

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.210.401 fee schedule,) REPEAL
24.210.641 unprofessional conduct,)
24.210.643 citations and fines,)
24.210.660 prelicensing education –)
salespersons and brokers, 24.210.667)
continuing real estate education,)
24.210.835 continuing property)
management education, and the)
repeal of 24.210.661 new licensee)
mandatory continuing education –)
salespersons)

TO: All Concerned Persons

1. On December 24, 2020, the Board of Realty Regulation (board) published MAR Notice No. 24-210-46 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 2296 of the 2020 Montana Administrative Register, Issue No. 24.

2. On January 21, 2021, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena via the remote conferencing platform. Several comments were received by the January 21, 2021 deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Many commenters believed the requirements of 37-51-321(1)(a), MCA, are much more limited than the requirements set forth in ARM 24.210.641(5)(ag) and are not, as stated by the board in the notice, duplicative.

RESPONSE 1: The board agrees with the commenters and will retain the language of ARM 24.210.641(5)(ag), now renumbered (1)(ae).

COMMENT 2: Numerous commenters asserted the requirements of ARM 24.210.641(5)(ag) are necessary to adequately protect the public and should not be stricken. Further, the public should be informed of any advertising placed by a real estate licensee, so the public knows the party advertising the property for sale is an experienced and licensed real estate professional.

RESPONSE 2: See RESPONSE 1.

COMMENT 3: Several commenters believed the "theme" of ensuring that licensees disclose their status similar to ARM 24.210.641(5)(ag) is already found in statutes and board rules including the obligation to disclose when a licensee is selling his or her own personal property (see 37-51-321(1)(g), MCA). To repeal the obligation of licensees to disclose their license status unless under a franchise agreement would be inconsistent with these requirements.

RESPONSE 3: See RESPONSE 1.

COMMENT 4: Many commenters stated that the REALTOR® Code of Ethics requires their realtors to disclose their status as a real estate licensee in a reasonable and readily apparent manner as in ARM 24.210.641(5)(ag). While the obligations imposed by the Code of Ethics are not binding on licensees who are not REALTOR®, the commenters believed the goal of the board should be similar to that of the Code of Ethics – e.g., to establish a minimum level of professionalism to which all real estate licensees must adhere.

RESPONSE 4: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.210.401, 24.210.643, 24.210.660, 24.210.667, and 24.210.835 exactly as proposed.

5. The board has repealed ARM 24.210.661 exactly as proposed.

6. The board has amended ARM 24.210.641 with the following changes, stricken matter interlined, new matter underlined:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (1)(ad) remain as proposed.

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

(ae) through (au) remain as proposed but are renumbered (af) through (av).
(2) and (3) remain as proposed.

BOARD OF REALTY REGULATION
RIC SMITH
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 18, 2021.