

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 24.210.301 definitions,)	
24.210.401 fee schedule, 24.210.426)	
trust account requirements, 24.210.601)	
general license administration)	
requirements, 24.210.624 inactive)	
licenses, 24.210.625 inactive to active)	
license status, 24.210.635 renewals,)	
24.210.641 unprofessional conduct,)	
24.210.646 disciplinary guidelines --)	
public notice, 24.210.805 property)	
management trust account)	
requirements, 24.210.827 inactive)	
status, and 24.210.828 unprofessional)	
conduct for property management)	
licensees)	

TO: All Concerned Persons

1. On December 22, 2017, the Board of Realty Regulation (board) published MAR Notice No. 24-210-44 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2400 of the 2017 Montana Administrative Register, Issue No. 24.

2. On January 12, 2018, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the January 19, 2018, deadline.

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

COMMENT 1: Several commenters expressed general support for the proposed rule changes.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Numerous commenters were concerned that in ARM 24.210.301(25), there is no apparent reference to the term "residential property" and therefore leaves open that a term of occupancy less than 30 days is something else. If the board intends to exempt property managers from having to use trust accounts for occupancies less than 30 days, the commenters did not believe this amendment accomplishes this. The commenters suggested the board amend the rule language.

RESPONSE 2: The board agrees with the commenters that the statutory language does not match the proposed language of the rule. The board is therefore not proceeding with this amendment at this time but will continue to work on distinguishing short-term vacation rentals with terms of occupancy less than 30 days from longer-term occupancies.

COMMENT 3: Several commenters questioned the reason for striking "while acting in the capacity of a broker" from ARM 24.210.426(3)(d). The commenters asserted the change may imply that all money received by a broker must be placed into a trust account, even when not acting in the capacity of a licensed broker. The commenters suggested the board leave the current rule language in place.

RESPONSE 3: The board agrees with the suggestion and is amending the rule accordingly.

COMMENT 4: Several commenters were concerned about the language in ARM 24.210.805(11)(a) and (b) regarding owning 100 percent and stated that many people do not own rental real property directly but rather through an LLC or other entity.

RESPONSE 4: The board acknowledges the comment, but is amending the rule exactly as proposed. The board concluded this language expresses the board's intent to require a management agreement any time property is owned by a separate legal entity, regardless if the licensee is a member of the LLC.

COMMENT 5: One commenter requested the board make changes regarding dual agency and buyer agent disclosure requirements and suggested that buyer agents are often paid undisclosed bonuses by seller agents. The commenter further requested the board explore requiring buyer agents to be paid a flat fee by the buyer.

RESPONSE 5: The board is unable to consider this comment as it is outside the scope of this rulemaking project.

4. The board has amended ARM 24.210.401, 24.210.601, 24.210.624, 24.210.625, 24.210.635, 24.210.641, 24.210.646, 24.210.805, 24.210.827, and 24.210.828 exactly as proposed.

5. The board has amended ARM 24.210.301 and 24.210.426 with the following changes, stricken matter interlined, new matter underlined:

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) through (24) remain as proposed.

~~(25) "Residential property" shall include real estate 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. The term of occupancy must be greater than 30 days to be considered residential.~~

(26) through (32) remain as proposed but are renumbered (25) through (31).

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (3)(c) remain as proposed.

(d) 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 and identified by the words "trust account." Trust funds must be liquid and may not be maintained in sweep accounts, invested in certificates of deposit or repurchase agreements, or any other method which places trust funds at risk. The broker must account for trust funds at all times;

(e) through (4) remain as proposed.

BOARD OF REALTY REGULATION
RIC SMITH, BROKER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2018.