

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.210.301 definitions,)	PROPOSED AMENDMENT
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 January 12, 2018, at 9:00 a.m., a public hearing will be held in the Basement Conference Room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on January 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrre@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, 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 (6) remain the same.

~~(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) through (11) remain the same but are renumbered (7) through (10).

(11) "Designated property manager" is a property manager who has been designated by other property managers of a property management company to be the property manager with the authority for the maintenance of a trust account.

(12) through (20) remain the same.

(21) "Maintenance service" means any entity hired to perform repairs or maintenance on the property.

(22) "Personal funds" means funds other than trust funds, which belong to the licensee or the property management business. Uses may include, but are not limited to:

(a) trust account maintenance;

(b) financial institution fees;

(c) designated interest earnings; and

(d) purchasing checks.

(23) "Personal indebtedness" means the licensee's personal expenses or expenses of the property management business debited from a trust account, including, but not limited to:

(a) personal bills or expenses;

(b) recreational expenditures;

(c) personnel wages, benefits, and incentives; and

(d) business operating expenses.

(21) remains the same but is renumbered (24).

(22) (25) "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. The term of occupancy must be greater than 30 days to be considered residential.

(23) through (29) remain the same but are renumbered (26) through (32).

AUTH: 37-1-131, 37-51-203, MCA

IMP: ~~37-1-401~~, 37-1-131, 37-1-136, 37-51-103, ~~37-51-202~~, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is striking (7) to remove the term and reflect current licensure terminology.

In conjunction with amendments to trust account and unprofessional conduct rules in this notice, the board is adding (11), (21), (22), and (23) to clearly define terms utilized in the amended rules.

After auditing several property managers who manage vacation rentals, the board's trust account auditor requested clarification on these rentals. The board determined that vacation rentals are not residential in nature and more like hotels and other public accommodations. The board is amending (25) to clarify this definition.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.401 FEE SCHEDULE (1) through (7) remain the same.

(8) Broker change of place of business or each salesperson	
change of broker or transfer of cancelled license	80
<u>(8) Change of salesperson supervising broker:</u>	
<u>(a) submitted via paper change form</u>	<u>40</u>
<u>(b) submitted online</u>	<u>no fee</u>
(9) through (11) remain the same.	
(12) Placing active or cancelled license on inactive status	20
(13) through (18) remain the same.	
(19) Predetermination, equivalency , or waiver application fee	87.50
(20) through (24) remain the same.	

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-207, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-308, 37-51-309, 37-51-311, 37-51-502, MCA

REASON: The Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. Audit recommendations included an online method for changing supervising broker relationships and the department implemented the necessary programming. The board is amending this rule to eliminate the fee for supervisors who will make these changes online and require no staff assistance. The board is retaining the fee for salesperson changes done using a paper form, but is reducing the fee to \$40. The board estimates these changes will affect approximately 159 licensees who will continue to utilize paper change forms, and reduce annual revenue by \$44,600.

The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is amending (12) to remove the term and reflect current licensure terminology.

The board's 2016 performance audit found that the equivalency application was rarely used, but added unnecessary costs to the license process, and recommended its elimination. The board repealed ARM 24.210.615 in a prior 2017 rulemaking project, but inadvertently missed striking the reference in (19).

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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.~~

(1) 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.

(2) All 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. If funds are delivered 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.

~~(5) (3)~~ If a broker elects to hold trust funds, the broker must comply with the following:

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

(b) A broker may maintain more than one trust account, but each trust account must be maintained separately;

(c) 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;

~~(a) (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;

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

(e) Trust funds 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 written agreement. Interest payable to the broker shall be identified by written agreement as consideration for services performed and will be considered personal funds unless otherwise designated;

~~(e) (f)~~ Trust funds shall be retained in this trust account until the transaction involved is closed or terminated; however,

~~(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) (g)~~ At the client's written instructions, trust funds which would otherwise be due and payable from a trust account 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) (h)~~ 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. Money not withdrawn from the trust account within the ten business days is subject to the personal funds limitations. However, the money may not be withdrawn until the financial institution has indicated that deposit has been verified and the funds are available;

~~(h)~~ remains the same but is renumbered (i).

~~(i) No payments of personal indebtedness shall be made from a trust account or trust funds;~~

~~(k) The broker will not be disciplined for a negative account or ledger balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available;~~

~~(l) (l)~~ Maintenance of a each individual 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 or electronic transfer, amount, source of the money, and where deposited;

~~(ii)~~ remains the same.

~~(iii)~~ disbursement of trust funds shall be made by either check or electronic transfer. If checks are used, trust account checks shall be numbered and all voided checks recorded. The checks shall denote the broker's business name, and address, and should must be designated as "trust account";

~~(iv)~~ remains the same.

~~(v)~~ for funds received, the record must include the date the funds are deposited, 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 the funds are disbursed, the name of the, each payee, the name of the principal, and the amount;

~~(vii)~~ and ~~(viii)~~ remain the same.

~~(j)~~ and ~~(k)~~ remain the same but are renumbered (m) and (n).

~~(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) (o)~~ A salesperson or a broker who has delegated the broker's obligation to maintain a trust account to a designated broker pursuant to (4) (c), 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) (p) 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 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.;~~

~~(i) Personal personal funds may be distributed to the broker or the financial institution for payment of trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager; and~~

~~(ii) If 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 depositing funds, the date of the deposit, the source of funds, and the amount must be shown. When disbursing funds, the date of the disbursement, the name of the payee, and the amount must be shown. A running balance must be shown after each entry.;~~

~~(q) 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 the trust account; and~~

~~(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) remains the same but is renumbered (r).~~

~~(4) 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.~~

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: ~~37-1-131, 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, 37-51-324, 37-51-503, MCA~~

REASON: Following an increase in the number of complaints based on trust account audits, the board's screening panel requested the board review and amend the rules for better organization and clarity, and consider requiring additional

education on trust accounting. Department staff conducted a thorough review of the trust accounting rules and presented the board with recommendations for amendments. Additional trust account education for property managers was implemented in a prior rulemaking project in 2017. The board is amending and reorganizing this rule and ARM 24.210.805 to implement the rest of the recommendations and address the concerns of staff and the screening panel. Additionally, while none of the requirements are new, several of them were never stated in rule.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (3) remain the same.

(4) A salesperson shall not practice without being associated with a supervising broker. A salesperson whose license has been cancelled because of ~~termination of association with their supervising broker~~ has been terminated, must properly notify the board of any 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. A licensee shall not practice with an inactive license.

~~(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) through (17) remain the same but are renumbered (5) through (16).

(a) through (e) remain the same.

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

(g) remains the same.

(18) remains the same but is renumbered (17).

(a) and (b) remain the same.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ~~(17)~~ (16). However, the authorization set forth in ~~(17)(a)~~ (16)(a) shall not be required.

(19) remains the same but is renumbered (18).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-301, 37-51-305, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (4) and striking (5) to remove the term while clarifying current standards regarding when licensees may not practice.

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: completing the change form requesting that the license be placed inactive and

~~(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) through (4) remain the same.

(5) An inactive licensee may not receive compensation for real estate activity not earned except for compensation that was earned while the license was active or payments made to an inactive licensee as the seller of a real estate brokerage business.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (1) to remove the term and reflect current processes for inactive status licensure.

The board determined it is reasonably necessary to amend (5) and clarify when inactive licensees can receive compensation based on suggestions from licensees and industry members. When transactions take many months to close and a licensee has moved to inactive status during that time, the licensee is still due the earned commission.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS (1) remains the same.

~~(a) file a change of address application request to move to an active status via the board-provided change form;~~

~~(b) provide evidence of completing 24 hours of continuing education within the preceding 24 months demonstrate completed continuing education that would have been required if on active status not to exceed 24 credits; and~~

~~(c) remains the same.~~

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-204, ~~37-51-302, 37-51-308, 37-51-311~~, MCA

REASON: The board is updating (1)(a) to express current standardized processes and terminology, as there is no application for changing addresses.

The board determined it is reasonably necessary to amend (1)(b) to address licensee questions and confusion among licensing staff regarding the CE required to change from inactive to active licensure.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.635 RENEWALS (1) remains the same.

~~(2) Renewal notices will be sent as specified in ARM 24.101.414. Active salesperson licensee renewals will be sent to the address of the salesperson's broker of record. Inactive licensee renewals will be sent to the licensee's address of record on file with the board. Each licensee is All licensees, including inactive licensees, are required to renew or the license will lapse, expire, or terminate per 37-1-141, MCA.~~

~~(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) through (6) remain the same but are renumbered (3) through (5).

AUTH: 37-1-131, ~~37-1-319~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, ~~37-1-319~~, 37-51-202, ~~37-51-309~~, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating this rule to remove the term and reflect current renewal processes.

The board is striking (3) to align with proposed amendments to ARM 24.210.601 elsewhere in this notice.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(b) remain the same.

(c) engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, maintenance service, 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, maintenance service, 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) through (ae) remain the same.

(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, or payments made to the seller of a real estate brokerage business even if the seller is no longer a licensee is not considered payment of a commission to an unlicensed person;

(ag) through (ak) remain the same.

(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) through (ao) remain the same.

(ap) acting as a dual agent in a transaction without a written agreement from each principal;

(ap) through (ay) remain the same but are renumbered (aq) through (az).

(6) and (7) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-301, 37-51-302, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, 37-51-503, 37-51-508, 37-51-512, MCA

REASON: The board is amending (5)(c) and (d) of this rule, and ARM 24.210.828 to address concerns of the board's screening panel and trust account auditor. Noting that an increasing number of brokers and property managers also own maintenance companies, the board concluded that the public trust is better ensured when this ownership is disclosed and is amending the rules to establish such nondisclosure as unprofessional conduct.

The board determined it is reasonably necessary to address questions from licensees and industry members by clarifying the guidelines for commission payments as unprofessional conduct. Noting that many retiring licensees structure the sale of their businesses in this manner, the board is amending (5)(af) to address an increasing number of inquiries to the executive officer.

The board is amending (5)(al) to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is removing the term from the rule.

The board is adding (5)(ap) to provide clarification requested by both attorneys and the auditor, after several audits demonstrated that dual agents did not have the proper paperwork in place. The board has traditionally required that dual agents have written agreements with both parties, but it was not explicitly stated in the rules. Additionally, 37-51-313, MCA, requires that agents comply with the terms established in the buyer broker agreement and the listing agreement, and that dual agents are obligated to the seller/buyer in the same manner as a seller/buyer agent, but the board received several complaints where agents were acting as dual agents without written agreements. The board concluded that it is reasonably necessary to add this section to address the increase in dual agency complaints and better protect the public.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE (1) through (2)(b) remain the same.

~~(c) suspension of the right to practice for a period not exceeding one year;~~
(d) through (i) remain the same but are renumbered (c) through (h).
(3) and (4) remain the same.

AUTH: 37-1-131, 37-1-136, ~~37-1-319~~, 37-51-203, MCA

IMP: 2-4-623, 37-1-136, 37-1-312, ~~37-1-319, 37-51-202~~, 37-51-321, MCA

REASON: During a review of the rules, board attorneys noted that this provision may unnecessarily limit the board's ability to suspend a license as part of the disciplinary process. Per 37-1-312, MCA, the board is authorized to impose either indefinite or fixed-term suspensions. The board concluded that it is reasonably necessary to strike this limitation to ensure the board's ability to utilize adequate suspension as a disciplinary sanction.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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.~~

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

(b) A property manager may maintain more than one trust account, but each trust account must be maintained separately.

(2) The trust account must be readily accessible, insured in a financial institution located in Montana, and identified by the words "trust account." All monies, belonging to others and accepted by the property manager, 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 property manager must account for trust funds at all times.

(3) Trust funds 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 written agreement. Interest payable to the property

manager shall be identified by written agreement as consideration for services performed and will be considered personal funds unless otherwise designated.

(4) Maintenance of the trust account is the responsibility of the property manager.

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

(b) Property managers are responsible for all funds deposited into the trust account by them or their property management staff.

~~(2) (5)~~ The property manager will not be disciplined for a negative account or ledger 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) (6) 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 A property manager may deposit and keep a sum not to exceed \$1000 of a property manager's personal funds in the trust account, which sum includes any from the property manager's personal funds, including the interest earned on the trust account, which accrues if the trust account is maintained in an interest-bearing account and the interest 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, related trust account maintenance expenses, and when due and payable to the property manager. 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 depositing funds, the date of the deposit, the source of funds, and the amount must be shown. When disbursing funds, the date of the disbursement, the name of the 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.~~

(7) 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.

~~(6) (8) 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)~~ (9) 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:

(a) notify the tenant in writing within five business days of termination of the agreement:

(i) that the agreement has terminated;

(ii) 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.~~ termination; and

(iii) ~~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)~~ (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 within 30 days of termination.

~~(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)~~ (10) Except for personal funds referenced in ~~(4)~~ (6), no payments of personal indebtedness of the property manager shall be made from such trust accounts or trust funds.

(11) When a property manager is managing the property manager's own real estate, all tenant security deposits must be deposited into a trust account. All remaining funds received and disbursed must be handled in the following manner:

(a) if the property manager solely owns 100 percent of the real estate, rents received shall not be required to be placed into a trust account. If rents received are placed into a trust account, any and all disbursements from the trust account must be described in the property management agreement. A disbursement may not be considered personal indebtedness if the disbursement is for the maintenance of the property(ies) itself and is designated in the management agreement; and

(b) if the property manager owns less than 100 percent of the real estate, all rents received must be placed into a trust account. Any and all disbursements from the trust account must be described in the property management agreement. A disbursement may not be considered personal indebtedness if the disbursement is for the maintenance of the property(ies) itself and is designated in the management agreement.

~~(9)~~ (12) 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 to the property manager, ~~or when the owner and tenant ledgers are reconciled, except as exempted in (5).~~ The money may not be withdrawn until the deposit has been verified and money not withdrawn from the trust account within the ten business days is subject to the personal funds limitations of (6).

~~(40)~~ (13) Maintenance of a each individual property management trust account shall include the property manager keeping at the property management office a completed record of all funds received and disbursed in the following manner:

- (a) proof of deposit showing the date of deposit or electronic transfer, amount, source of money, and where deposited;
- (b) remains the same.
- (c) disbursement of trust funds shall be made by either check or electronic transfer. 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) remains the same.
- (i) for funds received, the record must include the date the funds are deposited, 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 the funds are disbursed, each the name of the payee, the name of the principal, and the amount;
- (iii) and (iv) remain the same.
- (11) through (13) remain the same but are renumbered (14) through (16).
- ~~(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.~~
- (17) Trust account records, complete files of properties managed (including, but not limited to, the property management agreement, lease or rental agreement, and all transactions concerning the property in which the property manager was involved), and all other related documents shall be maintained for not less than eight years from the date the property management agreement terminates. A property manager is not relieved of this requirement in the event the property manager sells or ceases to operate a business.
- (15) remains the same but is renumbered (18).
- ~~(16)~~ (19) The board is authorized to examine each property manager's trust account and all related property management 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.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, ~~37-1-316~~, 37-1-319, ~~37-51-202~~, ~~37-51-321~~, 37-51-324, ~~37-51-601~~, MCA

REASON: Following an increase in the number of complaints based on trust account audits, the board's screening panel requested the board review and amend the rules for better organization and clarity, and consider requiring additional education on trust accounting. Department staff conducted a thorough review of the trust accounting rules and presented the board with recommendations for amendments. Additional trust account education for property managers was implemented in a prior rulemaking project in 2017. The board is amending and reorganizing this rule and ARM 24.210.426 to implement the rest of the recommendations and address the concerns of staff and the screening panel.

Additionally, while none of the requirements are new, several of them were never stated in rule.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.827 INACTIVE STATUS (1) A licensee not engaged in licensed activities may place the licensee's license on inactive status by completing the change form requesting that the license be placed inactive and by paying the required fee in accordance with ARM 24.210.401.:

~~(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) and (3) remain the same.

(4) Inactive licensees may not receive compensation for property management activity ~~not~~ except for compensation that was earned while their license was active or payments made to an inactive licensee as the seller of a property management business.

(5) 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 license remains on inactive status.

AUTH: 37-1-131, ~~37-1-141~~, 37-1-319, 37-51-203, MCA

IMP: ~~37-1-101~~, 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (1) to remove the term and reflect current processes for inactive status licensure.

Following questions from licensees and industry members, the board determined it is reasonably necessary to amend (4) and clarify when inactive property managers can receive compensation. When transactions take many months to close and a property manager has moved to inactive status during that time, the licensee is still due the earned compensation. Additionally, an inactive seller of a property management business can receive payments for that sale.

The board is adding (5) to specify the inactive property manager's duty to inform the board of residency or mailing address changes. This has been required for years of other board licensees in ARM 24.210.624, but had not been added to this rule.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(c) remain the same.

(d) engaging the services of any attorney, insurance agent, maintenance service, 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, maintenance service, 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) and (g) remain the same.

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

(i) through (w) remain the same but are renumbered (h) through (v).

~~(x) (w) managing property owned by a separate person or entity~~ without a written property management agreement in place, signed by the owner;

(y) through (ab) remain the same but are renumbered (x) through (aa).

~~(ae) (ab) 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, or is on inactive status, or has been cancelled; however, payments received by the seller of a property management business even if the seller is no longer a licensee is not considered engaging in or conducting business as a property manager;~~ or

(ad) remains the same but is renumbered (ac).

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-137, ~~37-1-306~~, 37-1-316, 37-1-319, ~~37-51-202~~, 37-51-508, 37-51-512, ~~37-51-601~~, 37-51-607, MCA

REASON: The board is amending (3)(d) and (e) of this rule, and ARM 24.210.641 to address concerns of the board's screening panel and trust account auditor. Noting that an increasing number of brokers and property managers also own maintenance companies, the board concluded that the public trust is better ensured when this ownership is disclosed and is amending the rules to establish such nondisclosure as unprofessional conduct.

It is reasonably necessary to delete (3)(h) at the board prosecutor's request, because it is nearly impossible to prove an individual's intent. Additionally, this subsection is rarely, if ever, cited as a specific violation, as such conduct falls under (3)(i).

The board is amending (3)(w) at the request of the board's trust account auditor. Several audits revealed that licensees and property management companies were managing property owned by a licensee (either as individuals or a business association owned by a different legal entity than the management company) without management agreements in place. Noting that the licensees were unaware they needed management agreements in place, the board is amending (3)(w) to clarify the requirement.

It is reasonably necessary to amend (3)(ab) to address questions from licensees and industry members by clarifying that the seller of a property management business can receive payments for that sale without engaging in the practice of property management. Noting that many retiring licensees structure the sale of their businesses in this manner, the board is amending this subsection to address an increasing number of inquiries to the executive officer.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

5. An electronic copy of this notice of public hearing is available at realestate.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.301, 24.210.401, 24.210.426, 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 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2305; or to dlibsdrre@mt.gov.

9. Rhonda Morgan, Executive Officer, has been designated to preside over and conduct this hearing.

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 December 11, 2017.