

Forms Guide* for Property Managers

* 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 rules 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>

TRUST FUNDS, TRUST ACCOUNTS & RESPONSIBILITY:

Property managers, brokers, and salespersons (licensees) practicing property management are required to have a trust account, designated by the words "trust account." All deposits, rent payments, or other trust funds shall be deposited into this account, including trust funds collected by property management staff. Each trust account must be maintained separately and have its own separate set of records.

IMPORTANT NOTE: If a licensee chooses to work with a property management company and use the company's trust account (including, but not limited to, handling trust funds in any capacity), ***the licensee is choosing to share and take responsibility for the trust account.***

Offices or firms having more than one licensee may utilize a single property management trust account and licensees may also maintain more than one trust account.

ARM 24.210.805(4) states:

- (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.

Brokers and salespersons, acting as property managers, are held to the same standards.

Refer to 37-51-321(1)(u), MCA and ARM 24.210.641(5)(z).

TRUST ACCOUNT RECORDS should include, but are not limited to, the following:

- Monthly Bank Statements – ARM 24.210.805(13)(b)
- Monthly Reconciliation Reports – ARM 24.210.805(16)
- Proofs of Deposit – ARM 24.210.805(13)(a)
- Checks (*if applicable*) – ARM 24.210.805(13)(c)
- General Ledger/Check Register – ARM 24.210.805(13)(d) / (13)(d)(i) / (13)(d)(ii) / (13)(d)(iv)
- Personal Funds Ledger (*if applicable*) – ARM 24.210.805(6)
- Owner Ledgers – ARM 24.210.805(15)
- Tenant Ledgers – ARM 24.210.805(14)

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

- Signed Management Agreement – ARM 24.210.805(11)(a)/(b), 24.210.828(3)(w)
- Management Agreement Addendums (*if applicable*) – ARM 24.210.805(11)(a)/(b), 24.210.828(3)(w)
- Power of Attorney (POA) or related legal document (*if applicable*) – ARM 24.210.828(3)(q)
- Invoices/Receipts – ARM 24.210.805(17)
- Correspondence related to expenditures exceeding agreed upon amounts – ARM 24.210.805(17)

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

- Lease/Rental Agreement – ARM 24.210.828(3)(r)
- Megan's Law Disclosure (*refer to statute for applicability*) – 37-51-105, MCA
- Lead Based Paint Disclosure (*if applicable*) – Sec. 1018 of Title X (Federal), ARM 24.210.828(3)(p)
- Mold Disclosure (*if applicable*) – 70-16-703, MCA
- Condition Report (*if applicable*) – ARM 24.210.828(3)(m)
- Notice of cleaning (*if applicable*) – ARM 24.210.828(3)(m)
- List of damages/refund provided to tenant (*if applicable*) – ARM 24.210.828(3)(m)

LICENSEES MANAGING THEIR OWN PROPERTY:

If you are licensed and managing your own properties, you are still obligated to follow licensure requirements. ARM 24.210.805 states:

- (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.

OTHER INFORMATION:

The Board's required documents may not be inclusive of all required documents to a property management transaction. As a licensee, you are 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 24.210.828 and may result in discipline against your license.

QUESTIONS & ANSWERS:

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

A. 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. **Additionally**, a property manager is not relieved of this requirement in the event the property manager sells or ceases to operate a business. Refer to ARM 24.210.805(17).

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. *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 24.210.805(18) and 24.210.805(19).

Examples of a general ledger, personal funds ledger, and owner and tenant 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 I 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. ARM 24.210.805(2) states, "The trust account must be readily accessible, insured in a financial 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."

Q. *I have multiple trust accounts. To make things simpler, can I combine them and keep only one set of books?*

A. No. Each trust account must be maintained separately, and each trust account must have its' own set of ledgers and related records. Refer to ARM 24.210.805(1)(b), 24.210.805(13), etc.

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 managing properties (including your own properties), you still must follow the statutes and rules governing property managers.

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 templates of the required forms?*

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

Q. *How do I know if the property I'm managing is required to have a Lead Based Paint Disclosure?*

A. Refer to Title X, Section 1018 of the USC, regulated by EPA & HUD. Public property information can be obtained online from the Montana State Library's Montana Cadastral Mapping Project, by visiting <http://svc.mt.gov/msl/mtcadastral/>. The availability of this data is for informational purposes only and the data is presented in good faith only. Please view the website for additional disclosures and other related information.

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. We may also direct you to appropriate legal authority and encourage you to seek legal counsel.

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).

As a reminder, 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 Administrative Rule revisions.

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.