

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.210.401 fee schedule,	)	REPEAL
24.210.416 applications for	)	
examination and license in general–	)	
broker and salesperson, 24.210.661	)	
new licensee mandatory continuing	)	
education–salespersons, 24.210.667	)	
continuing real estate education,	)	
24.210.801 fee schedule, 24.210.835	)	
continuing property management	)	
education, and the repeal of	)	
24.210.616 waiver of experience	)	
requirement for broker licensing	)	
prohibited, and 24.210.666,	)	
24.210.674, 24.210.677, 24.210.834,	)	
24.210.840, and 24.210.843	)	
pertaining to board approval of	)	
courses, providers, and instructors	)	

TO: All Concerned Persons

1. On May 24, 2019, the Board of Realty Regulation (board) published MAR Notice No. 24-210-45 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 588 of the 2019 Montana Administrative Register, Issue No. 10.

2. On June 18, 2019, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the June 21, 2019, 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 changes including the elimination of the board's role in reviewing and approving CE instructors and courses. Commenters believed the amendments provide REALTOR® boards the opportunity to expand the number of instructors and courses they will be able to utilize for the benefit of real estate licensees.

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

COMMENT 2: Several commenters noted the term REALTOR® is trademarked by the National Association of REALTORS® and should be printed in all capital letters and include the trademark symbol.

RESPONSE 2: The board agrees with the commenters and is amending ARM 24.210.667 and 24.210.835 accordingly.

COMMENT 3: Multiple commenters stated the new instructor requirements in ARM 24.210.667(5) and 24.210.835(5) are overly restrictive and may be detrimental to the stated reason of increasing the number of CE courses available to Montana real estate licensees. The commenters stated these changes will eliminate some currently qualified instructors from teaching courses in the state, and the 5-year broker requirement will eliminate qualified salespersons and experts in lending, title, and safety from instructing CE courses. The commenters stated that having no degree program in a real estate field in Montana will also make it difficult to meet the instructor criteria. One commenter believed that requiring a bachelor's degree in the real estate industry or five years as a broker will not invite knowledge into safety for licensees and noted that not all topics taught in CE courses require that level of education. Commenters believed these changes may be unenforceable since there is no mechanism to ensure instructors meet the qualifications and suggested the board eliminate the qualification requirements from both rules.

RESPONSE 3: The board agrees with the commenters that the proposed instructor criteria is overly restrictive and may not help to increase the number of available CE courses. The board did not intend for the amendments to eliminate from qualification any current qualified instructors who may not meet the specific criteria proposed. The board does acknowledge there is no real estate degree offered in Montana, that the proposed restrictions may not allow for instruction from experts in related topic areas, and that there is no mechanism in place for enforcing the qualification requirements. Therefore, the board is amending the rules to remove the proposed new (5) from ARM 24.210.667 and 24.210.835.

COMMENT 4: A commenter was concerned with the proposed amendments to ARM 24.210.667(2), stating that many Montana licensees are not REALTOR® members and it could be costlier for non-members to pay for the courses. The commenter believed this change would result in a fewer number of courses available. Also, requiring course approval through a local REALTOR® association could negatively impact instructors who travel the state presenting currently approved courses and rely on this income as part of their private businesses. The commenter stated that politics or personalities could play a role in approving CE courses and instructors and believed that criteria used by the local associations would be inconsistent. The commenter asserted that taking the approval out of the board's hands would be a mistake and would lower the level of professionalism.

RESPONSE 4: The board is confident in the entities that will provide the CE courses, as they have demonstrated a high level of professionalism in offered

services. The board is proceeding with the changes to ARM 24.210.667(2) as proposed.

COMMENT 5: Numerous commenters noted that ARM 24.210.667(4) and 24.210.835(4) specify that required CE hours be in topics approved by the board but the amendments to (5) eliminate the board's annual approved topic list. The commenters believed that the overall rule changes demonstrate the board's confidence in outside organizations to bring quality education to Montana licensees. The commenters stated that this additional level of instructor qualification is unnecessary and recommended the board strike (4) from each of the rules.

RESPONSE 5: The board agrees that the entities proposed to provide and host CE courses are all in real estate business, and the board is putting confidence in them to bring quality education. The board agrees with the commenters' suggestion but acknowledges the elimination of (4) exceeds the scope of the proposed amendments held out to the public for notice and opportunity to comment. The board will note the suggestion for inclusion in a subsequent rulemaking project.

COMMENT 6: Multiple commenters stated that ARM 24.210.667(8) is confusing because it appears to require that licensees apply and pay a fee 30 days after completing their CE. The commenters recommended the board retain "in another jurisdiction" (or state) to provide clarity.

RESPONSE 6: The board is confident the proposed language is clear and is amending (8) exactly as proposed.

COMMENT 7: Several commenters noted that an "or" seems missing at the end of ARM 24.210.667(5)(a) and 24.210.835(5)(a).

RESPONSE 7: The board agrees, but since the board is removing (5) from both rules, there is no need for the change.

COMMENT 8: Several commenters supported the amendment to ARM 24.210.667 that allows Rookie Course providers to apply for up to \$2000 in reimbursement of demonstrated losses. The commenters believed this is imperative to REALTOR® boards so their respective members do not subsidize courses for licensees in general.

RESPONSE 8: The board appreciates all comments received during the rulemaking process.

COMMENT 9: Numerous commenters supported the repeal of ARM 24.210.616 to allow the board's discretion in waiving experience qualifications for individual broker applicants. The commenters stated the time has come to repeal the rule.

RESPONSE 9: The board appreciates all comments received during the rulemaking process.

COMMENT 10: Several commenters stated it would be helpful if the board would allow current CE to be tracked in the database through 10/31/19, the end of the current licensing year.

RESPONSE 10: The board acknowledges that the department can provide database access through 10/31/19.

COMMENT 11: One commenter believed that not requiring CE rosters be submitted to the database will result in fewer licensees completing the required 12 CE hours.

RESPONSE 11: The board notes that recent audit results confirm that licensees are compliant with CE requirements. In the March 2019 random audit, 100 percent of audited licensees were compliant with CE requirements. Based on these results, the board is confident in licensees' professionalism to complete required CE and believes that greater access to CE courses resulting from the rule amendments will help support continued CE compliance.

4. The board has amended ARM 24.210.401, 24.210.416, 24.210.661, and 24.210.801 exactly as proposed.

5. The board has repealed ARM 24.210.616, 24.210.666, 24.210.674, 24.210.677, 24.210.834, 24.210.840, and 24.210.843 exactly as proposed.

6. The board has amended ARM 24.210.667 and 24.210.835 with the following changes, stricken matter interlined, new matter underlined:

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (2)(a) remain as proposed.

(b) endorsed by a national, state, or local Association of ~~Realtors~~ REALTORS®, or a national, state, or local real estate, landlords, or property management association.

(3) and (4) remain as proposed.

~~(5) Courses must be taught by an instructor who:~~

~~(a) has a bachelor's degree in a field associated with real estate;~~

~~(b) is approved as an instructor by any state real estate licensing regulatory agency or real estate commission; or~~

~~(c) has five years of active licensed experience as a broker.~~

(6) through (8) remain as proposed but are renumbered (5) through (7).

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (2)(a) remain as proposed.

(b) endorsed by a national, state, or local Association of ~~Realtors~~ REALTORS®, or any national, state, or local real estate, landlords, or property management association.

(3) and (4) remain as proposed.

~~(5) Courses must be taught by an instructor who:~~

- ~~(a) has a bachelor's degree in a field associated with property management;~~
- ~~(b) is approved as an instructor by any state real estate licensing regulatory agency or real estate commission; or~~
- ~~(c) has five years of active licensed experience as a broker or property manager.~~

(6) and (7) remain as proposed but are renumbered (5) and (6).

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 July 16, 2019.