

Forms Guide* for Brokers & Salespersons

* This guide is **NOT** a substitute for reading and understanding the requirements as they apply to your license! Requirements are subject to change due to statute and rule revisions.

Did you know some of the Board's rule changed on June 23, 2018?

"Rule Notices" are posted on the Board's website (www.realestate.mt.gov) under the "Regulations" tab.

If you have questions, comments, or concerns:
Please contact the Board Office at dlibsdrre@mt.gov or (406) 841-2300.

STATUTES AND ADMINISTRATIVE RULES:

Montana Code Annotated (MCA) – <https://leg.mt.gov/bills/mca/index.html>

Administrative Rules of Montana (ARM) – <http://www.mtrules.org>

SELLER AGENT FILES should include, but are not limited to, the following:

- Listing Agreement – 37-51-102(15), MCA, ARM 24.210.641(5)(an)
- Agency Disclosure – 37-51-313, 37-51-314, MCA
- Signed Buy/Sell Agreement – ARM 24.210.641(5)(l)
- Signed Buy/Sell Addendums or provision changes – ARM 24.210.641(5)(l)
- Megan's Law Disclosure – 37-51-105, MCA
- Radon Disclosure (Inhabitable Prop.) – 75-3-606, MCA, ARM 24.210.641(5)(x)
- Methamphetamine Disclosure (*if applicable*) – 75-10-1305, MCA
- Mold Disclosure (*if applicable*) – 70-16-703, MCA
- Lead-Based Paint Disclosure (*if applicable*) – Sec. 1018 of Title X (Federal), ARM 24.210.641(5)(y)
- Power of Attorney (POA) or related form (*if applicable*) – 71-1-102, MCA, ARM 24.210.641(5)(e)
- Documentation of earnest fund receipt (*if applicable*) – ARM 24.210.426(2)

CO-LISTING AGENT FILES should include, but are not limited to, the following:

- Each licensee involved must maintain a complete file as indicated under **SELLER FILES**.

BUYER AGENT FILES should include, but are not limited to, the following:

- Buyer Broker Agreement – 37-51-102(7), MCA, ARM 24.210.641(5)(am)
- Agency Disclosure – 37-51-313, 37-51-314, MCA
- Signed Buy/Sell Agreement – ARM 24.210.641(5)(l)
- Signed Buy/Sell Addendums or provision changes – ARM 24.210.641(5)(l)
- Megan's Law Disclosure – 37-51-105, MCA
- Radon Disclosure (Inhabitable Prop.) – 75-3-606, MCA, ARM 24.210.641(5)(x)
- Methamphetamine Disclosure (*if applicable*) – 75-10-1305, MCA
- Mold Disclosure (*if applicable*) – 70-16-703, MCA
- Lead-Based Paint Disclosure (*if applicable*) – Sec. 1018 of Title X (Federal), ARM 24.210.641(5)(y)
- Power of Attorney (POA) or related form (*if applicable*) – 71-1-102, MCA, ARM 24.210.641(5)(e)
- Documentation of earnest fund receipt (*if applicable*) – ARM 24.210.426(2)

DUAL AGENT FILES should include, but are not limited to, the following:

- All documents as listed under both the **SELLER** and **BUYER** files.
- Written agreement from each principal – ARM 24.210.641(5)(ap)

STATUTORY AGENT FILES should include, but are not limited to, the following:

- Agency Disclosure – 37-51-313, 37-51-314, MCA
- Signed Buy/Sell Agreement – ARM 24.210.641(5)(l)
- Signed Buy/Sell Addendums or provision changes – ARM 24.210.641(5)(l)
- Megan’s Law Disclosure – 37-51-105, MCA
- Radon Disclosure (Inhabitable Prop.) – 75-3-606, MCA, ARM 24.210.641(5)(x)
- Methamphetamine Disclosure (if applicable) – 75-10-1305, MCA
- Mold Disclosure (if applicable) – 70-16-703, MCA
- Lead-Based Paint Disclosure (if applicable) – Sec. 1018 of Title X (Federal), ARM 24.210.641(5)(y)
- Documentation of earnest fund receipt (if applicable) – ARM 24.210.426(2)

TRUST FUNDS & REAL ESTATE TRANSACTIONS:

A broker is always responsible for the proper handling of earnest money, security deposits, or other funds received by a broker or a broker's salesperson. Licensees shall ensure that all trust funds which the licensee receives 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.

IMPORTANT NOTE: A broker who handles trust funds and/or permits the funds to be kept in a trust account is responsible for the trust account, *even if they have designated authority for maintenance of the trust account to another broker.*

ARM 24.210.426(1) states, “A broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by a broker, a broker's salesperson, or funds received by a broker as a designated broker pursuant to (3)(c) on behalf of customers or clients. Brokers who have delegated authority for maintenance of a trust account are required to review the records maintained by the designated broker to ensure compliance with these rules.”

If a broker does not want the responsibility of a maintaining a trust account, the broker should use a third party to hold funds.

If a broker elects to deliver funds to a third party, the licensee must obtain documentation of receipt by the third party. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.

If a broker elects to use a trust account to hold funds in a real estate transaction, all trust account documentation must be maintained and able to be presented as described in ARM 24.210.426. Brokers may maintain more than one trust account and/or a single trust account may be utilized by an office/firm.

Trust account records should include, but are not limited to, the following:

- Monthly Bank Statements – ARM 24.210.426(3)(l)(ii)
- Monthly Reconciliation Reports – ARM 24.210.426(3)(n)

- Proofs of Deposit – ARM 24.210.426(3)(l)(i)
- Checks (*if applicable*) – ARM 24.210.426(3)(l)(iii)
- General Ledger/Check Register – ARM 24.210.426(3)(l)(iv) / (3)(l)(v) / (3)(l)(vi) / (3)(l)(vii)
- Personal Funds Ledger (*if applicable*) – ARM 24.210.426(3)(p) / (3)(p)(i) / (3)(p)(ii)
- Transaction Ledgers – ARM 24.210.426(3)(l)(ii)

Examples of a general ledger, personal funds ledger, and transaction ledgers can be found on the Board's website (www.realestate.mt.gov) under the "Trust Account & Audit Information" tab.

PROPERTY MANAGEMENT:

Licensed brokers and salespersons may practice property management under their license, including managing their own property, but they must also comply with all statutes and rules applicable to licensed Property Managers. Refer to 37-51-321(1)(u), MCA, and ARM 24.210.641(5)(z), 24.210.805, and 24.210.828.

Salespersons and supervising brokers, please note: Salespersons managing their own rental property should refer to 37-51-309, MCA. Salespersons may use their license to practice property management for others *if their supervising broker has consented to supervising these activities*. If the supervising broker does not consent, the salesperson is required to obtain a property manager license if they are not exempt from property management licensure as described under 37-51-103 and/or 37-51-602, MCA.

Please refer to the **Forms Guide* for Property Managers** for additional information.

OTHER INFORMATION:

The Board's required documents may not be inclusive of all required documents to a real estate transaction. As a licensee, you are still required to abide by all state and federal laws and rules that may affect your business practices and transactions. Failure to comply is considered unprofessional conduct as described in ARM 24.210.641 and may result in discipline against your license.

QUESTIONS & ANSWERS:

Q. *How long do I have to keep the transaction documentation and trust account records?*

A. 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. Refer to ARM 24.210.601(1).

Q. *Why eight years?*

A. The records retention period for the trust account records and related documents was set at eight years to coincide with the statute of limitations on written contracts (27-2-202(1), MCA) and for permitting thorough investigation of complaints and auditing for compliance with applicable statutes and rules. Refer to MAR Notice No. 24-210-37.

If you have questions about statute of limitations, written contracts, and/or civil liability, remedies, and limitations, you are encouraged to contact independent legal counsel.

Q. *Can the Board provide templates of the required forms?*

A. No. Please refer to your brokerage, a legal counselor, or other relevant source.

Q. *Can I use REALTOR® forms?*

A. You may, if you are a member of the National Association of REALTORS®, Montana Association of REALTORS®, or other association of REALTORS®.

You may not, if you are not a member of the National Association of REALTORS®, Montana Association of REALTORS®, or other association of REALTORS®.

Refer to 37-51-321(1)(d), MCA, if you have questions.

Q. *Can the Board provide legal advice about forms or other matters?*

A. No. You are free to ask questions and we will provide answers to the best of our abilities, but you may be encouraged to seek legal counsel in some instances.

Q. *Is an agreement with a buyer required if I'm a Dual Agent?*

A. Yes, an agreement with a buyer is required any time you are working on behalf of a buyer, including in dual agency transactions. Not having this agreement is considered unprofessional conduct under ARM 24.210.641(5)(ap). Refer to the following references if you have questions: 28-2-903(1), 37-51-102(8), 37-51-102(11), 37-51-313(4), 37-51-313(7), 37-51-314(3), and 37-51-314(10), MCA.

Q. *Why shouldn't I designate myself as a Seller, Buyer, and Dual Agent when completing an initial agency disclosure with my client?*

A. In a single transaction, the Agent is either 1) a seller agent, 2) a buyer agent, 3) or a dual agent. Refer to 37-51-102, MCA, for applicable definitions.

Q. *Can I have a listing agreement and/or buyer broker agreement with my client when I'm acting as a Statutory Broker?*

A. No. A Statutory Broker is one who assists one or both parties to a transaction but is not the agent of either. If the Agent has no written agreement, the Agent is presumed to be a Statutory Broker and continues in that capacity until the transaction is concluded. However, if the Statutory Broker enters into a listing agreement with a seller and/or buyer broker agreement with a buyer, they cease being a Statutory Broker. At that time, they become either a Seller Agent, Buyer Agent, or Dual Agent. Refer to 37-51-102, MCA, for applicable definitions.

Q. *I have a license, but 37-51-103 and 37-51-602, MCA, suggest I might be exempt from the requirement to be licensed. If I am exempt, do I still have to comply with requirements?*

A. The board cannot require someone to get a license if they fit within one of the licensing exemptions. However, if you are licensed and selling properties (including your own), you still must follow the statutes and rules governing brokers and salespersons.

Q. *Do I have to use a trust account to hold transaction trust funds?*

A. No. Brokers used to be required to maintain a trust account, but this is no longer the case. If you have a third-party holder of trust funds (such as a title company or legal counselor), you do not have to have a trust account. **However**, you are required to maintain documentation of receipt by the third party. Refer to ARM 24.210.426(1), 24.210.426(2), and 24.210.601(1).

Q. *What if my trust account and related records are kept electronically?*

A. Records may be maintained in any manner you choose. However, they must be maintained in a manner that permits auditing.

If you have chosen to use software to manage your trust accounts and/or related documents, you are required to know how to use the software and produce records compliant with trust account requirements. If you are audited and unable to present the records according to the Board's rules, for any reason, this may negatively impact your audit outcome. Refer to ARM 24.210.426(3)(r).

Examples of a general ledger, personal funds ledger, and transaction ledgers can be found on the Board's website (www.realestate.mt.gov) under the "Trust Account & Audit Information" tab.

Q. *I'm being audited and I'm unable to provide the trust account records in a Board-compliant format. Can't I just give the Auditor access to the software and let the Auditor find the information?*

A. No. Refer to the prior **Q.** and **A.** above.

Q. *Can I use a sweep account, CD, or other investment account/portfolio to hold trust funds?*

A. No. Trust 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 always account for trust funds. Refer to ARM 24.210.426(3)(d).

Q. *Can the Board distribute and/or provide hardcopies of the Administrative Rules (ARM) and laws?*

A. No. Licensees are responsible for ensuring they are using the most current statutes and rules, which can be found online (refer to the **STATUTES AND ADMINISTRATIVE RULES** and **OTHER INFORMATION** section of this guide).

Q. *I have more questions...*

A. If you have questions, comments, and/or concerns, *please contact us*. We can be reached via the following:

Email: DLIBSDRRE@mt.gov

Phone Number: (406) 841-2300

Address: 301 S. Park Avenue, 4th Floor, Helena, Montana

If you are currently being audited and have questions, please contact the Auditor as instructed in the letter you received.