks must denote the property manager's business name, address, and must be designated as "trust account";

(d) a record which shows the chronological sequence in which funds are received and disbursed;

(i) for funds received, the record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(ii) for disbursements, the record must include the date, each payee, and the amount;

(iii) no disbursement from the trust account shall be made until the deposit has been verified;

(iv) a running balance must be shown after each entry.

(11) A chronological ledger must be kept for each tenant showing all rents, deposits, and disbursements. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(12) A chronological record must be kept for each property owner showing all income, expenses, and disbursements. The record entries must clearly identify the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, the payee, and the amount must be shown. A running balance must be shown after each entry.

(13) The trust account must be reconciled monthly, except in the case where there has been no activity during that month.

(14) Every property manager shall keep all records required by (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.

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

(16) The board is authorized to examine each property manager's trust account and all related records. 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 property manager is required to fully cooperate with the board representative.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS

(1) A property management licensee who changes the office location must notify the board office in writing within ten business days of the change. The proper fee must accompany such notice. The board office will then issue a corrected pocket card for the remainder of the renewal year.

24.210.809 PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS

(1) Request for pre-licensing education course and instructor approval must be made on forms approved by the board and submitted 60 days prior to the initial course offering date.

(2) Expiration of course approval or instructor approval is three years from the date of approval, but may be revoked for cause.

(3) Distance education courses may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under this rule;

(c) the distance education course is certified by the Association of Real Estate License Law Officials (ARELLO) and the course provider has provided appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should the ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.

(4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.

(5) Instructors teaching more than 25 percent of a pre-licensing course must be approved by the board as pre-licensing instructors.

(6) The course provider is responsible for the actions and representations of all instructors who aid or assist in the instruction of the pre-licensing education course.

(7) No more than eight hours of instruction may be offered per day. Examination time does not count as hours of instruction.

(8) Approved instructors must have one year of experience in the practice of property management or property management education and:

(a) a bachelor's degree in a field traditionally associated with the subject matter being taught; or

(b) advanced training on instruction methods and adult learning.

(9) A property management application must provide evidence of successfully completing a minimum of 30 hours of pre-licensure education approved by the board.

(10) The pre-licensure curriculum must consist of the following topics:

(a) landlord tenant law (Title 70, chapter 24, MCA);

(b) federal and state fair housing laws;

(c) Americans with Disabilities Act;

(d) state licensing law and rules;

(e) trust accounts;

(f) accounting procedures;

(g) definitions and terms commonly used in the industry;

(h) contract law;

(i) agency; and

(j) leasing principles.

(11) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(12) The applicant must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

(1) An applicant for a property management license must submit a completed original application on forms approved by the board and pay the required fees.

(2) Real estate brokers and salespersons wishing to obtain a property management license must meet all existing property management licensing requirements, including completion of the pre-licensing course described in ARM 24.210.809, passing the examination, submitting the license application, and paying the required fee.

(3) Applicants for licensure as a property manager must submit proof of completing a board-approved property management pre-licensing course obtained within a period of 24 months, immediately preceding the date of the submission of the application.

(4) All individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate examination results.

(5) The board will review all non-routine applications.

24.210.815 APPLICATION FOR PROPERTY MANAGEMENT EXAMINATION
(REPEALED)

24.210.818 PROPERTY MANAGEMENT EXAMINATION

(1) License examinations may be held at such times and places as determined by the board.

(2) The rules established by the examination provider shall be obeyed by all persons taking an examination. A violation of a rule may result in imposition of any sanction found in 37-1-312 , MCA.

(3) The board may from time to time review and amend the examination type, format, and the score upon which the pass or fail determination is made.

(4) The passing score is 80 percent.

24.210.825 RENEWALS

(1) Except for new licensees as provided in ARM 24.210.827, all active and inactive licensees will be required to renew as set by ARM 24.101.413.

(2) Renewal notices will be sent as specified in ARM 24.101.414. Each licensee is required to renew.

(3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal date set forth in ARM 24.101.413. An unrenewed license will lapse, expire, or terminate per 37-1-141 , MCA.

(4) The provisions of ARM 24.101.408 apply.

24.210.826 INACTIVE TO ACTIVE STATUS - PROPERTY MANAGEMENT LICENSES

(1) In order to become active, an inactive property management licensee must:

- (a) file a change of address application;
- (b) provide evidence of completing 24 hours of continuing education within the proceeding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; and
- (c) pay the required fee in accordance with ARM 24.210.801.

24.210.827 INACTIVE STATUS

- (1) A licensee not engaged in licensed activities may place the licensee's license on inactive status by:
 - (a) paying the required fee;
 - (b) forwarding the license to the board office for cancellation of the active license; and
 - (c) submitting, in writing, a request that the license be placed on inactive status.
- (2) In order to avoid lapse, expiration, or termination of their license, inactive licensees must renew their inactive license each renewal period.
- (3) Inactive licensees do not need to report continuing education until they reactivate their license as found in ARM 24.210.826.
- (4) Inactive licensees may not receive compensation for property management activity not earned while their license was active.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES

- (1) In any transaction in which a property management licensee is involved as a licensee or as a party, has held self out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee has failed to meet the generally accepted standards of practice.
- (2) If the board determines that a licensee has committed an act that violates a statute or the rules administered by the board, such act shall be deemed an act against the interest of the public for which the board may take disciplinary action permitted by law against the licensee.
- (3) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:
 - (a) failing to maintain a level of knowledge customary for licensees of this state, including laws and rules administered by the board;
 - (b) violating laws and rules affecting any transaction in which the licensee acts;
 - (c) engaging in activities that constitute the practice of law;

(d) engaging the services of any attorney, insurance agent, or other like person or like entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(e) engaging or recommending the services of an attorney, insurance company, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or property management agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(f) the licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee manages, shows, negotiates for the rental, or otherwise is involved;

(g) falsifying documents, or placing signatures on documents without authority of a written power of attorney from the party, or committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

(h) entering into a transaction or agreement with the intent not to perform;

(i) failing to make reasonable efforts to perform all obligations arising from any agreement entered into;

(j) acting as a broker without holding that license separately;

(k) violating the landlord tenant laws of Title 70, chapter 24, MCA;

(l) violating the state and federal human rights statutes;

(m) violating the Americans with Disabilities Act;

(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;

(r) when entering into a management agreement failing to make a prompt effort to verify that the principal entering the agreement is the owner or is authorized by the owner to enter such agreement;

(s) failing to disclose to all customers and clients their contractual relationship;

(t) openly advertising property belonging to others, whether by means of printed material, radio, television, or display, or by other means, without a signed property management agreement from the owner of the property. The agreement must be valid as of the date of advertisement. Internet advertising is subject to the provisions of ARM 24.210.430;

(u) failing to include the name of the property management company, or the term "property manager" in any real estate advertising, including property owned by the licensee. Internet advertising is subject to the provisions of ARM 24.210.430.

(v) failing to disclose the fact that the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another.

(w) failing as a licensee to repay the recovery account for any amounts paid from the account, based on an unsatisfied judgment against the licensee;

(x) managing property without a written property management agreement in place, signed by the owner;

(y) failing to comply with all continuing education completion and reporting requirements as established by the board;

(z) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(aa) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

(ab) failing to respond to a request from the board;

(ac) engaging in or conducting business as a property manager, or advertising as a property manager, or engaging in or conducting the business of a property manager at a time when the licensee's license has expired, is on inactive status, or has been cancelled; or

(ad) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education.

(4) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or similar occupation or profession, shall be grounds for license discipline in this state, if the board, after appropriate notice and hearing, determines that the substantive grounds for that disciplinary treatment demonstrates the licensee's unworthiness or incompetency to act as a property manager.

(5) A licensed property manager is responsible for the actions of their employees who aid or assist the property manager in the performance of property management functions. At no time may an unlicensed employee perform an activity for which a license is required.

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION - PROPERTY MANAGER

(1) All new property management licensees are required to complete 12 hours of new licensee mandatory continuing education by the second renewal date as set by ARM 24.101.413, following their original license issue date. Six of those hours must consist of:

- (a) two hours of trust accounts;
- (b) two hours of leasing principles; and
- (c) two hours of state law update.

(2) New property managers will receive an interim license that will terminate on the second renewal date as set by ARM 24.101.413, following their original license issue date.

24.210.834 COURSE PROVIDER

(1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each active licensee is required to annually complete a board-mandated core education course of the length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in (17) and (18).

(2) In addition to the board-mandated core education course, each active licensee is required to complete a minimum of 12 hours of board-approved continuing property management education every year.

(3) A licensee must complete the board-mandated core education course that contributes to the professional competency of the licensee in their property management practice.

(4) The licensee must attend 90 percent of each hour of the approved course time in order to receive credit for attendance.

(5) The required hours shall be in courses approved by the board.

(6) By August 1 of each year, the board will identify topics in which the 12 hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

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

(8) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.

(9) The course provider must provide board-approved course and instructor evaluation forms to course attendees. A board representative may collect the forms and forward them to the board office.

(10) A board representative may, at no charge, audit all board-approved courses for rule compliance.

(11) All approved education must be available to all licensees.

(12) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

(13) Instructors or their designee must report all education attendance in a format approved and provided by the board.

(14) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course approval or withdrawal of the instructor approval.

(15) 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.

(16) Failure to comply with the continuing education requirements established by the board is unprofessional conduct and will result in disciplinary action by the board.

(17) A licensee completing board-mandated core education courses beyond the core course completed for professional competency required in (3), may apply one course toward meeting current continuing education requirements. The core course completion certificate(s) must be provided to the board office in order to receive continuing education credit.

(18) A licensee with both a real estate and property management license must complete both board-mandated core education courses, but may apply one course toward meeting the current continuing education requirement by providing the core course completion certificate(s) to the board office.

24.210.836 CONTINUING PROPERTY MANAGEMENT EDUCATION REPORTING REQUIREMENTS

(REPEALED)

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL

(1) Requests for approval of a continuing property management education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.

(2) The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December

31. Course approval may be revoked for cause.

(3) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(4) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) courses approved by another jurisdiction's real estate licensing authority, or

(b) courses which lead to designations or certifications by board-recognized trade or professional associations.

(5) A distance education course may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under ARM 24.210.835;

(c) the distance education course is certified by the Association of Real Estate License Law Officials (ARELLO) and the course provider has provided appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules.

(6) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

24.210.843 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL

(1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the intended instruction with payment of the required fee.

(2) The initial approval of an instructor will be in effect for the remainder of that calendar year and the next calendar year in its entirety, expiring December 31. Approval may be revoked for cause.

(3) Approved instructors must have:

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally recognized instructor designation.

(4) Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee.

24.210.1001 FEE SCHEDULE

(1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule.

(2) Fees are deemed earned by the board upon receipt and not refundable.

(3) Initial filing of an application for registration of the sale of a timeshare - \$500

(4) Amendment of registration of the sale of a timeshare - \$200

(5) Original timeshare salesperson license application - \$35

(6) Timeshare salesperson license renewal - \$35

(7) Placing an active license on inactive status - \$10

(8) Activating a license on inactive status - \$45

(9) Timeshare correspondence course fees are payable to the course provider as approved by the board.

24.210.1003 TIMESHARE LICENSURE FOR LICENSED REAL ESTATE BROKERS AND SALESPERSONS

(REPEALED)

24.210.1005 LICENSURE OF TIMESHARE BROKERS

(REPEALED)

24.210.1007 LICENSURE OF TIMESHARE SALESPERSONS

(1) Applications for licensure as a timeshare salesperson shall be made on a completed form provided by the board accompanied by satisfactory proof of successful completion of an approved course of education and payment of the required fee.

24.210.1011 REQUIREMENTS OF PERSONAL DISCLOSURE STATEMENT REQUIRED FOR LICENSURE

(REPEALED)

24.210.1013 TIMESHARE LICENSURE FOR NONRESIDENTS

(REPEALED)

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE

(1) Each applicant for licensure shall have successfully completed a course, or courses, of education related to the timeshare industry and approved by the board.

(2) No course will be approved for an applicant if attended more than two years prior to the application for licensure.

24.210.1018 TIMESHARE EXAMINATION REQUIREMENTS FOR LICENSURE

(REPEALED)

24.210.1020 RENEWALS

(1) Each licensee shall renew on or before the date as set by ARM 24.210.413.

(2) Renewal notices for all timeshare salespeople will be sent to the last known address in the division's records as specified in ARM 24.101.414.

(3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline or late renewal fees will be required.

(4) Timeshare sales licenses will lapse, expire, or terminate according to ARM 24.101.408.

24.210.1025 TIMESHARE REGISTRATION APPLICATION REQUIREMENTS

(1) Application for registration of a timeshare offering shall be made on a form provided by the board and include the required documents and the required fee.

(2) Application materials filed with the ARELLO Timeshare Registry (ATR) are preferred.

24.210.1027 ALTERNATIVE ACCEPTABLE DOCUMENTS FOR TIMESHARE REGISTRATION

(1) Subject to (2) , any document or set of documents actually filed with, or actually compiled in accordance with a rule of any agency of the United States or any other state shall be acceptable

alternatives to the documents required to be filed with an application for registration of a timeshare offering under 37-53-202 , MCA.

(2) If, in the board's discretion, the alternative documents do not provide reasonably equivalent material and recent information required by 37-53-202 , MCA, and any applicable rule, the board may require that the alternative documents be supplemented accordingly.

24.210.1029 TIMESHARE REGISTRATION DISCLOSURE DOCUMENT REQUIREMENTS
(REPEALED)

24.210.1031 TIMESHARE CONDITIONS OF REGISTRATION REQUIREMENTS

(1) It shall be a condition of registration that the registrant assures purchasers quiet enjoyment of the timeshare unit by providing satisfactory guarantee to the purchaser that all promises made that are yet to be performed or remain executory are covered by a performance bond, a trust, an escrow, or similar arrangement.

24.210.1033 TIMESHARE RENEWAL REGISTRATION REQUIREMENTS
(REPEALED)

24.210.1035 TIMESHARE AMENDMENT FOR ADDITIONAL INTERVAL REGISTRATION REQUIREMENTS
(REPEALED)

24.210.1037 TIMESHARE AMENDMENT FOR MATERIAL CHANGE REGISTRATION REQUIREMENTS

(1) Amendment to application for registration shall be made on a form provided by the board and accompanied by the required attached documents and payment of the required fee.

TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 1. General

Definitions

37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in [37-51-501](#).

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.

(4) "Board" means the board of realty regulation provided for in [2-15-1757](#).

(5) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a

prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (5).

(6) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(7) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(8) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(9) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(12) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(13) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(14) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(15) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(16) "Negotiations" includes:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(17) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(18) "Property manager" means an individual who for a salary, commission, or compensation of any kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;

(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;

(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;

(d) assists in creating or completing real estate lease contracts;

(e) procures tenants for owners of real estate located in this state;

(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

(g) makes the advertising of real property for lease available by public display to potential tenants;

(h) shows rental or lease properties to potential tenants;

(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;

(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;

(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;

(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;

(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (18).

(19) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(20) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(21) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(22) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who

have an interest in or are a party to a lease or rental agreement.

(23) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(24) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(25) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(26) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(27) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993; amd. Sec. 1, Ch. 565, L. 1995; amd. Sec. 144, Ch. 483, L. 2001; amd. Sec. 34, Ch. 492, L. 2001; amd. Sec. 25, Ch. 502, L. 2007; amd. Sec. 1, Ch. 211, L. 2015.



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 1. General

Exemptions

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker, a real estate salesperson, or a property manager. The licensing provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 251, L. 1997; amd. Sec. 2, Ch. 211, L. 2015.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 1. General

Chapter Supplemental To Deceptive Practices Law

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 1. General

Sexual Or Violent Offender Registration Information -- Responsibility Of Broker Or Salesperson

37-51-105. Sexual or violent offender registration information -- responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

- (1) the fact that the information may be maintained and by whom; and
- (2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

History: En. Sec. 1, Ch. 99, L. 1999.



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 2. Board of Realty Regulation

Presiding Officer -- Seal -- Records -- Prohibition On Membership In Real Estate Associations

37-51-201. Presiding officer -- seal -- records -- prohibition on membership in real estate associations. (1)

The members of the board shall elect a presiding officer from among their number.

(2) The board shall adopt a seal of a design that it prescribes. Copies of records and papers kept by the department, certified by the presiding officer, and authenticated by the seal of the board must be received in evidence in courts with the same effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department:

(a) shall keep a record of proceedings, transactions, communications, and official acts of the board;

(b) is custodian of the records of the board; and

(c) shall perform other duties that the board, on the written request of two or more members of the board or at other times that the presiding officer, considers necessary.

(4) The presiding officer or an employee of the department hired to provide services to the board may not be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1; amd. Sec. 1409, Ch. 56, L. 2009.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

General Licensing Power

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

Rulemaking Power

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 2. Board of Realty Regulation

Educational Programs

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985; amd. Sec. 104, Ch. 429, L. 1995; amd. Sec. 10, Ch. 375, L. 2003; amd. Sec. 101, Ch. 467, L. 2005; amd. Sec. 14, Ch. 100, L. 2011; amd. Sec. 10, Ch. 80, L. 2015.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

Compensation Of Members -- Expenses

37-51-205. Compensation of members -- expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

Schedule Of Fees

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

Deposit Of Money Not Otherwise Provided For

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.



TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 2. Board of Realty Regulation

Executive Secretary -- Hiring And Duties

37-51-209. Executive secretary -- hiring and duties. The department may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

History: En. Sec. 1, Ch. 270, L. 1991; amd. Sec. 145, Ch. 483, L. 2001; amd. Sec. 35, Ch. 492, L. 2001.



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 3. Licensing

License Required -- Limited To Persons

37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker's license and a supervising broker endorsement.

(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

(4) (a) For purposes of this section and whether or not the person is physically located in Montana, "within this state" or similar terminology includes:

(i) marketing or dealing with any interest in real estate or a business opportunity involving an interest in real estate that is situated in the state of Montana; or

(ii) conducting or attempting to conduct or solicit real estate business with residents of the state of Montana.

(b) Unless exempted from this chapter, any single act described within the definitions of "broker" or "salesperson" is sufficient to constitute engaging in the business of a real estate broker or salesperson.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 26, Ch. 502, L. 2007; amd. Sec. 3, Ch. 211, L. 2015.



TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 3. Licensing

Broker's Or Salesperson's License -- Qualifications Of Applicant -- Supervising Broker Endorsement

37-51-302. Broker's or salesperson's license -- qualifications of applicant -- supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of a licensed broker with a supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 36, Ch. 492, L. 2001; amd. Sec. 27, Ch. 502, L. 2007; amd. Sec. 1, Ch. 79, L. 2011.



TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 3. Licensing

Broker Or Salesperson Examination

37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination.

(2) (a) The examination for a salesperson's license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker's license must be of a more exacting nature and scope and more stringent than the examination for a salesperson's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 7, Ch. 196, L. 2003; amd. Sec. 102, Ch. 467, L. 2005.



TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 3. Licensing

License -- Delivery -- Display -- Pocket Card

37-51-305. License -- delivery -- display -- pocket card. (1) A license must bear the seal of the board.

(2) The license of a real estate salesperson must be delivered or mailed to the salesperson's supervising broker and must be kept in the custody and control of the supervising broker.

(3) A broker shall display the broker's own license conspicuously in the broker's place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have been paid and, on a real estate salesperson's cards only, the name and address of the salesperson's supervising broker.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 103, Ch. 467, L. 2005; amd. Sec. 2, Ch. 79, L. 2011.

TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 3. Licensing

Transactions With Nonresidents And With Nonlicensed Brokers, Salespersons, Or Property Managers -- Consent To Legal Process

37-51-306. Transactions with nonresidents and with nonlicensed brokers, salespersons, or property managers -- consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker, a licensed salesperson, or a licensed property manager. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991; amd. Sec. 105, Ch. 429, L. 1995; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 170, L. 1999; amd. Sec. 4, Ch. 211, L. 2015.



TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 3. Licensing

Broker's Office -- Notice To Department Of Change Of Address

37-51-308. Broker's office -- notice to department of change of address. (1) A licensed broker shall maintain a designated physical address where the original license of the broker and, if the broker is a supervising broker, the original license of each salesperson associated or under contract with the broker must be prominently displayed. The designated address of the broker must be indicated on the broker's license.

(2) In case of removal from the designated address, the broker shall notify the department before removal or within 10 days after removal, designating the new physical address and paying the required fee. After receipt of the information required under this subsection, the department shall issue a license for the new location for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 3, Ch. 79, L. 2011; amd. Sec. 15, Ch. 100, L. 2011.

TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

Part 3. Licensing

Broker -- Salesperson -- For Sale By Owner Personal Transactions Of Salesperson -- Notice To Department Of Change Of Association

37-51-309. Broker -- salesperson -- for sale by owner personal transactions of salesperson -- notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one supervising broker or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson except on a temporary basis as provided in **37-51-302**.

(2) When a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in for sale by owner personal transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision or provide any training for a salesperson with respect to for sale by owner personal transactions of the salesperson.

(b) A supervising broker or real estate firm is not responsible or liable for the for sale by owner personal transactions of a salesperson.

(c) Prior to entering into a for sale by owner personal transaction, the salesperson shall disclose in writing to the other party that the transaction is a for sale by owner personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's supervising broker or real estate firm.

(d) A supervising broker or real estate firm is not responsible or liable for the failure of a salesperson to provide the disclosure required in subsection (4)(c).

(5) For the purposes of this section, "for sale by owner personal transaction" includes the following:

- (a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and
- (b) the leasing or renting of real property owned by the salesperson.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 294, L. 2001; amd. Sec. 37, Ch. 492, L. 2001;

amd. Sec. 4, Ch. 79, L. 2011; amd. Sec. 1, Ch. 414, L. 2013.

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 3. Licensing

Fees -- Deposit Of Fees

37-51-311. Fees -- deposit of fees. The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985; amd. Sec. 106, Ch. 429, L. 1995.



TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS
Part 3. Licensing

No Taxation By Municipality

37-51-312. No taxation by municipality. (1) A license fee or license tax may not be imposed on a real estate broker or salesperson as a condition to the practice of the broker's or salesperson's profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality's or other political subdivision's jurisdiction.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4); amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 400, L. 2005.

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CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS

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Duties, Duration, And Termination Of Relationship Between Broker Or Salesperson And Buyer Or Seller

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in **37-51-102** and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

- (b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;
- (c) factors motivating either party to buy or sell; and
- (d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

- (i) completion of performance by the agent;
- (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
- (iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

- (a) to account for all money and property of the principal;
- (b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:
 - (i) subsequent conduct by the principal that authorizes disclosure;
 - (ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;
 - (iii) disclosure required by law or to prevent the commission of a crime;
 - (iv) the information being disclosed by someone other than the broker or salesperson; and
 - (v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

History: En. Sec. 3, Ch. 565, L. 1995; amd. Sec. 3, Ch. 170, L. 1999; amd. Sec. 1, Ch. 389, L. 2005; amd. Sec. 1, Ch. 118, L. 2007; amd. Sec. 5, Ch. 211, L. 2015.

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Relationship Disclosure Requirements

37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in **37-51-313**;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

- (c) a definition of "adverse material fact";
- (d) identification of the type of relationship disclosed;
- (e) the signature of the seller or the buyer to whom the disclosure is given;
- (f) the signature of the broker or the salesperson making the disclosure; and
- (g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.

(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

(10) Any disclosure required by this section may contain the following information:

- (a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;
- (b) a consent to the creation of a dual agency relationship;
- (c) other definitions in or provisions of this chapter; and
- (d) other information not inconsistent with the information required in the disclosure.

(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

History: En. Sec. 4, Ch. 565, L. 1995; amd. Sec. 4, Ch. 170, L. 1999; amd. Sec. 2, Ch. 389, L. 2005.



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Vicarious Liability

37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

- (a) the party has actual knowledge of the misrepresentation; or
- (b) the agent or subagent is repeating a misrepresentation made by the party.
- (2) A broker is not liable for a misrepresentation made by the broker's subagent unless:
 - (a) the broker has actual knowledge of the misrepresentation;
 - (b) the subagent making the misrepresentation is an employee of the broker and not an independent contractor; or
 - (c) a broker or subagent is repeating a misrepresentation made by the broker.
- (3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

History: En. Sec. 5, Ch. 565, L. 1995; amd. Sec. 38, Ch. 492, L. 2001.



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Revocation Or Suspension Of License -- Initiation Of Proceedings -- Grounds

37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to [37-1-101](#) and [37-1-121](#), and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson

knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993; amd. Sec. 2, Ch. 565, L. 1995; amd. Sec. 5, Ch. 170, L. 1999; amd. Sec. 2, Ch. 294, L. 2001; amd. Sec. 3, Ch. 389, L. 2005.



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Penalties -- Criminal -- Civil

37-51-323. Penalties -- criminal -- civil. (1) An individual acting as a broker or salesperson without a license or while the individual's license is suspended or revoked or a person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction by a district court of this state shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case a person in a civil action is found guilty of having received any money or the equivalent of money as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, the person shall in addition be liable to a penalty of not less than the amount of the sum of money received and not more than three times the sum received, as may be determined by the court. The monetary penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1410, Ch. 56, L. 2009.

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Penalty For Failure To Comply With Trust Account Requirements

37-51-324. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under **37-1-319**(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is \$50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

History: En. Sec. 24, Ch. 502, L. 2007.



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Part 4. Miscellaneous Provisions

Action For Compensation Limited To Licensed Broker Or Salesperson

37-51-401. Action for compensation limited to licensed broker or salesperson. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesperson within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesperson or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941; amd. Sec. 6, Ch. 565, L. 1995.



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Real Estate Recovery Account Established -- Minimum Balance -- Interest

37-51-501. Real estate recovery account established -- minimum balance -- interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in **17-7-502**.

(2) The board shall maintain a minimum balance of \$100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in **37-51-204**.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

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Initial Licensure And Additional Assessment

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of \$35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than \$100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of \$100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

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Claims Against Fund -- Orders For Payment

37-51-503. Claims against fund -- orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against a person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction for which a license is required under this chapter, the person may after executing on the final judgment file an application, in accordance with **37-51-504** and this section, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) An application or order for payment from the account may not be made for:

(a) a judgment that has been satisfied;

(b) any amount in excess of \$25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985; amd. Sec. 1411, Ch. 56, L. 2009.



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Form Of Application

37-51-504. Form of application. The person making application for payment from the account shall show in the application:

- (1) that the person is not the spouse of the judgment debtor or the personal representative of the spouse;
- (2) that the person has obtained a judgment that satisfies the requirements of **37-51-503**, stating the amount of the judgment and the amount unpaid on the date of the application;
- (3) that the person has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14;
- (4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and
- (5) that the person has diligently pursued the remedies of execution and proceedings in aid of execution against any other person against whom the person has a judgment as a result of the transaction for which the person seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985; amd. Sec. 1412, Ch. 56, L. 2009.

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Motion To Dismiss Application

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: En. Sec. 7, Ch. 688, L. 1985.



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Hearing On Application

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: En. Sec. 8, Ch. 688, L. 1985.



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Payment From Account

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: En. Sec. 9, Ch. 688, L. 1985.

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Limitation Of Payment -- Pro Rata Distribution

37-51-508. Limitation of payment -- pro rata distribution. (1) The liability of the account may not exceed \$25,000 for any one licensee until that licensee has repaid the account. If the \$25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the \$25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: En. Sec. 10, Ch. 688, L. 1985.

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Claims Satisfied In Order Of Filing

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of \$25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to **37-51-503**. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: En. Sec. 11, Ch. 688, L. 1985.

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Deposits By Board

37-51-510. Deposits by board. Money received by the board under **37-51-511** must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: En. Sec. 12, Ch. 688, L. 1985.



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Subrogation Rights Of Board

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount paid and the judgment creditor is considered to have assigned to the board all of the creditor's right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: En. Sec. 13, Ch. 688, L. 1985; amd. Sec. 1413, Ch. 56, L. 2009.



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Other Disciplinary Powers Unimpaired -- Effect Of Repayment To Fund

37-51-512. Other disciplinary powers unimpaired -- effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: En. Sec. 14, Ch. 688, L. 1985.

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License Required To Manage Property

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: En. Sec. 2, Ch. 142, L. 1993.

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Exemptions From Requirement Of Property Manager License

37-51-602. Exemptions from requirement of property manager license. (1) The property manager licensing provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner;
or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or

disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under a supervising broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license.

History: En. Sec. 3, Ch. 142, L. 1993; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 4, Ch. 389, L. 2005; amd. Sec. 5, Ch. 79, L. 2011; amd. Sec. 6, Ch. 211, L. 2015.

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Qualification Of Property Manager Applicants -- Examination -- Form Of Licenses

37-51-603. Qualification of property manager applicants -- examination -- form of licenses. (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(4) The license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board.

History: En. Sec. 4, Ch. 142, L. 1993; amd. Sec. 46, Ch. 492, L. 1997; amd. Sec. 104, Ch. 467, L. 2005.



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Property Manager's Office -- Notice Of Change Of Address

37-51-605. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

History: En. Sec. 6, Ch. 142, L. 1993; amd. Sec. 16, Ch. 100, L. 2011.



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Transactions With Nonlicensed Persons Unlawful -- Action For Compensation Limited To Licensees

37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees.

(1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: En. Sec. 8, Ch. 142, L. 1993.



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Penalties -- Criminal -- Civil

37-51-608. Penalties -- criminal -- civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: En. Sec. 9, Ch. 142, L. 1993.