

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 24.210.641 unprofessional)	PROPOSED AMENDMENT,
conduct, 24.210.661 new licensee)	ADOPTION, AND REPEAL
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 April 18, 2017, at 10:00 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, adoption, and repeal 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 no later than 5:00 p.m., on April 11, 2017, 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:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (4) remain the same.

(5) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:

(a) through (af) remain the same.

(ag) failing to disclose in advertising the licensee's name and identifying that the advertisement is made by a real estate licensee or that the advertising is made by a brokerage company;

(ah) through (av) remain the same.

(aw) when applying for a broker license, claiming more credit for transactional experience than actually earned; or

(ax) as a supervising broker, failing to immediately inform the broker's supervised salespersons that the supervising broker's license or endorsement has expired; or

(ay) failing as a supervising broker to adequately supervise his or her salespeople. A supervising broker endorsement may be limited or revoked as a consequence of violating this subsection.

(6) and (7) remain the same.

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

IMP: 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 Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. The audit results included a recommendation that the board establish a limit on the number of salespersons a supervising broker may supervise. As an alternative solution to the audit recommendation, the board is adding (5)(ay) after concluding that stronger enforcement within the complaint process will improve the supervision of salespersons.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) All new sales licensees are required to complete the board-mandated new licensee mandatory continuing education requirement, commonly known as the 12-hour rookie course, ~~by the first renewal date as set by ARM 24.101.413,~~ within 120 days following their original license issue date. If no rookie course is offered within the 120-day period, the new licensee must complete the class when the class is next offered after the 120-day period unless, at the board's discretion, it is extended for good cause. Only live in-person presentations of the rookie course will be approved by the board. No online or webinar rookie courses are appropriate.

(2) and (3) remain the same.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. The board is amending the rule as an alternative solution to an audit recommendation to allow first-year salespersons 12 months following initial licensure

to complete the rookie course. The board determined a 120-day period would prepare the licensees sooner for work they are actually performing on the job.

24.210.666 COURSE PROVIDER (1) through (3) remain the same.

(4) A course provider which is approved to administer the approved 12-hour rookie course for new salesperson licensees may seek reimbursement for up to \$2,000 of demonstrated losses incurred in providing and administering the rookie course. Compensation will be limited to reasonable expenses. Application for reimbursement must be made on board-approved forms which detail the nature and amount of losses.

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-204, 37-51-302, MCA

REASON: Noting that local associations of the Montana Association of Realtors are hosting and administering the rookie courses, the board is adding (4) to provide a reimbursement option for losses incurred while hosting the course. The board believes this option will help ensure courses are available throughout the year and better serve first-year salesperson licensees who are required to take the course.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) remains the same.

(2) Approved courses must have a specific approved instructor although additional speakers may assist in the instruction pursuant to ARM 24.210.677(6). An instructor does not need to make new application for a course that is already approved. The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause. If the application for course approval is granted less than three months before the end of the calendar year, the approval shall be in effect until the end of the two calendar years following the year in which the approval is granted.

(3) through (7) remain the same.

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule to specify that approved continuing education courses must be paired with specific approved instructors. The board has long intended that when a course is considered for approval, there be a specific approved instructor to teach it. Courses must be approved under a specific topic, while the content of each of the various topics can be very diverse. Having approval to teach a particular course under a particular topic does not mean that the instructor is qualified to teach any other course approved under that topic. The instructor must be able to teach the specific course as it was presented to the board for approval. In determining whether an instructor can teach a specific course, the board examines the instructor's qualifications, including the instructor's education, practice experience, and any experience in previously teaching the topic.

The board also discovered that the current rules seem to require new instructors to reapply for course approval, even when the course has prior approval. The board determined that if a course has already been approved, a new instructor merely needs approval to teach the previously approved course. Once approved, an instructor may utilize assistants to teach portions of the course under the instructor's supervision. The board is amending the rule to clarify these provisions.

The board does not permanently approve courses and instructors, but currently for the rest of the year in which they were approved and one calendar year thereafter. The board notes that many courses and instructors are submitted for approval late in the calendar year, to ensure authorization to teach the class as soon as the calendar year begins. Submitting courses and instructors in this manner benefits both the board and the submitters as it avoids a concentrated workload at the beginning of the calendar year. The current rules result in approval of the late-submitted courses and instructors for a much shorter period of time than those approved immediately after the beginning of the year. Noting the benefits of submitting courses and instructors for late-year approval, the board wishes to encourage the practice without penalizing applicants for doing so. The board is amending this rule and ARM 24.210.677 to approve late-year submitted courses and instructors for the last part of the calendar year as well as the two following calendar years. Courses and instructors submitted before the last three months of a calendar year will only be approved for the rest of the year in which the application was made and the single calendar year that follows.

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) remains the same.

(2) The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Approval may be revoked for cause. If the application for instructor approval is granted less than three months before the end of the calendar year, the approval shall be in effect until the end of the two calendar years following the year in which the approval is granted.

(3) remains the same.

(4) In addition to the requirements of (3), instructors who wish to teach the board-mandated new licensee mandatory continuing education course, commonly known as the 12-hour rookie course, shall have five years of active licensed experience as a broker or five years of experience as an instructor of real estate education. The experience necessary to instruct the rookie course may be achieved through a combination of practice or instruction experience.

(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.

(4) remains the same but is renumbered (6).

~~(5)~~ (7) Instructor approval will be for specific courses and topics and will not carry over to other courses or topics of education. An instructor must make application for each course and topic and may not be deemed approved for other courses or topics without approval from the board or its designee. An instructor

need only be approved for a specific topic one time in an approved period. However, except as provided in (6), an instructor must be approved for each course which the instructor wishes to teach.

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: See REASON for ARM 24.210.674 regarding amendments to (2) and (7).

The board is also adding (4) and (5) to strengthen and clarify the experience requirements for instructors who teach the new licensee mandatory continuing education (rookie) classes, the supervising broker prelicensing classes, and the supervising broker continuing education classes. Because the board demands that these classes teach correct information and cover vital topics, the board concluded that qualified and experienced persons are better suited to accomplish these goals.

In the past, the board has contracted with two highly qualified individuals to teach these courses. However, the contracts have expired and no request for proposal has been completed to contract with the previous instructors or find a new contractor. In the meantime, numerous other people have stepped in to teach the classes which prompted the board to closely examine these courses and instructors.

The board intends that all education and instructors are paired and that instructors are qualified to teach the subject matter. The rookie and supervising broker education courses are fundamentally important to real estate practitioners and thus require instructors with a heightened expertise above what is required to teach other continuing education. In this way, the board can be more assured that knowledgeable instructors with relevant experience are teaching these fundamental courses.

24.210.825 RENEWALS (1) ~~Except for new licensees as provided in ARM 24.210.829, all~~ All active and inactive licensees will be required to renew as set by ARM 24.101.413.

~~(2) Renewal notices will be sent as specified in ARM 24.101.414. Each licensee is required to renew.~~

(3) and (4) remain the same but are renumbered (2) and (3).

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

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

REASON: It is reasonably necessary to amend (1) to correct an error and avoid licensee confusion. ARM 24.210.829 provides that new licensees are not required to have continuing education until their second renewal. The board determined that by referencing ARM 24.210.829 in this rule, licensees may be misled to believe that new property manager licensees do not need to renew the first year, which is not the case. All licensees still need to renew upon their first renewal date.

The board is striking (2) because ARM 24.101.414 has been repealed.

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.

24.210.829 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. ~~Two~~ 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. 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.

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

IMP: 37-1-306, 37-1-319, 37-51-603, MCA

REASON: The board is amending this rule to increase the required course length for the required trust account course for a newly licensed property manager. The board concluded that, with additional hours of instruction, more material can be covered that is important to the management and requirements of trust accounts. The board determined this amendment will provide a better education for new licensees, and therefore, will better serve the public.

4. The proposed new rules are as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) The board shall review an application containing any of the following criteria:

(a) criminal convictions and charges:

(i) a felony conviction of any nature if the sentence imposed for any such conviction has not been fully discharged or if the sentencing order was entered within the past ten years;

(ii) any conviction involving use or sale of drugs, fraud, deceit, or theft, pursuant to 37-1-316(1), MCA, if the sentence imposed for any such conviction has not been fully discharged or if the sentencing order was entered within the past five years;

(iii) a misdemeanor conviction relating to sex or violence;

(iv) three or more misdemeanor convictions;

(v) a pending criminal charge if, as a conviction, it would cause the application to be nonroutine under (i) through (iv); or

(vi) a criminal charge resulting in a deferred sentence that has not been discharged as of the date of application.

(vii) For the purposes of this rule, a criminal charge resulting in a deferred sentence that has not been discharged as of the date of application is considered a conviction for purposes of determining whether the application is nonroutine. Misdemeanor traffic convictions not involving alcohol or drugs will not cause an application to be considered nonroutine.

(b) other unprofessional conduct:

(i) an investigation, complaint, consent agreement, or disciplinary action involving the applicant that either:

(A) resulted in a license or license application that was revoked, suspended, denied, withdrawn, placed on probation, or subjected to any condition or restriction in the past five years; or

(B) resulted in a license or license application that is currently encumbered by a disciplinary sanction. "Encumbered by a disciplinary sanction" means conditions imposed on the license have not been satisfied or are ongoing if the action was based upon the applicant's underlying conduct and not based on another state's or jurisdiction's disciplinary action;

(ii) the applicant was diagnosed with an addiction or participated in a chemical dependency or other addiction treatment program within three years of submitting the application. However, if treatment has been successfully completed and any recommended follow-up is being complied with, the department may consider the application routine; or

(iii) the applicant answered "yes" on the application regarding a diagnosis for a physical condition or mental health disorder involving a potential health risk to the public.

(c) application discrepancies:

(i) failure to accurately and completely respond to a question on the application form. The department may treat an application as routine under this subsection if the department receives an adequate explanation for such a failure;

(ii) the department may, but is not required to, submit an otherwise routine application for board review if:

(A) questions arise whether the applicant meets all requirements for licensure, including, but not limited to, the demonstration of good moral character; or

(B) inconsistencies, irregularities, or other matters of concern, including but not limited to allegations of unlicensed practice, exist in the application or related documentation.

(d) any application which staff believes warrants board review.

(2) An application which would otherwise be nonroutine under this rule will nevertheless be deemed routine if the application is based solely on information previously considered by the board, but which resulted in the issuance of an unencumbered license or if it resulted in a complaint that was resolved without discipline.

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

IMP: 37-1-101, 37-1-105, 37-1-131, 37-1-136, 37-1-137, 37-1-203, 37-1-307, 37-1-308, 37-51-202, 37-51-302, 37-51-603, MCA

REASON: The Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. The board is adopting this rule in response to an audit recommendation that the board clearly define criteria for treating applications as nonroutine, including classification of criminal convictions.

NEW RULE II TRUST ACCOUNT COURSE REQUIREMENT (1) Except for new licensees as provided in ARM 24.210.829, all active 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) Inactive licensees returning to active status who have not taken this course must take it by the next renewal date after they become active.

AUTH: 37-1-131, MCA

IMP: 37-1-131, MCA

REASON: The board is adopting this new rule due to the number of violations through board audits on trust accounts, and therefore the number of board-generated complaints to address these issues as seen and reported by the screening panel. The board determined that requiring all active property management licensees to attend a trust account course within 12 months of the effective date of this rule will increase licensee knowledge of trust account management and requirements, and reduce audit deficiencies and complaints.

5. The board proposes to repeal the following rule:

24.210.615 APPLICATION FOR DETERMINATION OF EQUIVALENT EXPERIENCE FOR BROKER LICENSING

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

IMP: 37-51-202, 37-51-302, MCA

REASON: The Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. The board is repealing this rule to eliminate the equivalency application, which the audit concluded was used rarely, but added unnecessary costs to the license process.

6. 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., April 21, 2017.

7. An electronic copy of this notice of public hearing is available at www.realestate.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. 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.

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

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.641, 24.210.661, 24.210.666, 24.210.674, 24.210.677, 24.210.825, and 24.210.829 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.210.615 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations 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.

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

BOARD OF REALTY REGULATION
RIC SMITH
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 March 13, 2017.