

REALTY REGULATION BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 51
REAL ESTATE BROKERS AND
SALESPERSONS

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CHAPTER 51 REAL ESTATE BROKERS AND SALESPERSONS

Chapter Compiler's Comments

Severability Clause: Section 23, Ch. 250, L. 1963, was a severability clause.

Chapter Cross-References

Licensed broker — exemption from regulation of escrow business, 32-7-103.

Chapter Administrative Rules

Title 24, chapter 210, ARM Board of Realty Regulation.

Chapter Case Notes

Counterclaim for Payment of Commission Remanded Along With Claims for Fraud, Negligent Misrepresentation, Breach of Contract, and Breach of Covenant of Good Faith: May brought an action against a Bozeman real estate company and a real estate broker, alleging fraud, breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, negligent and intentional infliction of emotional distress, negligent misrepresentation, and professional negligence. The defendants counterclaimed for payment of their commission, and the District Court granted summary judgment for the defendants and against May on all issues. The Supreme Court reversed the District Court on several of May's claims and remanded them to the District Court. The Supreme Court also held that the defendants' counterclaim for their commission, although not briefed by the parties, was so inextricably connected to the facts of those of May's claims remanded to the District Court that the counterclaim should also be remanded to the District Court for determination along with May's remaining claims. *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Professional Negligence — Expert Testimony Required to Establish Standard of Care — Statutory Standard Inapplicable: May sued a Bozeman real estate company and real estate agent over the sale of his service station and alleged professional negligence on the part of the agent as one of his claims for relief. The Supreme Court affirmed the District Court's holding that the defendants were entitled to summary judgment because May had not listed an expert witness to give expert testimony to establish the standard of care for the agent. The Supreme Court distinguished *Durbin v. Ross*, 276 M 463, 916 P2d 758 (1996), and relied upon *Newville v. St.*, 267 M 237, 883 P2d 793 (1994), reasoning that real estate sales is among the professions requiring special knowledge and that a lay jury could not pass judgment on the question of whether an individual correctly used that knowledge without the assistance of expert testimony. The Supreme Court also held that inasmuch as 37-51-313 had not been enacted until after the instant case arose, the statute could not be relied on to provide express duties of the agent. *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000). However, see *Wagner v. MSE Technology Applications, Inc.*, 2016 MT 215, 384 Mont. 436, 383 P.3d 727, in which the Supreme Court ruled that expert testimony may not be necessary for a claim of professional negligence because those duties are now outlined in statute.

Real Estate Sale — Alleged Breach of Fiduciary Duties Held Repetitious of Other Claims: May brought an action against a Bozeman real estate company and agent, claiming that defendants breached their fiduciary duty to him and also alleging fraud, professional negligence, negligent misrepresentation, and bad faith. The Supreme Court held that the District Court properly dismissed the claim for breach of fiduciary duties, which May alleged on the basis of *Durbin v. Ross*, 276 M 463, 916 P2d 758 (1996), because that claim was based upon the same facts as the other claims, was therefore repetitious of those other claims, and added nothing to May's claims for relief. *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Real Estate Sale — Disclosure Statement Not Susceptible to Violation — Standard Listing Agreement Violation: In an action against a realtor for breach of contract, May alleged violation of both a document entitled "Disclosure Regarding Types of Real Estate Agency Relationships Available" (disclosure statement), listing the duties of a real estate agent, and a "Standard Listing Contract". The Supreme Court held that the disclosure statement was not a contract and could not serve as the basis for

a breach of contract action. The Supreme Court also held that the Standard Listing Contract could be violated and that May had sufficiently alleged breach of a specific provision of that contract, that provision being one that the broker was employed to find a buyer ready and willing to acquire the property on the terms stated in the contract, to survive a motion for summary judgment. *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Qualifications of Real Estate Experts — Differing Valuation: At a hearing concerning the valuation and division of property in the dissolution of Maureen and Joseph's marriage, an agricultural real estate broker testified for Maureen that the parties' ranch was worth \$398,000 to \$400,000, while a certified and licensed property appraiser testified for Joseph that the ranch was worth \$182,500. Joseph contended that the District Court erred in accepting the value of the ranch as testified to by the real estate broker because the broker had no experience as a real property appraiser. Citing *Jim's Excavating Serv., Inc. v. HKM Associates*, 265 M 494, 878 P2d 248 (1994), the Supreme Court held that whether an adequate foundation has been established for the admission of expert testimony is an issue largely within the discretion of the District Court and that the District Court did not abuse its discretion when it relied upon the testimony of the real estate broker. The Supreme Court therefore affirmed the part of the District Court's order that valued the parties' ranch at \$400,000. *In re Marriage of Ortiz*, 282 M 500, 938 P2d 1308, 54 St. Rep. 446 (1997).

Sale Not Occurring — Broker Entitled to Commission Based on Terms of Contract: Language in a listing agreement was clear and unambiguous in stating that a broker was entitled to a commission upon procuring a buyer who was "ready and willing to purchase" and who entered into a written agreement to make the purchase. The District Court did not err in granting summary judgment in favor of the broker when the seller was obligated to pay the commission even though the proposed sale did not go through. *Sayegusa v. Rogers*, 256 M 269, 846 P2d 1005, 50 St. Rep. 89 (1993), followed in *Johnson v. Nyhart*, 269 M 379, 889 P2d 1170, 52 St. Rep. 37 (1995).

Variation From Terms of Listing Contract — No Entitlement to Commission: When differences in the sale offers produced by a real estate broker varied substantially from the terms of the listing contract, the broker was not entitled to a commission on the sale of the property. *Watson v. Fultz*, 239 M 364, 782 P2d 361, 46 St. Rep. 1751 (1989).

Commission Reduction Agreement Not Breach of Fiduciary Duty: Cady listed his ranch for sale with Ussin, a realtor. Ussin found a buyer in Ehly. Ussin advised Ehly that Cady would not accept Ehly's offer but that Ussin would reduce his commission to make a sale. The agreement entered was that Ussin would reduce his commission by the amount between what Cady wanted and what Ehly wanted to pay. This was not communicated to Cady. A buy-sell was entered, and Cady later breached. He refused to pay Ussin his commission. The District Court awarded Ussin his commission. On appeal, the Supreme Court held that the fiduciary duty of a realtor to the seller is breached if: (1) a seller is foiled or deceived by the contract or does not understand the contract; or (2) full disclosure of all pertinent facts is not made by the broker. The court held that although arguably Ussin had breached his duty to Cady by not disclosing all pertinent facts, there was no damage to Cady. The flow of money to Cady was the same regardless of the commission reduction agreement. Cady suffered no prejudice or damage from the agreement. Ussin was entitled to his commission. *Ehly v. Cady*, 212 M 82, 687 P2d 687, 41 St. Rep. 1611 (1984).

Duty of Broker to Disclose: The fiduciary relationship which exists between a broker and his client imposed upon plaintiff a duty to verbally disclose a number of facts which were not disclosed verbally, although contained in the listing agreement. These included the fact that defendants could not withdraw plaintiff's authority under the agreement without forfeiting a sizable commission, and could not sell the property on their own during the term of the agreement. The District Court erred in finding there was no fraud involved in the execution of the employment contract. *Lyle v. Moore*, 183 M 274, 599 P2d 336, 36 St. Rep. 1307 (1979), followed in *Watson v. Fultz*, 239 M 364, 782 P2d 361, 46 St. Rep. 1751 (1989).

Scope of Act — Honest Mistake: The Real Estate License Act of 1963 (Ch. 250, L. 1963) should be construed to lend maximum efficacy to the enforcement of the fiduciary relationships involved in the real estate profession. However, willful misconduct must be present as opposed to an "honest" mistake, regardless of the argument that another course of conduct or the lack of some negligence would have avoided the situation complained of. *Van Ettinger v. Pappin*, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978), partially overruled in *Cechovic v. Hardin & Associates, Inc.*, 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995).

Chapter Law Review Articles

Hidden-but-Discoverable Defects: Resolving the Conflicts Between Real Estate Buyers and Brokers, Culum, 50 Mont. L. Rev. 331 (1989).
The Montana Real Estate Agent: An Overview of the Law and a Proposed Listing Agreement, Schaplow, 44 Mont. L. Rev. 197 (1983).
The Requirement of Statute of Frauds for Real Estate Brokers to Receive Commissions and the Festering Minority View of Equity, Councilman, 10 Tex. Wesleyan L. Rev. 441 (2004).
Agent Liability and Seller's Representations, Jennings, 27 Real Est. L.J. 308 (1999).
The Buyer's Agent and the "As Is" Clause: A Liability Trap?, Moore, 27 Real Est. L.J. 374 (1999).
The Psychological Impact of AIDS on Real Property and a Real Estate Broker's Duty to Disclose, Hartog, 36 Ariz. L. Rev. 757 (1994).
Breach of a Real Estate Broker's Duty to a Buyer, Slicker, 65 Fla. B.J. 60(3) (1991).
Environmental Liability of Brokers and Other Parties, Ferguson & Gray, 19 Real Est. L.J. 218 (1991).
Seller/Broker Liability in Multiple Listing Service Real Estate Sales: A Case for Uniform Disclosure, Wolf & Jennings, 20 Real Est. L.J. 22 (1991).
Federal Regulation of Real Estate Brokers, Loewy, 4, Prob. & Prop. 28(7) (1990).
Home Not-So-Sweet Home: Real Estate Broker Liability in the Sale of Previously Contaminated Residential Property: Has Broker Liability Gone Too Far?, Guilfooy, 21 Rutgers L.J. 111 (1989).
The Independent Real Estate Broker, Kaplan, 62 Fla. B.J. 24(4) (1989).

Part 1 General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Account" means the real estate recovery account established in 37-51-501.
- (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:
 - (i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or
 - (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.
- (3) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.
- (4) "Board" means the board of realty regulation provided for in 2-15-1757.
- (5) "Broker" includes an individual who:
 - (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;
 - (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;
 - (c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or

other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (5).

(6) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(7) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(8) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(9) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(12) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(13) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(14) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(15) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(16) "Negotiations" includes:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(17) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(18) "Property manager" means an individual who for a salary, commission, or compensation of any kind or with the intent or expectation of receiving valuable consideration engages in the business of

leasing, renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;

(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;

(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;

(d) assists in creating or completing real estate lease contracts;

(e) procures tenants for owners of real estate located in this state;

(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

(g) makes the advertising of real property for lease available by public display to potential tenants;

(h) shows rental or lease properties to potential tenants;

(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;

(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;

(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;

(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;

(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (18).

(19) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(20) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(21) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(22) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(23) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(24) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(25) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(26) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(27) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity.

37-51-102. (Effective February 1, 2021) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(2) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (4).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" includes:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" means an individual who for a salary, commission, or compensation of any kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;

(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;

(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;

(d) assists in creating or completing real estate lease contracts;

(e) procures tenants for owners of real estate located in this state;

(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

(g) makes the advertising of real property for lease available by public display to potential tenants;

(h) shows rental or lease properties to potential tenants;

(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;

(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;

(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;

(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;

(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (17).

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993; amd. Sec. 1, Ch. 565, L. 1995; amd. Sec. 144, Ch. 483, L. 2001; amd. Sec. 34, Ch. 492, L. 2001; amd. Sec. 25, Ch. 502, L. 2007; amd. Sec. 1, Ch. 211, L. 2015; amd. Sec. 2, Ch. 354, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 354 deleted definition of account; and made minor changes in style. Amendment effective February 1, 2021.

2015 Amendment: Chapter 211 inserted definition of asset management; in definition of broker in (d) at end deleted "and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease", inserted (g) related to asset management services, and in (h) substituted "this subsection (5)" for "subsections (4)(a) through (4)(f)"; in definition of negotiations substituted "includes" for "means"; substituted current definition of property manager for former definition that read: "'Property manager' includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 502 inserted definitions of supervising broker and supervising broker endorsement. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendments — Composite Section: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

Chapter 492 deleted former definition of broker associate that read: "'Broker associate' means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm"; deleted former definition of broker owner that read: "'Broker owner' means a broker who owns or has a financial interest in a real estate firm"; in definition of in-house buyer agent designate and in-house seller agent designate near beginning after "broker" deleted "associate"

and in two places after "broker" deleted "owner"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 565 inserted definitions of adverse material fact, buyer, buyer agent, buyer broker agreement, buyer subagent, dual agent, in-house buyer agent designate, in-house seller agent designate, listing agreement, negotiations, real estate transaction, seller, seller agent, seller subagent, and statutory broker; in definition of broker associate, after "associates", inserted "as an employee or independent contractor"; substituted salesperson for salesman as defined term; and made minor changes in style.

1993 Amendment: Chapter 142 inserted definition of property manager; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (3)(f) to include in definition of broker one who, for a fee, commission, or other compensation, refers a person to another to buy or sell real estate; and in (3)(g) changed subsection reference.

1989 Amendment: Throughout (3) made minor changes in grammar, phraseology, and style; in (3)(a), before first occurrence of "valuable consideration", deleted "a fee, commission, or other"; in (3)(b) substituted "disposition of real estate for consideration" for "disposition thereof at a salary or a fee, commission, or any other consideration"; in (3)(d), at beginning, inserted "makes the advertising, sale, lease, or other real estate information available by public display to potential buyers"; and inserted (3)(e) relating to locating or obtaining real estate.

1985 Amendment: Inserted (1) defining account.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (5); changed internal references to the department and the board.

Cross-References

Real property defined, 70-15-101.

Administrative Rules

ARM 24.210.301 Definitions.

Case Notes

Inability to Obtain Real Estate Financing — Return of Earnest Money Proper: Defendants secured prequalification on a real estate loan and, pursuant to the buy-sell agreement, paid \$53,000 in earnest money to purchase a condominium from plaintiff. The buy-sell agreement required the defendants to obtain financing for the remaining \$946,000 of the purchase price. However, the economic climate later changed and required the need for a larger down payment, which defendants did not have. Defendants notified plaintiff and requested the return of the earnest money, but plaintiff refused and filed a fraud action, contending that defendants falsely represented their borrowing status and failed to obtain the required financing. The District Court summarily dismissed the fraud claims because the purchase agreement provided that if conventional financing could not be obtained, the agreement was void. On appeal, plaintiff asserted that a genuine issue of material fact remained regarding the fraud claims, precluding summary judgment. The Supreme Court disagreed. It was undisputed that defendants applied for loans and were prequalified for financing, so defendants did not misrepresent their borrowing status. Summary dismissal of the fraud claims was appropriate as a matter of law, particularly because plaintiff had the opportunity to be heard on the issue. The District Court properly terminated the purchase agreement when defendants could not obtain financing, and plaintiff was correctly ordered to return the earnest money. *Mill Creek Ltd. Partnership v. Lodge*, 2010 MT 65, 355 Mont. 478, 228 P.3d 1144.

Agreement for Commission for Sale of Real Estate Not in Writing — Summary Judgment Denying Commission Affirmed: Andersen assisted in the sale of Schenk's ranch, and although Schenk allegedly told Andersen that Andersen would receive a commission on the sale, no listing agreement was ever reduced to writing. The District Court granted summary judgment for Schenk on the commission issue because 28-2-903 provides that a real estate agreement authorizing an agent to transact for a commission is invalid if it is not in writing. Even though Schenk allegedly told Andersen that a commission would be earned if the ranch sold for at least \$10 million, the sale price was \$6.5 million, so Andersen could not hold Schenk to an agreement that Schenk never made. Absent a genuine issue of material fact, summary judgment for Schenk was affirmed. *Andersen v. Schenk*, 2009 MT 399, 353 M 424, 220 P3d 675 (2009).

Simultaneous Representation of More Than One Buyer by Same Buyer Agent — Conflict of Interest: Because a buyer agent must act solely in the best interests of the buyer, a conflict of interest and

breach of obligation arises when a buyer agent simultaneously represents more than one buyer competing for the same property. *Zuazua v. Tibbles*, 2006 MT 342, 335 M 181, 150 P3d 361 (2006).

Officers of National Realty Corporation Not Brokers — Distinction Between "Fee" and "Commission": The officers of a national corporation that provides licensed brokers with catalogs, confidential listings, and referrals for a commission received only after a sale are not acting as "brokers". The forbidden act is the collection of a fee for advertisement of real estate for sale, and there is a distinction between a fee and a commission collected only after an actual sale. *Bradt v. Strout Realty, Inc.*, 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Questions of Law: Whether plaintiff was doing business in Montana within purview of statute governing foreign corporations or was carrying on business of a real estate broker were questions of law under 26-1-201. *Union Interchange, Inc. v. Parker*, 138 M 348, 357 P2d 339 (1960).

Attorney General's Opinions

License Not Required for Advertising Real Estate Information: The mere advertisement of a seller's property for a fee charged to the seller does not constitute an act regulated by real estate licensing law. Therefore, a person is not required to be licensed as a real estate broker or salesperson in order to obtain and organize information from potential sellers of real estate and to advertise the information to interested potential buyers for a fee charged to the seller only. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesperson in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

"Broker" and "Salesman" (now "Salesperson") — Scope of Definitions: The definitions of "broker" and "salesman" (now "salesperson") include individuals engaged in the business of renting or leasing real property, transacting interests in condominiums, providing lists of real property rentals, or arranging fee ownership time-sharing of real property. 40 A.G. Op. 54 (1984).

Computer Referral Service: Corporations operating a computer referral service for the purpose of promoting the sale, lease, or disposition of real estate within the state must comply with the licensing requirements of Title 37, ch. 51, part 3, in order to conduct operations in Montana. 34 A.G. Op. 23 (1971).

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker, a real estate salesperson, or a property manager. The licensing provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals

or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 251, L. 1997; amd. Sec. 2, Ch. 211, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 211 in (1) at end of first sentence inserted "or a property manager" and in second sentence before "provisions" inserted "licensing"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

1997 Amendment: Chapter 251 in (1), near middle of introductory clause after "section", substituted "must identify" for "shall constitute"; in (1)(b), near beginning before "special", deleted "duly executed"; inserted (1)(i) exempting a person who performs acts with respect to certain right-of-way transfers, condemnations, or governmental or tribal permits from licensure requirements; and made minor changes in style.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

1989 Amendments: Chapter 180, in (1)(b), after "executed", inserted "special or general", after "authorizing the" deleted "final consummation of any contract for the", and after "real estate" inserted language clarifying that attorney-in-fact exemption from licensing requirement does not apply to a person who regularly, consistently, or for commission or consideration participates in a real estate transaction for another in conjunction with business or to avoid licensing requirements.

Chapter 314 near beginning of (1), before "compensation", deleted "a commission or"; inserted (2) excepting general circulation print and broadcast media; and made minor changes in grammar and style.

Preamble: The preamble to Ch. 180, L. 1989, provided: "WHEREAS, the Legislature of the State of Montana finds that there presently is an attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman [now salesperson]; and

WHEREAS, the Legislature of the State of Montana finds that there is a potential use of the attorney-in-fact exemption by certain persons on a regular or consistent basis, thereby allowing those persons to avoid license requirements and negating adequate safeguards to the public; and

WHEREAS, the Legislature of the State of Montana finds the present attorney-in-fact exemption is limited to one based on a special power of attorney; and

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman [now salesperson] should be expanded to include a general power of attorney.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include one based on a general power of attorney and to limit all attorney-in-fact exemptions to occasional use under circumstances in which it is reasonably certain that adequate safeguards to the public are maintained."

Case Notes

Agent Seller — Bond Coverage: Members of the public have the right to rely upon express or implied representations of a licensed real estate agent or broker, although the agent is in fact the owner of the property being sold. Therefore, the surety is bound by such express or implied representations, and the bond must cover such judgments entered. *Twite v. W. Sur. Co.*, 176 M 286, 577 P2d 1219 (1978).

Advertising Not Dealing: Advertising for purpose of bringing buyers and sellers together is not dealing in real estate for license purposes. *Union Interchange, Inc. v. Parker*, 138 M 348, 357 P2d 339 (1960).

Isolated Transactions: Under former provision (sec. 3, Ch. 195, L. 1921, repealed by Ch. 250, L. 1963) defining real estate broker and setting forth classes exempted from Ch. 195, L. 1921, provision similar to present 37-51-401 had no application to one who acted as a broker in connection with a single transaction only. *Harbolt v. Hensen*, 78 M 228, 253 P 257 (1927).

Attorney General's Opinions

License Not Required for Advertising Real Estate Information: The mere advertisement of a seller's property for a fee charged to the seller does not constitute an act regulated by real estate licensing law. Therefore, a person is not required to be licensed as a real estate broker or salesperson in order to obtain and organize information from potential sellers of real estate and to advertise the information to interested potential buyers for a fee charged to the seller only. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

37-51-105. Sexual or violent offender registration information — responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

(1) the fact that the information may be maintained and by whom; and

(2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

History: En. Sec. 1, Ch. 99, L. 1999.

Compiler's Comments

Effective Date: Section 3, Ch. 99, L. 1999, provided that this section is effective on passage and approval. Approved March 17, 1999.

Part 2 Board of Realty Regulation

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1757.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Part Administrative Rules

Title 24, chapter 210, subchapter 1, ARM Organizational rule.

Title 24, chapter 210, subchapter 2, ARM Procedural rules.

Title 24, chapter 210, subchapter 8, ARM Property management regulation.

37-51-201. Presiding officer — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a presiding officer from among their number.

(2) The board shall adopt a seal of a design that it prescribes. Copies of records and papers kept by the department, certified by the presiding officer, and authenticated by the seal of the board must be received in evidence in courts with the same effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department:

(a) shall keep a record of proceedings, transactions, communications, and official acts of the board;

(b) is custodian of the records of the board; and

(c) shall perform other duties that the board, on the written request of two or more members of the board or at other times that the presiding officer, considers necessary.

(4) The presiding officer or an employee of the department hired to provide services to the board may not be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1; amd. Sec. 1409, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.210.411 Board meetings.

ARM 24.210.412 Record of minutes and hearings.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

Administrative Rules

ARM 24.210.301 Definitions.

Title 24, chapter 210, subchapter 6, ARM Brokers and salespersons.

ARM 24.210.604 Supervising broker endorsement.

Case Notes

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under 37-51-321, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of 37-51-321. On appeal, Sorini argued

that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. *In re Sorini*, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Compiler's Comments

Transition: Section 10, Ch. 497, L. 1979, provided: "All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 24, chapter 210, ARM Board of Realty Regulation.

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302, 37-51-303, 37-51-603, and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985; amd. Sec. 104, Ch. 429, L. 1995; amd. Sec. 10, Ch. 375, L. 2003; amd. Sec. 101, Ch. 467, L. 2005; amd. Sec. 14, Ch. 100, L. 2011; amd. Sec. 10, Ch. 80, L. 2015; amd. Sec. 1, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in (2) inserted references to 37-51-303 and 37-51-603; and made minor changes in style. Amendment effective February 17, 2017.

2015 Amendment: Chapter 80 in (4) at end substituted "37-1-306" for "37-1-131". Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2011 Amendment: Chapter 100 inserted (4) regarding use of certain education information to determine compliance with board requirements. Amendment effective October 1, 2011.

2005 Amendment: Chapter 467 in (3) near middle after "required" substituted "by the board" for "under 37-51-310". Amendment effective July 1, 2005.

2003 Amendment: Chapter 375 in (2) in exception clause inserted reference to subsection (3); and inserted (3) allowing board to require specific performance levels of licensees who take certain kinds of continuing education courses. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1995 Amendment: Chapter 429 substituted language in (2) prohibiting license examinations except as provided in 37-51-302 for language that read: "The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees"; and deleted (3) that read: "(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: Inserted (3) allowing Board to establish continuing education requirements.

Administrative Rules

ARM 24.210.604 Supervising broker endorsement.

ARM 24.210.660 Prelicensing education — salespersons and brokers.

ARM 24.210.661 through 24.210.677 Continuing education.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of \$25 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board".

37-51-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.210.401 Fee schedule.

ARM 24.210.801 Property management — fee schedule.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-51-209. Executive secretary — hiring and duties. The department may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

History: En. Sec. 1, Ch. 270, L. 1991; amd. Sec. 145, Ch. 483, L. 2001; amd. Sec. 35, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 near beginning after "department" deleted "of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 492 deleted former (2) that read: "(2) The person hired to be executive secretary:

(a) shall possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character"; and made minor changes in style. Amendment effective

October 1, 2001.

Effective Date: Section 3, Ch. 270, L. 1991, provided: "[This act] is effective July 1, 1991."

Part 3 Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

Part Case Notes

Intentional Violation Not Required to Recover Under Real Estate License Laws: Saville, the seller, and her realtor were sued by the purchasers of her property. The suit was based on negligent misrepresentation of the boundaries of the property by the realtor. Saville cross-claimed for indemnification against the realtor for any judgment obtained against her by the plaintiffs and was awarded indemnification by the jury. Hardin, the realtor, appealed, arguing that Saville was not an aggrieved person as contemplated by this chapter. The Supreme Court held that Saville did not have to show that the misrepresentation made by the realtor was a malicious or intentional violation of the chapter in order to be an aggrieved person under the chapter. *Cechovic v. Hardin & Associates, Inc.*, 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995), partially overruling *Van Ettinger v. Pappin*, 180 M 1, 588 P2d 988 (1978).

Part Attorney General's Opinions

Public Disclosure of Records: The Board of Real Estate (now Board of Realty Regulation), when requested, must disclose the status of any real estate licensee, whether any disciplinary action has been taken against that individual, and, if so, the reason. Public access to information relating to complaints or to allegations and to other files on individual licensees is left to the discretion of the Board, within the guidelines of this opinion. All minutes, except those minutes of a meeting closed by the presiding officer pursuant to 2-3-203, must be open to public inspection. 37 A.G. Op. 107 (1978).

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker's license and a supervising broker endorsement.

(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

(4) (a) For purposes of this section and whether or not the person is physically located in Montana, "within this state" or similar terminology includes:

(i) marketing or dealing with any interest in real estate or a business opportunity involving an interest in real estate that is situated in the state of Montana; or

(ii) conducting or attempting to conduct or solicit real estate business with residents of the state of Montana.

(b) Unless exempted from this chapter, any single act described within the definitions of "broker" or "salesperson" is sufficient to constitute engaging in the business of a real estate broker or salesperson.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 26, Ch. 502, L. 2007; amd. Sec. 3, Ch. 211, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 211 inserted (4) clarifying "within the state", "broker", and "salesperson". Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 502 inserted (2) providing that it is unlawful to supervise salespersons without a broker's license and supervising broker endorsement; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

1989 Amendment: Throughout (2) substituted "licensee" for "real estate broker" or "broker"; and made minor changes in phraseology.

1987 Amendment: In (2) deleted reference to subsection (2) of 37-51-102.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Administrative Rules

ARM 24.210.601 General license administration requirements.

Case Notes

No Recovery When Seller Owns Property: The plaintiffs sought to recover for a real estate loss from the state's real estate recovery account. The plaintiffs had been part of a partnership in which the general partner had fraudulently sold some of his own property in a manner that caused the partnership to lose money. The Supreme Court held that when an owner sells his own property, no real estate license is required and therefore under the terms of the statute, no recovery is available from the state's fund. (Decided prior to 1989 amendments.) *Yellowstone Valley Properties v. Bd. of Realty Regulation*, 243 M 241, 794 P2d 341, 47 St. Rep. 1209 (1990).

Advice to Broker by Nonlicensed Corporate Employee: The act of a nonlicensed employee of a national corporation, whose job was to procure brokers to enter into contracts with the corporation, in accompanying a broker to get a real estate listing and in advising the broker how to set up a "net listing" did not put the corporation out of compliance with this section. The employee was not an "officer" of the

corporation in the usual sense, and his actions did not amount to the negotiation of a listing. *Bradt v. Strout Realty, Inc.*, 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Licensing of Corporate Officers: It is not required that every officer of a corporation be licensed, only those officers who "perform the functions of a broker". By way of illustration, the president of a Montana corporation who himself did no real estate business of any kind but simply managed the office and general corporate affairs would not need to be licensed. The purpose of Montana law is to require that the buying and selling of real estate be handled by persons who are licensed. *Bradt v. Strout Realty, Inc.*, 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Advertising Not Dealing: Advertising for purpose of bringing buyers and sellers together is not dealing in real estate for license purposes. *Union Interchange, Inc. v. Parker*, 138 M 348, 357 P2d 339 (1960).

Attorney General's Opinions

City Licensing of Real Estate Firms: A city may not require real estate firms to obtain business licenses. 37 A.G. Op. 71 (1977).

Corporate Officers — Sale of Real Estate: A corporation operating computer referral services to real estate brokers may conduct its business in Montana only if all corporate officers involved in the actual operation are licensed as real estate brokers. 34 A.G. Op. 23 (1971).

37-51-302. Broker's or salesperson's license — qualifications of applicant — supervising

broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or a salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed between 60 and 80 classroom or equivalent hours, as set by the board. The hours must be in a course of study approved by the board and taught by instructors approved by the board. The applicant must satisfactorily pass an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of a licensed broker with a supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to the applicant.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's license.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 36, Ch. 492, L. 2001; amd. Sec. 27, Ch. 502, L. 2007; amd. Sec. 1, Ch. 79, L. 2011; amd. Sec. 2, Ch. 27, L. 2017; amd. Sec. 2, Ch. 51, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 51 in (4)(a)(iv) in first sentence substituted "between 60 and 80" for "60", after "hours" inserted "as set by the board", and substituted second and third sentences for former text that read: "in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course"; and made minor changes in style. Amendment effective March 7, 2019.

2017 Amendment: Chapter 27 in (5) substituted current text concerning issuance of a license for former text that read: "(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes"; in (6)(c) at end substituted "license" for "pocket card"; and made minor changes in style. Amendment effective February 17, 2017.

2011 Amendment: Chapter 79 in (4)(b) inserted "with a supervising broker endorsement"; deleted former (6)(a)(i) and (6)(a)(ii) that read: "(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons"; inserted (6)(c) authorizing the board to adopt rules; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

2007 Amendment: Chapter 502 inserted (6) providing that an applicant must meet education and experience requirements established by board, that a broker licensed prior to October 1, 2007, is entitled to an endorsement but is subject to endorsement renewal requirements, that continuing education requirements for an endorsement may not be in addition to requirements for a broker, and that the board may not assess a fee for obtaining or renewing an endorsement; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendment: Chapter 492 deleted former (6) that read: "(6) A broker's license must indicate whether the broker is a broker owner or a broker associate"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson" or "salesperson's" for "salesman" or "salesman's".

1985 Amendment: Inserted (2)(e) requiring applicant for broker's license to furnish evidence of completion of required course of study; and inserting (4)(a)(iv) requiring applicant for salesman's license to furnish evidence of completion of required course of study.

1981 Amendment: Deleted former subsection (2)(a) requiring U.S. citizenship.

Citizenship Qualifications — Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Administrative Rules

Title 24, chapter 210, subchapter 6, ARM Brokers and salespersons.

ARM 24.210.604 Supervising broker endorsement.

Case Notes

Charges of Incompetence and Untrustworthiness Not Determined by Issuance of Broker's License: A complaint was filed against Sorini, a licensed real estate salesperson, for violations of 37-51-321 relating to her competence and trustworthiness. After charges were filed, she was allowed to sit for the real estate broker's examination and was subsequently issued a broker's license. On appeal, she argued that the question of her competence or trustworthiness became moot because the Board of Realty Regulation was required to consider those characteristics before issuing her a broker's license under this section. The Supreme Court noted that while the Board is required by statute to determine that an applicant for a broker's license meets certain standards, in the absence of evidence that the Board considered the pending charges, the determination that she met the standards of conduct was not dispositive of the pending charges against her. The court found no such evidence in the record and concluded that the issue of competence and trustworthiness as raised by the charges was not determined by the issuance of the real estate broker's license. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination.

(2) (a) The examination for a salesperson's license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker's license must be of a more exacting nature and scope and more stringent than the examination for a salesperson's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 7, Ch. 196, L. 2003; amd. Sec. 102, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end after "examination" deleted "prescribed by or under the supervision of the board. The examination must be given at least once each 6 months and at places within the state that the board prescribes." Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (1) near middle of first sentence substituted "an examination prescribed" for "a written examination prepared"; at end of (2)(a) inserted "subject portions that the board determines by rule to be appropriate"; deleted former (2)(a)(i) and (2)(a)(ii) that read: "(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter"; near middle of (2)(b) after "examination" deleted "(2)(a)(i) or (2)(a)(ii)"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson's" for "salesman's".

1981 Amendment: Deleted former subsection (4) requiring an applicant, following two failures, to wait 6 months before another reexamination.

Administrative Rules

ARM 24.210.602 Examination.

ARM 24.210.611 Application for license — salesperson and broker.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. Repealed. Sec. 9, Ch. 27, L. 2017.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 103, Ch. 467, L. 2005; amd. Sec. 2, Ch. 79, L. 2011.

37-51-306. Transactions with nonresidents and with nonlicensed brokers, salespersons, or property managers — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker, a licensed salesperson, or a licensed property manager. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991; amd. Sec. 105, Ch. 429, L. 1995; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 170, L. 1999; amd. Sec. 4, Ch. 211, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 211 in (1) at end of first sentence inserted "or a licensed property manager"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

1999 Amendment: Chapter 170 in (1) near middle of second sentence after "another state" inserted "or jurisdiction". Amendment effective March 24, 1999.

1995 Amendments: Chapter 429 deleted third sentence in (1) that read: "This subsection does not limit the next subsection"; deleted former (2) that read: "(2) A person who is licensed as a broker or a salesman in another state may obtain a license as a broker or as a salesman in this state by complying with this chapter and with the rules of the board. However, this section applies only to licensees of other states that offer the same privileges to the licensees of this state. A nonresident licensee need not maintain a place of business in this state. The board may:

(a) authorize the department to license a nonresident without examination if he files with the department an authorized or certified copy of the license issued in another state and pays to the department the same license fee as is required for obtaining a license in this state;

(b) refuse to authorize the department to issue a license to an applicant who is not a resident of this state; and

(c) enter into reciprocal agreements with other states"; and made minor changes in style.

Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: Two times in (2) and three times in (3) substituted reference to licensee for reference to broker; substituted first sentence of (2) relating to licensure of licensed broker or salesman from another state and to compliance with Board rules for former first sentence that read: "A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter"; near beginning of (2)(a), after "nonresident", deleted "broker", near middle, after "issued", deleted "to the nonresident for conducting this business", and near end, before "license", deleted "broker's"; in (2)(b), before "license", deleted "broker's"; inserted (2)(c) allowing reciprocal agreements; near end of second sentence of (3) substituted "licensee" for "nonresident broker and his salesman or agent"; and made minor changes in style. Amendment effective February 6, 1991.

Preamble: The preamble attached to Ch. 11, L. 1991, provided: "WHEREAS, it has been determined that it is in the best interest of Montana real estate licensees to be able to obtain licenses in other states and to allow the Board of Realty Regulation to enter into reciprocal licensing agreements with other states."

Cross-References

Rules for determining residency, 1-1-215.

Administrative Rules

ARM 24.210.616 Waiver of experience requirement for broker licensing prohibited.

ARM 24.210.629 Reciprocity.

Case Notes

Venue of Action Against Nonresident: Nonresident defendant who had filed consent referred to by statute could be sued in any county of Montana in which plaintiff resided, but two other defendants, appearing separately by motion for change of venue, had right to have venue changed to county of their residence. *Young v. Savage*, 137 M 174, 351 P2d 227 (1960).

Attorney General's Opinions

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesperson in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-307. Repealed. Sec. 13, Ch. 375, L. 2003.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

37-51-308. Broker's office — display — notice to department of change of address. (1) A licensed broker shall maintain a designated physical address where the original license or a copy of the current license of the broker must be prominently displayed. The designated address of the broker must be indicated on the broker's license.

(2) (a) If the broker is a supervising broker, the broker shall prominently display at the broker's designated physical address a copy of the current license of each salesperson associated or under contract with the broker.

(b) The name of the broker and the designated address of the broker must be indicated on the salesperson's license.

(3) In case of removal from the designated address, the broker shall notify the department before removal or within 10 days after removal, designating the new physical address and paying the required fee. After receipt of the information required under this subsection, the department shall issue a license to the broker for the new location for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 3, Ch. 79, L. 2011; amd. Sec. 15, Ch. 100, L. 2011; amd. Sec. 3, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in (1) in first sentence substituted "original license or a copy of the current license" for "original license" and after "the broker" deleted "and, if the broker is a supervising broker, the original license of each salesperson associated or under contract with the broker"; inserted (2) requiring broker to display license of salesperson associated with the broker and requiring salesperson's license to include name and address of broker; in (3) in last sentence after "license" inserted "to the broker"; and made minor changes in style. Amendment effective February 17, 2017.

2011 Amendments — Composite Section: Chapter 79 in (1) in second sentence near middle inserted "if the broker is a supervising broker"; in (2) after "paying the required" substituted current text for "fee, whereupon a license for the new location must be issued for the unexpired period"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 100 in (1) in first sentence at beginning substituted "A licensed broker" for "A resident licensed broker", after "shall maintain a" substituted "designated physical address where" for "fixed office in this state", and at end deleted "in the office" and in second sentence substituted current language for "The address of the office and any branch office shall be designated on the broker's license"; in (2) substituted "broker" for "licensee" and "physical address" for "location of this office"; and made minor changes in style. Amendment effective October 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

37-51-309. Broker — salesperson — for-sale-by-owner personal transactions of salesperson — notice to department of change of association. (1) A salesperson may not be associated with, be under contract to, or perform services for more than one supervising broker, except on a temporary basis as provided in 37-51-302.

(2) (a) If a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing and pay the required fee.

(b) The successor supervising broker shall notify the department in writing of acceptance of the salesperson.

(c) After the department receives written acceptance of the salesperson from the successor supervising broker, the department shall issue a new license to the salesperson and a new endorsement to the supervising broker. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker.

(3) (a) If a licensed salesperson chooses to change association or contractual relationship from the salesperson's supervising broker, but the salesperson does not have another supervising broker who has accepted supervision of the salesperson, the salesperson shall notify the department promptly in writing, at which time the salesperson's license will automatically be put on inactive status.

(b) When the conditions in subsection (3)(a) apply, the department may not charge a fee for the change in status.

(c) The salesperson may not practice during a time when the salesperson has no supervising broker or when the salesperson's license is on inactive status.

(4) A supervising broker who wishes to terminate supervision of a salesperson shall notify the salesperson in advance or concurrently with notification to the board. Termination of supervision by the supervising broker is not effective under this subsection until the supervising broker has notified both the salesperson and the board.

(5) Only one license issued to a salesperson is in effect at one time.

(6) (a) The provisions of this chapter do not prohibit a salesperson from engaging in for-sale-by-owner personal transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision or provide any training for a salesperson with respect to for-sale-by-owner personal transactions of the salesperson.

(b) A supervising broker or real estate firm is not responsible or liable for the for-sale-by-owner personal transactions of a salesperson.

(c) Prior to entering into a for-sale-by-owner personal transaction, the salesperson shall disclose in writing to the other party that the transaction is a for-sale-by-owner personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's supervising broker or real estate firm.

(d) A supervising broker or real estate firm is not responsible or liable for the failure of a salesperson to provide the disclosure required in subsection (6)(c).

(7) For the purposes of this section, "for-sale-by-owner personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 294, L. 2001; amd. Sec. 37, Ch. 492, L. 2001; amd. Sec. 4, Ch. 79, L. 2011; amd. Sec. 1, Ch. 414, L. 2013; amd. Sec. 4, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in (1) after "under contract to" inserted "or perform services for" and after "broker" deleted "or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson"; in (2) substituted current text concerning requirements for a salesperson to change association from one supervising broker to another, notification requirements for the successor supervising broker, and requirements for the issuance of a new license for former text that read: "(2) When a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation"; inserted (3) concerning placement of salesperson's license on inactive status; inserted (4) concerning termination of supervision of a salesperson by a supervising broker; and made minor changes in style. Amendment effective February 17, 2017.

2013 Amendment: Chapter 414 throughout section in six places substituted references to for sale by owner personal transaction for references to personal transaction; in (4)(b) after "broker" inserted "or real estate firm" and after "salesperson" deleted "if: (i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and (ii)"; in (4)(c) substituted "salesperson shall disclose" for "salesperson discloses"; inserted (4)(d) concerning liability for failure to provide disclosure; in (5) substituted "section" for "part"; and made minor changes in style. Amendment effective May 6, 2013.

2011 Amendment: Chapter 79 in (1) substituted "supervising broker" for "licensed broker", near middle inserted "with a supervising broker endorsement", and at end inserted exception; in (2) in second sentence in two places and in third sentence, in (4)(a) near middle, in (4)(b) near beginning, and in (4)(b)(ii) near end inserted "supervising" before "broker"; in (2) in first sentence substituted "supervising broker" for "licensed broker"; in (4)(b) at end inserted "if"; inserted (4)(b)(i) regarding supervising brokers; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

2001 Amendments — Composite Section: Chapter 294 inserted (4) providing that provisions of chapter do not prohibit salesperson from engaging in personal transactions; inserted (5) defining personal transaction; and made minor changes in style. Amendment effective April 20, 2001.

Chapter 492 in (1) near middle after "more than one licensed broker" deleted "owner"; in (2) in first sentence near end after "and return the salesperson's license" deleted "and pocket card", in second sentence in two places after "broker" deleted "owner", and in third sentence after "the salesperson shall surrender the salesperson's license" substituted "to the salesperson's broker" for "and pocket card to his broker owner"; deleted former (4) that read: "(4) A broker associate may not be associated with more than one broker owner"; and made minor changes in style. Amendment effective October 1, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson" or "salesperson's" for "salesman" or "salesman's".

Administrative Rules

ARM 24.210.601 General license administration requirements.

37-51-310. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987; amd. Sec. 45, Ch. 492, L. 1997; amd. Sec. 2, Ch. 170, L. 1999; amd. Sec. 48, Ch. 271, L. 2003.

37-51-311. Fees — deposit of fees. The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985; amd. Sec. 106, Ch. 429, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (2) that read: "(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (2) near middle of second sentence, after "need not", substituted remainder of sentence for "file a bond with the department as provided in 37-51-304"; and deleted former (3) that read: "The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "following" after "The" at the beginning of (1); inserted "prescribed by the board" after "fees" near the beginning of (1); deleted subsections (1)(a) through (1)(k) which specified the maximum fees for various licenses; substituted "charge an annual fee" for "charge a \$5 annual fee" in the first sentence of (2); and deleted "within the limits set by this section" after "adopt a schedule of fees" at the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Recovery account assessment fee, 37-51-502.

Administrative Rules

ARM 24.210.401 Fee schedule.

ARM 24.210.625 Inactive to active license status.

37-51-312. No taxation by municipality. (1) A license fee or license tax may not be imposed on a real estate broker or salesperson as a condition to the practice of the broker's or salesperson's profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality's or other political subdivision's jurisdiction.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4); amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 400, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 400 in (1) near beginning after "license fee or" inserted "license", after "salesperson" inserted "as a condition to the practice of the broker's or salesperson's profession", and at end inserted "including a local government with self-governing powers"; inserted (2) regarding imposition of general business license fee or tax; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner substituted "salesperson" for "salesman".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

City Licensing: A city can license local aspects of interstate commerce if not a direct burden or impediment; but, enterprises preempted by state regulation are not subject to city licensing. 37 A.G. Op. 100 (1977).

City Licensing of Real Estate Firms: A city may not require real estate firms to obtain business licenses. 37 A.G. Op. 71 (1977).

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent", and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the ability of the buyer to perform on any purchase offer;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

History: En. Sec. 3, Ch. 565, L. 1995; amd. Sec. 3, Ch. 170, L. 1999; amd. Sec. 1, Ch. 389, L. 2005; amd. Sec. 1, Ch. 118, L. 2007; amd. Sec. 5, Ch. 211, L. 2015; amd. Sec. 5, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in (5)(b) at end substituted "ability of the buyer to perform on any purchase offer" for "property". Amendment effective February 17, 2017.

2015 Amendment: Chapter 211 inserted (10) related to written agreements; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 118 in (2)(a) and (4)(a) at end inserted exception clause; in (2)(c) at end inserted "with a buyer or another seller"; in (4)(c) at end inserted "with another buyer or a seller"; inserted (11)(b)(ii) concerning disclosure of adverse material facts; and made minor changes in style. Amendment effective April 3, 2007.

2005 Amendment: Chapter 389 inserted (8) providing that except for licensing requirements for property managers, a licensed real estate broker or salesperson is only required to meet requirements of part 6 and board rules governing a licensed property manager in management of properties for owners; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 170 in (1) in first sentence after "intended to" inserted "replace the duties of agents as provided elsewhere in state law and" and inserted second sentence defining terms; and made minor changes in style. Amendment effective March 24, 1999.

Case Notes

Professional Negligence — Expert Testimony Not Required to Establish Standard of Care — Statutory Standard Applicable: The plaintiff sued his real estate agent after land for which he had entered into a buy-sell agreement with a landowner was sold to a different purchaser, who had also been represented by the same real estate agent. The plaintiff sued the defendant for professional negligence; however, the District Court granted summary judgment in favor of the defendant after the plaintiff disclosed he did not intend to call an expert witness on a real estate agent's duties. On appeal, the Supreme Court reversed, holding that expert testimony on a real estate agent's duties may not have been necessary given that 37-51-313 sets forth those duties. The court concluded that the plaintiff had presented sufficient evidence for the claims to be presented to a jury and remanded the matter for further proceedings. *Wagner v. MSE Technology Applications, Inc.*, 2016 MT 215, 384 Mont. 436, 383 P.3d 727.

No Duty by Seller's Agent to Inspect or Discover Adverse Facts: The requirement to "ascertain all pertinent facts" found in 37-51-313(13) is not a restatement of common law duties and does not require a seller's agent to inspect property or verify a seller's statements. Rather, it is a duty to disclose any adverse facts that the seller's agent is aware of and to disclose when the seller's agent has no personal

knowledge of the veracity of the seller's statements. *Watterud v. Gilbraith*, 2015 MT 288, 381 Mont. 218, 358 P.3d 891.

Simultaneous Representation of More Than One Buyer by Same Buyer Agent — Conflict of Interest: Because a buyer agent must act solely in the best interests of the buyer, a conflict of interest and breach of obligation arises when a buyer agent simultaneously represents more than one buyer competing for the same property. *Zuazua v. Tibbles*, 2006 MT 342, 335 M 181, 150 P3d 361 (2006).

Professional Negligence — Expert Testimony Required to Establish Standard of Care — Statutory Standard Inapplicable: May sued a Bozeman real estate company and real estate agent over the sale of his service station and alleged professional negligence on the part of the agent as one of his claims for relief. The Supreme Court affirmed the District Court's holding that the defendants were entitled to summary judgment because May had not listed an expert witness to give expert testimony to establish the standard of care for the agent. The Supreme Court distinguished *Durbin v. Ross*, 276 M 463, 916 P2d 758 (1996), and relied upon *Newville v. St.*, 267 M 237, 883 P2d 793 (1994), reasoning that real estate sales is among the professions requiring special knowledge and that a lay jury could not pass judgment on the question of whether an individual correctly used that knowledge without the assistance of expert testimony. The Supreme Court also held that inasmuch as this section had not been enacted until after the instant case arose, the statute could not be relied on to provide express duties of the agent. *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000). However, see *Wagner v. MSE Technology Applications, Inc.*, 2016 MT 215, 384 Mont. 436, 383 P.3d 727, in which the Supreme Court ruled that expert testimony may not be necessary for a claim of professional negligence because those duties are now outlined in statute.

37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A

PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

- (c) a definition of "adverse material fact";
- (d) identification of the type of relationship disclosed;
- (e) the signature of the seller or the buyer to whom the disclosure is given;
- (f) the signature of the broker or the salesperson making the disclosure; and
- (g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.

(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

(10) Any disclosure required by this section may contain the following information:

- (a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;
- (b) a consent to the creation of a dual agency relationship;
- (c) other definitions in or provisions of this chapter; and
- (d) other information not inconsistent with the information required in the disclosure.

(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

History: En. Sec. 4, Ch. 565, L. 1995; amd. Sec. 4, Ch. 170, L. 1999; amd. Sec. 2, Ch. 389, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 389 inserted (8) requiring broker or salesperson managing properties for owners to disclose to all customers and clients the contractual relationship of broker or salesperson; inserted (9) providing that broker or salesperson acting only as property manager is not required to provide another relationship disclosure and that required contractual relationship disclosure is sufficient disclosure; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 170 in (2)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the seller agent is acting as a seller subagent, at the time negotiations commence"; inserted (2)(b) regarding disclosure of a broker acting as a seller subagent; in (2)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; in (3)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence"; inserted (3)(b) regarding disclosure of a broker acting as a buyer subagent; in (3)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; inserted (4)(a) and (4)(b) regarding initial and subsequent disclosure; in (5) in first sentence after "agent who" inserted "contemplates becoming or" and after "disclose the" inserted "potential or actual" and inserted second sentence regarding disclosure by an agent who contemplates becoming a dual agent; substituted language in (6) setting out the form of initial disclosure for former text that read: "(6) A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the following information:

(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.

Your seller agent is obligated to you as follows:

(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;

(2) to obey promptly and efficiently all lawful instructions of the seller;

(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the seller's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;

(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the listing agreement."

(b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.

A seller agent is obligated to a buyer as follows:

(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;

(2) to deal in good faith with the buyer; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:

(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;

(2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;

(2) to deal in good faith with the seller; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

A statutory broker is obligated to the parties as follows:

(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.

(2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;

(3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and

(4) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:

(1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;

(2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

(3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;

(5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;

(6) to comply with all applicable federal and state laws, rules, and regulations;

(7) to carry out the terms of the buyer broker agreement; and

(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any

confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:

- (a) that the buyer is willing to pay more than the buyer has offered for the property;
- (b) that the seller is willing to accept less than the asking price for the property;
- (c) factors motivating the buyer to buy or the seller to sell; and
- (d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent"; inserted (7) setting out form of subsequent disclosure; inserted (8) setting out information permitted in any required disclosure; and made minor changes in style. Amendment effective March 24, 1999.

Case Notes

Alleged Failure to Disclose Agency Relationship — Resolution of Conflicting Evidence — Alternative Findings Not Required: Garrison purchased property on Flathead Lake through Averill, a real estate broker. Later, Garrison filed suit against Averill and the seller of the property, alleging that he, Garrison, considered Averill his agent and relied on Averill to represent his interests and that Averill was aware of that reliance. Garrison also argued that the District Court ignored testimony from his expert to the effect that Averill breached the standard of care by failing to document his disclosure to Garrison of his agency relationship with the seller. Garrison also alleged that Averill was negligent and that the negligence caused Garrison's damages. The Supreme Court pointed out testimony in the record from Averill's expert and concluded that the District Court had not ignored the testimony presented by Garrison but simply resolved conflicting evidence against Garrison. Citing *Yellowstone Basin Properties, Inc. v. Burgess*, 255 M 341, 843 P2d 341 (1992), the Supreme Court held that just because there is evidence in the record on which the District Court could have based certain findings of fact does not require the District Court to make those findings. *Garrison v. Averill*, 282 M 508, 938 P2d 702, 54 St. Rep. 454 (1997).

37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

- (a) the party has actual knowledge of the misrepresentation; or
 - (b) the agent or subagent is repeating a misrepresentation made by the party.
- (2) A broker is not liable for a misrepresentation made by the broker's subagent unless:
- (a) the broker has actual knowledge of the misrepresentation;
 - (b) the subagent making the misrepresentation is an employee of the broker and not an independent contractor; or
 - (c) a broker or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

History: En. Sec. 5, Ch. 565, L. 1995; amd. Sec. 38, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 in (2) in introductory clause after "made by the broker's" deleted "broker associate or"; in (2)(b) at beginning substituted "the subagent" for "a broker associate" and at end after "independent contractor" deleted "or subagent"; and in (2)(c) near beginning after "a broker" deleted "associate". Amendment effective October 1, 2001.

37-51-316 through 37-51-320 reserved.

37-51-321. (Temporary) Unprofessional conduct — sanction of license. (1) The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection (1)(a).

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(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;

(e) failing to account for or to remit money coming into the licensee's possession when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) as a salesperson, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) unless exempted, paying a commission in connection with 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;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker, a salesperson, or a property manager;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the licensee's contractual relationship while managing properties for owners.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(3) The license of a broker, salesperson, or property manager who violates this section may be sanctioned as provided in 37-1-312.

37-51-321. (Effective November 1, 2020) Unprofessional conduct — sanction of license. (1)

The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection (1)(a).

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(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;

(e) failing to account for or to remit money coming into the licensee's possession when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) as a salesperson, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) unless exempted, paying a commission in connection with 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;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker, a salesperson, or a property manager;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners;

(v) failing to disclose to all customers and clients, including owners and tenants, the licensee's contractual relationship while managing properties for owners; or

(w) failing to maintain continuous professional liability insurance coverage that meets the requirements of 37-51-325.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(3) The license of a broker, salesperson, or property manager who violates this section may be sanctioned as provided in 37-1-312.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993; amd. Sec. 2, Ch. 565, L. 1995; amd. Sec. 5, Ch. 170, L. 1999; amd. Sec. 2, Ch. 294, L. 2001; amd. Sec. 3, Ch. 389, L. 2005; amd. Sec. 6, Ch. 27, L. 2017; amd. Sec. 2, Ch. 358, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 358 inserted (1)(w) concerning failing to maintain continued professional liability insurance; and made minor changes in style. Amendment effective November 1, 2020.

2017 Amendment: Chapter 27 in (1) in introductory clause substituted current text concerning practices that constitute unprofessional conduct for former text that read: "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"; in (1)(e) substituted "licensee's" for "broker's or salesperson's"; in (1)(l) at beginning inserted "as a broker or a salesperson"; in (1)(n) at beginning inserted "as a salesperson"; in (1)(p) at beginning inserted "unless exempted"; in (1)(s) at end inserted "or a property manager"; in (1)(v) substituted "licensee's" for "broker's or salesperson's"; in (3) substituted current text concerning sanctioning of license of broker, salesperson, or property manager for former text that read: "The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)"; and made minor changes in style. Amendment effective February 17, 2017.

2005 Amendment: Chapter 389 inserted (1)(u) providing for revocation or suspension of real estate broker's or salesperson's license for failing to meet requirements of part 6 or board rules governing property management of properties for owners; inserted (1)(v) providing for revocation or suspension of real estate broker's or salesperson's license for failing to disclose to customers and clients, including owners and tenants, contractual relationship while managing properties for owners; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 294 in (1)(r) substituted "supervising broker" for "registered broker" and at end inserted exception clause; and made minor changes in style. Amendment effective April 20, 2001.

1999 Amendment: Chapter 170 in (1)(a) near middle of second sentence after "broker's own name" substituted "or" for "in the franchise name or logotype or does not conspicuously display, on the

broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and" and at end inserted "in the franchise name or logotype". Amendment effective March 24, 1999.

1995 Amendment: Chapter 565 in (1)(l), after "real property", substituted "directly with a seller or buyer" for "directly with an owner or lessee", substituted "seller or buyer" for "owner", and after "outstanding" substituted "listing agreement or buyer broker agreement" for "contract"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 246 at end of second sentence of (1)(a) inserted "and the trade name, if any, by which the office is known"; in (1)(g), after "transaction", inserted "including failing to disclose in advertisements for real property the person's dual capacity as broker and principal"; inserted (2) requiring a broker or salesperson to have a signed listing agreement from the property owner prior to openly advertising the property and providing a penalty; and made minor changes in style.

Administrative Rules

ARM 24.210.641 Unprofessional conduct.

ARM 24.210.646 Disciplinary guidelines — public notice.

Case Notes

Expert Testimony Unnecessary on Issue of Standard of Care — District Court Not Directed as to All Expert Testimony on All Claims: Durbins purchased a home through the seller's realtors. Contrary to the representations of the realtors, Durbins discovered that the property had no legal septic system, that the household water was unsafe to use for any purpose, and that the access road was located on the neighbor's property. Durbins brought an action against the realtors, alleging negligent misrepresentation, actual and constructive fraud, and statutory violations involving the Montana real estate licensing laws and the Montana Unfair Trade Practices and Consumer Protection Act of 1973. The defendants sought and achieved dismissal of the case on the grounds that Durbins failed to prove through expert testimony the applicable standard of care of the realtors. The Supreme Court held that expert witnesses were unnecessary to prove a standard of care. Durbins also asked that the Supreme Court direct the District Court to exclude testimony of any expert witnesses on any claim asserted by the Durbins. The Supreme Court noted that the District Courts have great latitude concerning the admissibility of evidence and that the District Court would in any event have to comply with Rule 702, M.R.Ev. (Title 26, ch. 10). The Supreme Court therefore declined to direct the District Court as requested by the Durbins. *Durbin v. Ross*, 276 M 463, 716 P2d 758, 53 St. Rep. 471 (1996).

Board of Realty Regulation Not Empowered to Award Damages — Complaint to Board Inadequate Notice of Legal Claim: The Board of Realty Regulation may only revoke or suspend a broker's license and has no power to award damages for negligence or fraud. Further, because the Board is not designated by law as a quasi-judicial board pursuant to 2-15-124, a complaint to the Board does not give adequate notice of the existence of a legal claim. *Erickson v. Croft*, 233 M 146, 760 P2d 706, 45 St. Rep. 1379 (1988).

No Duty to Disclose What Seller Already Knows: On the question of a real estate agent's duty to inform sellers of the buyer's offer to secure the balance of the purchase price for property with bonds encumbered by margin loans, the Supreme Court noted that the sellers' attorneys were aware of this fact from buyer's initial proposals. The real estate agent had no duty to disclose what the sellers already knew. *Bills v. Hannah, Inc.*, 230 M 250, 749 P2d 1076, 45 St. Rep. 179 (1988).

No False Representations by Real Estate Agent — Dismissal Proper: Real estate agent was properly dismissed from an action involving fraudulent misrepresentations of income by the seller of a business when it was found the agent concealed nothing from buyers and had no knowledge of and made no representations to buyers concerning business profitability. *Selvidge v. McBeen*, 230 M 237, 750 P2d 429, 45 St. Rep. 168 (1988).

Charges of Incompetence and Untrustworthiness Not Determined by Issuance of Broker's License: A complaint was filed against Sorini, a licensed real estate salesperson, for violations of this section relating to her competence and trustworthiness. After charges were filed, she was allowed to sit for the real estate broker's examination and was subsequently issued a broker's license. On appeal, she argued that the question of her competence or trustworthiness became moot because the Board of Realty Regulation was required to consider those characteristics before issuing her a broker's license under

37-51-302. The Supreme Court noted that while the Board is required by statute to determine that an applicant for a broker's license meets certain standards, in the absence of evidence that the Board considered the pending charges, the determination that she met the standards of conduct was not dispositive of the pending charges against her. The court found no such evidence in the record and concluded that the issue of competence and trustworthiness as raised by the charges was not determined by the issuance of the real estate broker's license. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under this section, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of this section. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Broker Malpractice — Failure to Provide Copy of Assignment: A real estate agent was found by the trial court to have been culpable of broker malpractice along with her broker in failing to supply purchasers, who had assigned their purchase interest to the agent and broker, with a copy of the assignment. However, the Supreme Court held that the agent was in no position to give the purchasers a copy of the assignment because not all the purchasers signed the assignment at the same time. The agent turned the partially signed document over to the broker for the remaining purchaser to sign. Hoefler v. Wilckens, 210 M 218, 684 P2d 468, 41 St. Rep. 1019 (1984).

Aggrieved Persons — Persons Sustaining Damages — Waiver of Damages: Appellants do not qualify as aggrieved persons or persons sustaining damages for an alleged violation of 37-51-321(9) when suing a broker over an alleged defect in an easement purportedly conveyed to the appellants because appellants failed to first establish the nonexistence of the easement in question. Secondly, and more importantly, appellants waived any claim for damages by closing the transaction after they became aware of the alleged defect in the easement. Van Ettinger v. Pappin, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978).

Agent Seller — Bond Coverage: Members of the public have the right to rely upon express or implied representations of a licensed real estate agent or broker, although the agent is in fact the owner of the property being sold. Therefore, the surety is bound by such express or implied representations, and the bond must cover such judgments entered. Twite v. W. Sur. Co., 176 M 286, 577 P2d 1219 (1978).

Misrepresentation Action in Real Estate Sale: The court properly awarded summary judgment to defendants in a misrepresentation action under the Montana Real Estate License Act of 1963 (Ch. 250, L.

1963) when the record indicated that no fraudulent representations were made by defendants and the Statute of Limitations had expired, notwithstanding the "discovery" exception. *Anderson v. Applebury*, 173 M 411, 567 P2d 951 (1977).

Fraudulent Listing: Broker who obtained exclusive listing through a discharged real estate salesman and assured seller that he would "get rid" of a prior exclusive listing of same property which seller had made with another broker was in violation of this section. *Johnson v. Doran*, 167 M 501, 540 P2d 306 (1975).

Wide Range of Evidence Allowed in Fraud Cases: Where broker induced sellers to sign listing agreement coupled with option to purchase, knowing different broker had exclusive listing, which caused sellers considerable expense, it was not error for trial court to allow wide range of evidence in order that fraud may be detected and exposed, as fraud assumes many shapes, disguises, and subterfuges and is generally so secretly hatched that it can only be detected by a consideration of facts and circumstances which are not infrequently trivial, remote, and disconnected. *Johnson v. Doran*, 167 M 501, 540 P2d 306 (1975).

Civil Liability Resulting From Violation: Vendor was entitled to cancellation of contract for sale of land as well as damages from real estate broker for misrepresentations relating to marketability of title made by broker during course of dealings with vendor in violation of subsections (2) and (3) of this section. The vendee was entitled to damages from broker for misrepresentations and failure to remit vendee's earnest money to vendor in violation of subsections (2), (3), and (5) of this section. *Stafford v. Love*, 151 M 270, 442 P2d 190 (1968).

Innocent Misrepresentation of Acreage: Misrepresentation as to acreage of tract offered by broker was not in itself sufficient ground for cancellation of license where acreage stated was that stated by landowner, broker had no reason to believe that acreage stated was incorrect, and prospective purchaser had been over the tract and was not deceived by the misrepresentation. *Meyer v. Unroe*, 139 M 174, 362 P2d 218 (1961).

Attorney General's Opinions

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties — criminal — civil. (1) An individual acting as a broker or salesperson without a license or while the individual's license is suspended or revoked or a person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction by a district court of this state shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case a person in a civil action is found guilty of having received any money or the equivalent of money as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, the person shall in addition be liable to a penalty of not less than the amount of the sum of money received and not more than three times the sum received, as may be determined by the court. The monetary penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1410, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

Case Notes

Intentional Violation Not Required to Recover Under Real Estate License Laws: Saville, the seller, and her realtor were sued by the purchasers of her property. The suit was based on negligent misrepresentation of the boundaries of the property by the realtor. Saville cross-claimed for indemnification against the realtor for any judgment obtained against her by the plaintiffs and was awarded indemnification by the jury. Hardin, the realtor, appealed, arguing that Saville was not an aggrieved person as contemplated by this chapter. The Supreme Court held that Saville did not have to show that the misrepresentation made by the realtor was a malicious or intentional violation of the chapter in order to be an aggrieved person under the chapter. *Cechovic v. Hardin & Associates, Inc.*, 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995), partially overruling *Van Ettinger v. Pappin*, 180 M 1, 588 P2d 988 (1978).

Board of Realty Regulation Not Empowered to Award Damages — Complaint to Board Inadequate Notice of Legal Claim: The Board of Realty Regulation may only revoke or suspend a broker's license and has no power to award damages for negligence or fraud. Further, because the Board is not designated by law as a quasi-judicial board pursuant to 2-15-124, a complaint to the Board does not give adequate notice of the existence of a legal claim. *Erickson v. Croft*, 233 M 146, 760 P2d 706, 45 St. Rep. 1379 (1988).

Statute of Limitations Begins at Time of Injury: Plaintiff alleged defendant violated this section by misrepresenting himself as being a real estate broker licensed by another state. Plaintiff's complaint was filed over 2 years after the alleged tort. Plaintiff contends that defendant's alleged misrepresentation constitutes concealment of a material fact, and therefore the statute of limitations should be tolled. The court held that defendant's misrepresentation was not an affirmative act calculated to obscure plaintiff's cause of action. In nonmalpractice tort actions, the statute of limitations begins to run on the date of plaintiff's injury. This action is barred because plaintiff did not file within the 2-year period. *Payne v. Stratman*, 229 M 377, 747 P2d 210, 44 St. Rep. 2059 (1987).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under 37-51-321, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. *In re Sorini*, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Treble Damages Not Awarded — No Harm Caused by Realtor's Actions: No penalty was awarded under this section when an audit of a realtor's trust account indicated that even though disbursement from the client's trust account was not approved in advance by the client, the disbursements were proper and the client suffered no damages. *United Farm Agency v. Blome*, 198 M 435, 646 P2d 1205, 40 St. Rep. 19 (1982).

Aggrieved Persons — Persons Sustaining Damages — Waiver of Damages: Appellants do not qualify as aggrieved persons or persons sustaining damages for an alleged violation of 37-51-321(9) when suing a broker over an alleged defect in an easement purportedly conveyed to the appellants because appellants failed to first establish the nonexistence of the easement in question. Secondly, and more importantly, appellants waived any claim for damages by closing the transaction after they became aware of the alleged defect in the easement. *Van Ettinger v. Pappin*, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978).

Scope of Act — Honest Mistake: The Real Estate License Act of 1963 (Ch. 250, L. 1963) should be construed to lend maximum efficacy to the enforcement of the fiduciary relationships involved in the real estate profession. However, willful misconduct must be present as opposed to an "honest" mistake, regardless of the argument that another course of conduct or the lack of some negligence would have avoided the situation complained of. *Van Ettinger v. Pappin*, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978), partially overruled in *Cechovic v. Hardin & Associates, Inc.*, 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995).

Misrepresentation Action in Real Estate Sale: The court properly awarded summary judgment to defendants in a misrepresentation action under the Montana Real Estate License Act of 1963 (Ch. 250, L. 1963) when the record indicated that no fraudulent representations were made by defendants and the Statute of Limitations had expired, notwithstanding the "discovery" exception. *Anderson v. Applebury*, 173 M 411, 567 P2d 951 (1977).

Proof of Injury: To recover under this section, plaintiff must show not only that real estate broker violated this act (Ch. 250, L. 1963) but also that plaintiff suffered damage thereby. Evidence that broker received commission is not sufficient proof of damage. Sellers who exchanged their equity in residence for cash sufficient to pay broker's commission and assignment of buyer's interest in an installment promissory note were not entitled to recovery from broker when only two installments were paid on note in absence of evidence that note was valueless. Sellers who made no attempt to contact debtors for payment or to contact buyers for information or assistance were not yet damaged since note might still be fully collectible with interest. *Denny v. Brissonneaud*, 161 M 468, 506 P2d 77 (1973).

Civil Liability Resulting From Violation: Where vendor sued vendee, broker, and broker's surety for cancellation of contract for sale of land and for damages and where vendee filed cross-complaint against broker and broker's surety, vendor was entitled to cancellation of contract and both vendor and vendee were entitled to reasonable attorney's fees and equal share in treble damage award based on vendee's right to recover his earnest money from broker and broker's surety. *Stafford v. Love*, 151 M 270, 442 P2d 190 (1968).

37-51-324. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is \$50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

History: En. Sec. 24, Ch. 502, L. 2007.

Compiler's Comments

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: This section is effective October 1, 2007.

Administrative Rules

ARM 24.210.426 Trust account requirements.

ARM 24.210.643 Citations and fines.

37-51-325. (Effective November 1, 2020) Professional liability insurance required — errors and omissions insurance coverage — policy requirements. (1) A real estate broker or salesperson licensed under this chapter must maintain continuous professional liability insurance coverage that meets the requirements of this section during the period of licensure. The insurance must cover the broker or salesperson for activities contemplated under Title 37, chapter 51, part 3, including errors and omissions by the real estate broker or salesperson.

(2) A real estate broker or salesperson licensed under this chapter must be covered by professional liability insurance through a policy:

(a) issued to real estate broker or salesperson licensees provided on a group policy basis that is approved by the board;

(b) obtained by real estate broker or salesperson licensees independently; or

(c) issued to the firm with which a real estate broker or salesperson license is affiliated.

(3) All policies issued under this chapter must:

(a) be issued by an insurer licensed under Title 33 to provide professional liability insurance;

(b) offer prior acts coverage to an insured who maintains continuous past insurance coverage;

(c) provide an automatic 60-day extended reporting period to report a claim if the policy is canceled or not renewed for any reason other than nonpayment of premium or a deductible; and

(d) offer an optional extended reporting period of not less than 365 days to report a claim, as long as the insured requests the extended reporting period and pays any additional premium for the extended reporting period within 60 days after expiration or cancellation of the policy.

(4) (a) A professional liability insurance policy must be issued to the board and must cover a group of real estate brokers and salespersons licensed under Title 37, chapter 51, part 3, as named insureds. The board may request bids from insurers for the group policy and may use a limited solicitation under 18-4-305. The maximum contract period between the insurer and the board is seven consecutive policy terms, although the board may place the contract out for bid at the end of any policy period. A policy term is for a year. A real estate broker or salesperson licensee may not be denied coverage or be canceled by the group policy.

(b) The group policy must:

(i) have a minimum per-claim limit of \$100,000;

(ii) have a minimum annual aggregate limit of \$300,000;

(iii) have a deductible maximum of \$2,500 a claim for damages; and

(iv) provide coverage that is specific to the real estate broker or salesperson licensee regardless of changes in supervising broker.

(5) If the board is unable to obtain a professional liability insurance policy as described in subsection (4) on terms and conditions the board determines are commercially reasonable, the requirements of this section do not apply to the licensing period for which the policy is sought.

(6) A professional liability insurance policy may be independently issued to a real estate broker or salesperson licensee. The individual policy must:

(a) have a minimum per-claim limit of \$100,000;

(b) have a minimum annual aggregate limit of \$300,000; and

(c) have a deductible maximum of \$2,500 a claim for damages.

(7) A professional liability insurance policy issued to the firm with which a real estate broker or salesperson licensee is affiliated must:

(a) have a minimum per-claim limit of \$100,000;

(b) have a minimum annual aggregate limit of \$1 million; and

(c) provide for a deductible not to exceed \$10,000 a claim to be paid by the firm with which a real estate broker or salesperson licensee is affiliated.

(8) An applicant seeking to obtain or renew a real estate broker or salesperson license shall prove to the board compliance with the insurance requirements of this section. A real estate broker or salesperson licensee who fails to produce proof of coverage on request by the board or its designee is subject to administrative suspension or disciplinary action as determined by the board.

(9) For purposes of this section, the following definitions apply:

(a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as a policy term.

(b) "Claims-made and reported policy" means an insurance policy written on a claims-made and reported basis, which provides coverage for claims first made against the insured and first reported to the

insurer during the insured's policy period for acts, errors, or omissions that occur after the insured's retroactive date.

(c) "Extended reporting period" means a designated period of time after expiration or cancellation of a claims-made and reported policy during which a claim may be made and reported as if the claim had been made and reported during the policy period.

(d) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising from the same or a related claim.

(e) "Prior acts coverage" means coverage under a policy for claims made against the insured and reported to the insurer that arise from acts, errors, or omissions in services rendered by an insured prior to inception of the current policy period.

(f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance, or a binder of insurance.

(g) "Retroactive date" means a provision, found in many claims-made and reported policies, that the policy may not cover claims for injuries or damages that occurred before the retroactive date even if the claim is first made during the policy period.

History: En. Sec. 1, Ch. 358, L. 2019.

Compiler's Comments

Effective Date: Section 4, Ch. 358, L. 2019, provided: "[This act] is effective November 1, 2020."

Part 4 Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesperson. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesperson within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesperson or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941; amd. Sec. 6, Ch. 565, L. 1995.

Compiler's Comments

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in two places substituted "salesperson" for "salesman".

Case Notes

Receipt of Asking Price and Licensing — Only Requirements for Commission: Defendants decided to sell their ranch and were contacted by plaintiff, a real estate salesperson. Defendants listed the ranch on a nonexclusive basis for \$1.6 million and agreed to pay a 5% commission on the sale. Plaintiff presented offers from Semenza, which were rejected. Later, Semenza offered the asking price, and a contract to sell and purchase was executed, reciting that Semenza had paid \$50,000 to plaintiff as earnest money. Semenza failed to obtain financing by the closing date, and it was determined he had never paid the earnest money to plaintiff. A new agreement to sell was executed, referencing the obtaining of long-term financing, at a meeting at which defendants were again represented by counsel. The transaction was closed, and defendants refused to pay plaintiff his commission, contending he was not a licensed broker as claimed at the time they entered the agreement and that he had actually represented the buyer. On appeal from a summary judgment, the Supreme Court found that under 37-51-401 a person need only be a licensed salesperson to receive a commission and that plaintiff was a licensed broker at the time the transaction closed. The defendants received their asking price through plaintiff's efforts, even though Semenza had to bring in a partner. There was no evidence defendants were damaged by the claimed conflict of interest. They ratified the entire transaction and were represented by competent counsel throughout. *Deimler v. Ostler*, 200 M 350, 651 P2d 41, 39 St. Rep. 1797 (1982).

Pretrial Order and Evidence to Establish Standing: In an action for a real estate commission, the real estate broker (Nardi) did not allege himself to be a licensed broker in his initial complaint. The pretrial

order, however, contained an amendment to the complaint stating that Nardi was a licensed real estate broker. In addition, Nardi introduced his broker's license at trial. The pretrial order and the exhibit adequately proved Nardi to be licensed pursuant to the statute, giving him standing to sue. *Nardi v. Smalley*, 197 M 321, 643 P2d 228, 39 St. Rep. 606 (1982).

When Recovery of Compensation Not Barred — Out-of-State Services: Where defendant agreed to pay commission for brokerage services rendered by out-of-state plaintiff not licensed in Montana and services were performed by plaintiff both within and without Montana, the fact that recovery cannot be had for services rendered in Montana because of proscription of this section does not prevent recovery for services rendered out of the state. *Ryckman v. Wildwood, Inc.*, 197 M 154, 641 P2d 467, 39 St. Rep. 378 (1982).

Completing Sale Distinguished From Finding Purchaser: In action to recover broker's commissions purportedly due and owing from sale of property owned by defendant, the Supreme Court held that the defendant was not liable because plaintiff broker failed to perform the terms of the exclusive listing agreement by completing the sale. It was insufficient under this agreement to merely find a purchaser. *Diehl & Associates v. Houtchens*, 173 M 372, 567 P2d 930 (1977), followed in *Blumfield Agency v. Little Belt, Inc.*, 203 M 515, 663 P2d 1164, 40 St. Rep. 605 (1983).

Deal Held Not Option but Sale Entitling Broker to Commission: Where owner left deed to real property with broker under agreement to pay him 5% commission if he found party acceptable purchaser and broker produced a prospective purchaser who agreed to forfeit \$200 downpayment if by a specified date he failed to meet the major portion of the purchase price, which proposal owner and his wife accepted in writing with the payment, the transaction was a sale and not a mere option, and broker was entitled to his commission. *Anderson v. Craig*, 111 M 182, 108 P2d 205 (1940).

Waiver of License Issue: Failure to allege license is waived where defendant fails to take advantage thereof by special demurrer (demurrer abolished, former Rule 7(c), M.R.Civ.P., now superseded, and 25-31-503, now repealed) or answer, a general demurrer (demurrer abolished) not reaching the point. *Piatt & Heath Co. v. Wilmer*, 87 M 382, 288 P 1021 (1930).

Isolated Transactions: Under former provision (sec. 3, Ch. 195, L. 1921, repealed by Ch. 250, L. 1963) defining real estate broker and setting forth classes exempted from Ch. 195, L. 1921, provision similar to this section had no application to one who acted as a broker in connection with a single transaction only. *Harbolt v. Hensen*, 78 M 228, 253 P 257 (1927).

Nonbroker Not Required to Prove Status — Waiver of Issue: This section did not require one who was not a real estate broker to allege and prove that he was not a broker; failure of defendant to raise issue of license in answer waived the point. *Harbolt v. Hensen*, 78 M 228, 253 P 257 (1927).

Part 5

Recovery Account

37-51-501. (Temporary) Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of \$100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually. (*Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.*)

History: En. Sec. 3, Ch. 688, L. 1985.

Compiler's Comments

Initial Transfer of Funds — Assessment of All Licensees — Retransfer: Section 16, Ch. 688, L. 1985, provided: "(1) The amount of \$100,000 is transferred from the state special revenue fund to the real estate recovery account for the use of the board.

(2) Notwithstanding the provisions of 37-51-311, the board shall charge a fee of \$35 in addition to any other fee due under the provisions of Title 37, chapter 51, to all licensees paying a renewal fee for the 1986 calendar year.

(3) Notwithstanding the provisions of 37-51-501, \$100,000 is transferred from the real estate recovery account on March 1, 1986, or when the total balance of the account exceeds \$200,000, whichever occurs last, to the state special revenue fund for the use of the board."

37-51-502. (Temporary) Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of \$35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than \$100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of \$100,000. (*Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.*)

History: En. Sec. 4, Ch. 688, L. 1985.

Administrative Rules

ARM 24.210.401 Fee schedule.

37-51-503. (Temporary) Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against a person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction for which a license is required under this chapter, the person may after executing on the final judgment file an application, in accordance with 37-51-504 and this section, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) An application or order for payment from the account may not be made for:

(a) a judgment that has been satisfied;

(b) any amount in excess of \$25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service. (*Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.*)

History: En. Sec. 5, Ch. 688, L. 1985; amd. Sec. 1411, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Case Notes

No Recovery When Seller Owns Property: The plaintiffs sought to recover for a real estate loss from the state's real estate recovery account. The plaintiffs had been part of a partnership in which the general partner had fraudulently sold some of his own property in a manner that caused the partnership to lose money. The Supreme Court held that when an owner sells his own property, no real estate license is required and therefore under the terms of the statute, no recovery is available from the state's fund. (Decided prior to 1989 amendments.) *Yellowstone Valley Properties v. Bd. of Realty Regulation*, 243 M 241, 794 P2d 341, 47 St. Rep. 1209 (1990).

37-51-504. (Temporary) Form of application. The person making application for payment from the account shall show in the application:

(1) that the person is not the spouse of the judgment debtor or the personal representative of the spouse;

(2) that the person has obtained a judgment that satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that the person has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that the person has diligently pursued the remedies of execution and proceedings in aid of execution against any other person against whom the person has a judgment as a result of the transaction for which the person seeks recovery from the account. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 6, Ch. 688, L. 1985; amd. Sec. 1412, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-51-505. (Temporary) Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 7, Ch. 688, L. 1985.

37-51-506. (Temporary) Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 8, Ch. 688, L. 1985.

37-51-507. (Temporary) Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 9, Ch. 688, L. 1985.

37-51-508. (Temporary) Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed \$25,000 for any one licensee until that licensee has repaid the account. If the \$25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the \$25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 10, Ch. 688, L. 1985.

37-51-509. (Temporary) Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of \$25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 11, Ch. 688, L. 1985.

37-51-510. (Temporary) Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 12, Ch. 688, L. 1985.

37-51-511. (Temporary) Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount paid and the judgment creditor is considered to have assigned to the board all of the creditor's right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 13, Ch. 688, L. 1985; amd. Sec. 1413, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-51-512. (Temporary) Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter. *(Repealed effective February 1, 2021—secs. 3, 7, Ch. 354, L. 2019.)*

History: En. Sec. 14, Ch. 688, L. 1985.

Part 6

Licensure of Property Managers

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 142, L. 1993, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the board of realty regulation to provide for the licensure and regulation of real estate property managers. The legislature intends that the board have general authority to adopt rules in regard to licensing procedures, including but not limited to issuance of licenses, administration of examinations, establishment of criteria for grading of examinations, promulgation of disciplinary standards for licensees, establishment of fee schedules consistent with the program area costs, and provisions for investigation of complaints against licensees."

Effective Date: Section 11, Ch. 142, L. 1993, provided: "[This act] [37-51-601 through 37-51-608] is effective July 1, 1993."

Part Cross-References

Landlord-tenant laws, Title 70, ch. 24 through 26.

Part Administrative Rules

Title 24, chapter 210, subchapter 8, ARM Property management.

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: En. Sec. 2, Ch. 142, L. 1993.

37-51-602. Exemptions from requirement of property manager license. (1) The property manager licensing provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under a supervising broker may act as a property manager without meeting any

qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license.

History: En. Sec. 3, Ch. 142, L. 1993; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 4, Ch. 389, L. 2005; amd. Sec. 5, Ch. 79, L. 2011; amd. Sec. 6, Ch. 211, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 211 in (1) deleted former first sentence that read: "An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management" and before "provisions" inserted "property manager licensing"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2011 Amendment: Chapter 79 in (2) substituted "a supervising broker" for "the supervision of a real estate broker"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

2005 Amendment: Chapter 389 in (2) at end inserted "and without holding a separate property manager's license". Amendment effective October 1, 2005.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (2) substituted "salesperson" for "salesman".

37-51-603. Qualification of property manager applicants — examination — issuance of license.

(1) The board shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(4) If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to the applicant.

History: En. Sec. 4, Ch. 142, L. 1993; amd. Sec. 46, Ch. 492, L. 1997; amd. Sec. 104, Ch. 467, L. 2005; amd. Sec. 7, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in (1) after "The board" deleted "by rule"; inserted (4) concerning issuance of a license; deleted former (4) and (5) that read: "(4) The license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business";

(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board"; and made minor changes in style. Amendment effective February 17, 2017.

2005 Amendment: Chapter 467 deleted former (3) that read: "(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination"; in (4) at beginning after "The" deleted "board shall prescribe the form of the license, and the"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 492 in (6), after "prepare and deliver", deleted "annually" and near end inserted "and at times". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed

practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

Administrative Rules

ARM 24.210.812 Application for property management licensure.

37-51-604. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 142, L. 1993.

37-51-605. Property manager's office — notice of change of address. A property manager shall maintain a designated physical address in this state at which a copy of the current license of the property manager must be prominently displayed. The designated address of the property manager must be indicated on the property manager's license. The property manager shall notify the department of a new address before removal or within 10 days after removal. After receipt of the information required under this section, the department shall issue a license to the property manager for the new location for the unexpired period.

History: En. Sec. 6, Ch. 142, L. 1993; amd. Sec. 16, Ch. 100, L. 2011; amd. Sec. 8, Ch. 27, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 27 in first sentence substituted "designated physical address" for "fixed office" and substituted "a copy of the current license" for "the original license"; inserted second sentence requiring the designated address to be indicated on the property manager's license; in third sentence substituted current text concerning notification of new address for former text that read: "If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address"; and inserted last sentence concerning issuance of license for the new location. Amendment effective February 17, 2017.

2011 Amendment: Chapter 100 deleted former second sentence that read: "The office manager must be designated on the license." Amendment effective October 1, 2011.

37-51-606. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 142, L. 1993.

37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: En. Sec. 8, Ch. 142, L. 1993.

37-51-608. Penalties — criminal — civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: En. Sec. 9, Ch. 142, L. 1993.