

Montana Board of Realty Regulation's *Required Forms Guide** for **Real Estate Brokers & Salespersons**

* This guide is ***NOT*** a substitute for reading the regulations and understanding all the requirements as they apply to your license! Required documents for Audits are subject to change due to law and rule revisions. Please view the "Rule Notices" posted periodically on the Board's website (www.realestate.mt.gov), located under the "Regs" tab.

➔ *If you have questions, comments, or concerns* ←

The Board Office may be contacted any time at dlibsdrre@mt.gov or (406) 841-2321.

Asking questions will not trigger an audit.

MONTANA RULES & STATUTES:

Administrative Rules of Montana (ARM) – <http://www.mtrules.org/gateway/chapterhome.asp?chapter=24%2E210>
Montana Code Annotated (MCA) – http://leg.mt.gov/bills/mca_toc/index.htm

SELLER FILES should include:

- Listing Agreement – ARM 24.210.641(5)(an) and 37-51-102(15), MCA
- Agency Disclosure – 37-51-314, MCA and 37-51-313, MCA
- Signed Buy/Sell Agreement – ARM 24.210.641 (5)(l) and (5)(h)
- Signed Buy/Sell Agreement Addendums or provision changes – ARM 24.210.641(5)(g) and (5)(l)
- Megan's Law Disclosure – 37-51-105, MCA
- Radon Disclosure (Inhabitable Prop.) – ARM 24.210.641(5)(x) and 75-3-606, MCA
- Methamphetamine Disclosure (if applicable) – 75-10-1305, MCA
- Mold Disclosure (if applicable) – 70-16-703, MCA
- Lead Based Paint Disclosure (if applicable) – ARM 24.210.641(5)(y) and Title X, Section 1018 of the USC
- Power of Attorney (POA) or other related legal form (if applicable) – ARM 24.210.641(5)(e) and 71-1-102, MCA
- Documentation of earnest fund receipt by the designated holder (if applicable) – ARM 24.210.426(8)

CO-LISTING FILES should include:

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

BUYER FILES should include:

- Buyer Broker Agreement – ARM 24.210.641(5)(am) and 37-51-102(7), MCA
- Agency Disclosure – 37-51-314, MCA and 37-51-313, MCA
- Signed Buy/Sell Agreement – ARM 24.210.641 (5)(l) and (5)(h)
- Signed Buy/Sell Agreement Addendums or provision changes – ARM 24.210.641(5)(g) and (5)(l)
- Megan's Law Disclosure – 37-51-105, MCA
- Radon Disclosure (Inhabitable Prop.) – ARM 24.210.641(5)(x) and 75-3-606, MCA
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- Mold Disclosure (if applicable) – 70-16-703, MCA
- Lead Based Paint Disclosure (if applicable) – ARM 24.210.641(5)(y) and Title X, Section 1018 of the USC
- Power of Attorney (POA) or other related legal form (if applicable) – ARM 24.210.641(5)(l) and 71-1-102, MCA
- Documentation of earnest fund receipt by the designated holder (if applicable) – ARM 24.210.426(8)

DUAL AGENT FILES should include:

- All documents as listed under both the **SELLER** and **BUYER** files.

TRUST ACCOUNTS & REAL ESTATE TRANSACTIONS:

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

PLEASE NOTE: A broker who uses a trust account is responsible for the trust account, *even if they have designated authority for maintenance of the trust account to another broker.* ARM 24.210.426(3) clearly states, “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.” In short: *if a broker does not want to be held responsible for a trust account, they should not use a trust account.*

Each trust account must have its own set of records. During an audit, the following records need to be available:

- Monthly bank statements
- Monthly reconciliation reports
- Proofs of deposit
- Copies of checks
- General ledger/check register
- Individual transaction ledgers
- Personal funds ledger (if applicable)

Examples of a check register/general ledger, personal funds ledger, and transactions ledger can be found on the Board’s website (www.realestate.mt.gov), under the “Trust Account Information” tab.

OTHER INFORMATION:

The Board’s required documents may not be inclusive of all required documents to a real estate transaction. As a licensee, you are still required to abide by **all** licensing laws and rules, and any state and federal requirements that may affect your real estate license and/or a real estate transaction. Failure to abide by the laws and rules is considered unprofessional conduct as described in ARM 24.210.641 and may result in action being taken against your license.

Additional applicable State and Federal laws and rules include, but are not limited to the following:

- Residential Tenants' Security Deposits Laws – Title 70, chapter 25, MCA
- The Residential Landlord Tenant Laws – Title 70, chapter 24, MCA
- Landlord and Tenant Residential and Commercial Laws – Title 70, chapter 26, MCA
- The Montana Residential Mobile Home Lot Rental Act – Title 70, chapter 33, MCA
- The Fair Housing Act – [42 USC §§ 3601 et seq.](#); Implementing Regulation: 24 CFR Parts 100 et seq.
- State Human Rights Statutes – Title 49, MCA
- Americans with Disabilities Act (ADA) – www.ada.gov
- Megan’s Law Disclosure – ARM 24.210.828(3)(f) and 37-51-105, MCA
- Montana Fair Housing – www.montanafairhousing.org

PROPERTY MANAGEMENT:

Licensed brokers and salespersons may practice property management under their license, but they must comply with all Administrative Rules and Statutes applicable to licensed Property Managers; refer to ARM 24.210.641(5)(z).

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

Even if a licensed broker or salesperson is managing their own property(s), they must still comply with all Administrative Rules and Statutes applicable to licensed property managers.

→ **ARM 24.210.641 Unprofessional Conduct.** (5) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct: (z) failing, while acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of Title 37, chapter 51, part 6, MCA, and the requirements of the Board of Realty Regulation’s rules for property management as set forth in ARM 24.210.805 and 24.210.828, except for the advertising requirements of ARM 24.210.828(3)(u).

Please refer to the *Montana Board of Realty Regulation's Required Forms Guide for Property Managers* for additional information.

QUESTIONS & ANSWERS:

Q. *How long am I required to keep all of the transaction and trust account documentation?*

A. Eight years from the latter of the date of receipt or the date the transaction was completed – ARM 24.210.601(1).

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

A. No. Brokers used to be required to maintain a trust account, but this is no longer the case. As long as you have a designated holder of trust funds (such as a title company), you do not have to have a trust account – ARM 24.210.426(6). **Please note**, however, that you are required to obtain and maintain documentation of receipt by the designated holder.

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®. If a licensee is randomly sampled for an audit and found to be using these forms without authorization, under 37-51-321, MCA, **a Board-generated complaint will be filed against their license**. *If you have discontinued your membership and have used these forms in the past, you are strongly encouraged (but not required) to keep documentation showing when you were a member.*

→ **37-51-321, MCA. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices: (d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member.

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

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

Q. *Is a Buyer Broker Agreement required if I'm a Dual Agent?*

A. Yes, a Buyer Broker Agreement is required any time you are working on behalf of a buyer, including in dual agency transactions. Not having this Agreement is considered unprofessional conduct under ARM 24.210.641(5)(am). If your clients are confused by this, the following references may be of assistance: MCA 28-2-903(1), 37-51-102(8) and (11), 37-51-313(4) and (7), and 37-51-314(3) and (10).

Q. *Why shouldn't I designate myself as a Seller, Buyer, and Dual Agent when completing the Agency Disclosure with my client?*

A. To avoid the possibility of a misunderstanding between a client and an Agent, the Board advises licensees to only designate the actual agency relationship the Agent has with the client. In a single transaction, the Agent is either 1) a seller agent, 2) a seller and dual agent, 3) a buyer agent, or 4) a buyer and dual agent; the Agent cannot be all three in the same transaction. Please see 37-51-102, MCA, for the applicable definitions.

Q. *Can I have a Listing Agreement or Buyer Broker Agreement with my client when I'm acting as a Statutory Broker?*

A. No. There can never be an Agent who is both a Statutory Broker and a Seller or Buyer Agent for another client in the same transaction at the same time. A Statutory Broker is one who assists one or both parties to a transaction, but is not the agent of either. If the Agent has no written agreement, the Agent is presumed to be a Statutory Broker and continues in that capacity until the transaction is concluded. However, if the Statutory Broker enters into a Listing Agreement with a seller or Buyer Broker Agreement with a buyer, they automatically stop being a Statutory Broker; at that point in time, they become either a Seller Agent, Buyer Agent, or Dual Agent. Please see 37-51-102, MCA, for the applicable definitions.

Q. *Are there exemptions from licensure provisions?*

A. Yes, certain scenarios allow for exemptions from licensure provisions. Additional information can be found under 37-51-103, MCA. **Please note:** Board Office staff **cannot** provide an official determination whether or not a scenario qualifies as an exemption. If you have been randomly selected for an audit and feel you may be exempt from licensure provisions, please contact the Auditor as instructed in the letter you received.

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

A. Records may be maintained electronically; however, if you use an accounting software to maintain your trust account, ensure that your software can provide the records in a format compliant with the Board's requirements. If you are audited and unable to present the records in a manner compliant with ARM 24.210.426, this may negatively impact your audit outcome – ARM 24.210.426(10). An example general ledger, personal funds ledger, and transaction ledgers can be found on the Board's website (www.realestate.mt.gov), under the "Trust Account Information" tab.

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

A. No. Accessing your software is a liability for the Auditor, the Board, and for you. You are required to know how to operate the software you choose.

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

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

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

A. No. Licensees are responsible for ensuring they are using the most current ARM and Statutes, which can be found online (refer to the **OTHER INFORMATION** section of this guide). If you are interested in obtaining official hardcopies of Administrative Rules and statutes, please contact the Montana Secretary of State's office and the Montana Legislative Services Division respectively.

Q. *I have more questions...*

A. **Asking questions will not trigger an audit** – audits are conducted randomly. Please feel free to contact the Board Office at dlibsdrre@mt.gov or (406) 841-2321 if you have any questions, comments, and/or concerns. If you are currently being audited and have questions, please contact the Auditor at your earliest convenience as instructed in the letter you received.