

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 24.210.641 unprofessional)	ADOPTION, AND REPEAL
conduct, 24.210.661 new licensee)	
mandatory continuing education --)	
salespersons, 24.210.666 course)	
provider, 24.210.674 continuing real)	
estate education -- course approval,)	
24.210.677 continuing real estate)	
education -- instructor approval,)	
24.210.825 renewals, and 24.210.829)	
new licensee mandatory continuing)	
education -- property manager, the)	
adoption of NEW RULE I nonroutine)	
applications and NEW RULE II trust)	
account course requirement, and the)	
repeal of ARM 24.210.615 application)	
for determination of equivalent)	
experience for broker licensing)	

TO: All Concerned Persons

1. On March 24, 2017, the Board of Realty Regulation (board) published MAR Notice No. 24-210-43 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 319 of the 2017 Montana Administrative Register, Issue No. 6.

2. On April 18, 2017, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the April 21, 2017, deadline.

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

ARM 24.210.641

COMMENT 1: Several commenters supported adding failure of supervising brokers to adequately supervise as unprofessional conduct. The commenters agreed with the board that limiting the number of salespeople a broker can supervise, as suggested in a legislative audit, will not address numbers of complaints or quality of supervision provided. One commenter thought the amendment may be hard to administer and suggested the board define "adequately supervise" and require broker accountability and adequate education/training going forward.

COMMENT 2: One commenter stated the amendment is vague and ambiguous with no criteria for judging the actions of a supervising broker. The commenter was concerned that different standards may be applied to different licensees for the same conduct, as referenced in the legislative audit, and suggested the board establish more specific criteria for determining failure to adequately supervise.

RESPONSE TO COMMENTS 1 and 2: The board appreciates all comments made during the rulemaking process. The board is amending this rule exactly as proposed, but will consider the suggestions in future rulemaking.

ARM 24.210.661

COMMENT 3: Several commenters noted that the board's task force is currently assessing whether to incorporate rookie course content into the 60-hour prelicensing requirement and modify the sales licensee exam to shift focus from national to Montana-specific issues. Commenters stated that changing the prelicensing course and test will better ensure new licensees that are qualified to practice, imposing a 120-day time limit will place a significant hardship on new licensees, and there is no assurance that courses will be available throughout the year.

COMMENT 4: Numerous commenters agreed that more can be done to ensure education and testing of licensees match the real-world needs of agents. The commenters believed it is critical that the rookie course is taken shortly after licensure and one commenter suggested the board require the rookie course be held only in live presentations. Commenters stated that if the board is going to require completion of the rookie course on a short schedule, it is incumbent on the board to also make sure courses are available. The commenter offered to work with local associations to ensure that the class is offered on a timely basis.

RESPONSE TO COMMENTS 3 and 4: The board concluded the proposed amendments meet the concerns regarding when to take the rookie course. The education committee is actively evaluating the prelicensing issues, but there is no guarantee of any change. The board is amending the rule exactly as proposed.

ARM 24.210.666

COMMENT 5: Many commenters supported the amendment to help reimburse rookie course presenters but some thought the amendments may not adequately address attendance at rookie classes early in the education year. Several pointed out that local associations had presented the rookie courses for three years, even though it was only supposed to be a temporary situation. Several commenters suggested that the board remove the proposed \$2,000 limit on the reimbursement.

RESPONSE 5: The board concluded that the \$2,000 reimbursement limit is appropriate and did not intend to address rookie class attendance early in the year in this rules project. The board is amending the rule exactly as proposed.

ARM 24.210.674

COMMENT 6: One commenter believed the amendment of (2) to pair instructors with courses is confusing, especially between the first and second sentences. If the intent is that a new instructor application is not required at renewal if the course is renewed by a previously approved instructor, the commenter suggested the board amend the language to reduce confusion.

RESPONSE 6: The board does not believe the language is confusing. Noting that a course must be paired with at least one instructor approved to teach it, the board determined it is clear the course can be approved one time and still can have multiple instructors approved to teach that course. The board is amending the rule exactly as proposed.

COMMENT 7: Several commenters supported the amendment to extend course approval when the approval is granted less than three months before the end of the calendar year.

RESPONSE 7: The board appreciates all comments made during the rulemaking process.

ARM 24.210.677

COMMENT 8: One commenter opposed requiring that persons wishing to teach the supervising broker prelicensing or continuing education courses have seven years of active licensed experience as a supervising broker. The commenter stated the requirement would disqualify many individuals, including the commenter. The commenter asserted that experience as a supervising broker should be only one criteria for teaching the courses, and suggested the board consider other equally important qualifications.

RESPONSE 8: The board agrees with the commenter that the experience requirement could render currently qualified persons ineligible. The board is amending (5) to mirror (4) and allow seven years of active supervising broker experience or five years of experience as a real estate education instructor, or a combination of the two for these instructors.

COMMENT 9: Several commenters supported the amendments to this rule, with the exception of the seven-year experience requirement in (5). The commenters requested the board consider different criteria that would acknowledge the experience of current instructors.

RESPONSE 9: The board agrees with the commenters' concerns and is amending (5) accordingly.

COMMENT 10: Many commenters supported the amendment to extend instructor approval if granted less than three months before the end of the calendar year.

RESPONSE 10: The board appreciates all comments in the rulemaking process.

ARM 24.210.825

COMMENT 11: Several commenters supported the amendments to ARM 24.210.825.

RESPONSE 11: The board appreciates all comments in the rulemaking process.

ARM 24.210.829

COMMENT 12: Many commenters supported the amendment requiring more property management trust accounting continuing education for new property management licensees and the clarification that it must be completed before the first renewal date of the license. Commenters requested the board annually post the schedule and location of the board-approved property management courses.

RESPONSE 12: The board will consider the recommendation to annually post the schedule and location of available property management courses.

COMMENT 13: A commenter noted that should a student pass the state-required exam and become licensed on October 1st, it would be highly unlikely for a trust accounting class to be available before the first renewal date of October 31st. The commenter suggested the board instead require that new licensees take the mandatory four hours of trust accounting within the first nine months of being licensed to avoid potential scheduling problems.

RESPONSE 13: The board agrees with the commenter's recommendation and is amending the rule accordingly.

NEW RULE I

COMMENT 14: Several commenters supported NEW RULE I regarding nonroutine license applications.

RESPONSE 14: The board appreciates all comments in the rulemaking process.

NEW RULE II

COMMENT 15: Several commenters supported adopting NEW RULE II to require that active property managers complete a four-hour property management trust accounting course within 12 months of the rule's effective date. The commenters stated that it is appropriate for the board to take steps to ensure licensees have appropriate training when the board identifies specific areas in real estate transactions or property management where problems may be occurring.

RESPONSE 15: The board appreciates all comments in the rulemaking process.

COMMENT 16: Several commenters stated this rule is confusing and questioned whether it applies to all licensees or only to property manager licensees. The commenters further stated that if it applies to all licensees, they strongly oppose the rule. The commenters asserted that very few real estate licensees engage in property management and even fewer use a trust account, instead utilizing title companies to hold client funds relative to transactions. If the rule applies to all licensees, commenters believed that real estate licensees will be penalized for property manager errors. The commenters suggested the board instead require that licensees doing property management take a trust accounting course.

RESPONSE 16: The board agrees and is amending NEW RULE II to specify its application solely to property management licensees.

COMMENT 17: One commenter could not see how requiring that active property managers complete a four-hour property management trust accounting course would prevent trust account violations by sales and broker associates. The commenter stated that it is fairly common for real estate brokerage companies to use title companies to accept earnest money and closing funds. Further, most sales and broker associates do not handle trust account monies.

RESPONSE 17: The board agrees and is amending NEW RULE II to specify its application solely to property management licensees.

ARM 24.210.615

COMMENT 18: Many commenters supported the repeal of ARM 24.210.615.

RESPONSE 18: The board appreciates all comments in the rulemaking process.

COMMENT 19: One individual commented on ARM 24.210.805 and requested the board issue an opinion statement on the board's authority to discipline a property manager by requiring an accountant as part of their business or having their accounting done by an outside firm.

RESPONSE 19: This comment exceeds the scope of this rulemaking project as the board did not propose any amendments to ARM 24.210.805.

4. The board has amended ARM 24.210.641, 24.210.661, 24.210.666, 24.210.674, and 24.210.825 exactly as proposed.

5. The board has adopted NEW RULE I (24.210.418) exactly as proposed.

6. The board has repealed ARM 24.210.615 exactly as proposed.

7. The board has amended ARM 24.210.677 and 24.210.829 with the following changes, stricken matter interlined, new matter underlined:

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) through (4) remain as proposed.

(5) In addition to the requirements of (3), instructors who wish to teach the board-approved supervising broker prelicensing or the supervising broker continuing education course shall have seven years of active licensed experience as a supervising broker or five years as an instructor of real estate education, or a combination of the two.

(6) and (7) remain as proposed.

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- PROPERTY MANAGER (1) All new property management licensees are required to complete 12 hours of property management continuing education by the second renewal date as set by ARM 24.101.413, following their original license issue date. Four of the hours must consist of courses in property management trust accounts and must be taken before the first renewal date following original issuance of the license. In the event there is no course offered by the end of the licensing year, a new licensee must complete the course when the class is next offered unless the time for taking the course is extended for good cause at the board's discretion. After satisfactorily completing their first renewal, property manager licensees may satisfy their continuing education obligations for subsequent years by choosing any continuing education courses approved by the board, whether designated as property management education or not.

8. The board has adopted NEW RULE II (24.210.820) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.210.820) TRUST ACCOUNT COURSE REQUIREMENT

(1) Except for new licensees as provided in ARM 24.210.829, all active property manager licensees must complete a four-hour property management trust account course as approved by the board within 12 months of the effective date of this rule.

(2) remains as proposed.

BOARD OF REALTY REGULATION
RIC SMITH, BROKER
CHAIRPERSON

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 10, 2017.