

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.210.401 fee schedule,) PROPOSED AMENDMENT AND
24.210.641 unprofessional conduct,) REPEAL
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 January 21, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/94151717287>, Meeting ID: 941 5171 7287, Passcode: 365585; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 941 5171 7287, Passcode: 365585.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., on January 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or dlibsdrre@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.210.401 FEE SCHEDULE (1) through (13) remain the same.

(14) Placing active license on inactive status	20
(15) through (17) remain the same but are renumbered (14) through (16).	
(18) Rookie continuing education course registration	175
(19) and (20) remain the same but are renumbered (17) and (18).	
(21) Late fee for individual application for CE course	
credit (per course)	100

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-207, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-308, 37-51-309, 37-51-311, 37-51-502, MCA

REASON: A 2016 Legislative Audit Division performance audit determined the board's inactive license fees conflicted with department rules and in 2019 (MAR Notice No. 24-210-45), the board amended this rule to address the audit. Fiscal staff recently discovered the fee to place licenses on inactive status had not been removed. The board is striking (14) to align with the audit and fiscal staff recommendation.

The board is amending and repealing several rules in this notice to move the post-licensure rookie course into pre-licensing course content. See REASON for ARM 24.210.661. The board is striking (18) to eliminate the rookie course registration fee to align with and facilitate the other rule changes.

In 2019, the board amended and repealed rules that ended board preapproval of CE courses, providers, and instructors. Subsequently, staff reviewed the board's fees and noticed a late fee for licensees requesting approval of CE courses. The board concluded that since CE courses are no longer pre-approved, and compliance is ensured through the random audit process, this fee is no longer necessary and is being stricken from (21).

24.210.641 UNPROFESSIONAL CONDUCT (1) A licensee involved in any real estate transaction shall comply with the generally accepted standards of practice. In addition to all other statutes and rules administered by the board, the following are considered unprofessional conduct:

~~(2) (a) A licensee shall not act acting as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313, MCA.~~

~~(3) Violation of 37-51-321, MCA, constitutes unprofessional conduct.~~

~~(4) The board may take disciplinary action and impose any penalty found in 37-1-312, MCA, against any licensee who violates any statute or rule administered by the board.~~

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

~~(a) through (j) remain the same but are renumbered (b) through (k).~~

~~(k) failing to make reasonable efforts to perform all obligations arising from any agreement entered into;~~

~~(l) through (q) remain the same.~~

~~(r) failing, as a licensee, to repay the recovery account for any amounts paid from the account based on an unsatisfied judgment against the licensee;~~

~~(s) through (ac) remain the same but are renumbered (r) through (ab).~~

~~(ad) guaranteeing or authorizing a person to guarantee future profits which may result from the resale of real property;~~

~~(ae) and (af) remain the same but are renumbered (ac) and (ad).~~

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

~~(ah) through (at) remain the same but are renumbered (ae) through (aq).~~

~~(au) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education;~~

~~(av) and (aw) remain the same but are renumbered (ar) and (as).~~

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

~~(ay) and (az) remain the same but are renumbered (at) and (au).~~

~~(6) and (7) remain the same but are renumbered (2) and (3).~~

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

IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, ~~37-51-503, 37-51-508, 37-51-512, MCA~~

REASON: Following an in-depth review, board legal counsel recommended several amendments to this rule to ensure no unnecessary duplication with statutes. The board determined it is reasonably necessary to update this rule to remove duplication with statute, simplify and streamline the rule for ease of use and readability, and more clearly set forth the actions considered by the board as unprofessional conduct, whether located in statute or administrative rule.

The board is striking (1)(k) as too vague to utilize in disciplinary proceedings and the conduct is adequately addressed in 37-51-313 and 37-51-314, MCA.

It is reasonably necessary to remove (1)(ad) and (1)(ag) as the provisions are duplicated in 37-51-321(1)(h) and (1)(a), MCA, respectively.

The 2019 Montana Legislature enacted Chapter 354, Laws of 2019 (House Bill 376), an act repealing the real estate recovery account and providing for the 2021 transfer of remaining money and claim deadline. The board is striking (1)(r) to align with the repeal of the recovery account and further implement the legislation.

The board is striking (1)(au) to align with the standardized department procedures for renewals, random audits, and administrative suspension.

The board is eliminating (1)(ax) as the conduct is adequately addressed by 37-1-316(3) and (4), MCA.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.210.643 CITATIONS AND FINES (1) Citations issued by the department may be presented to the ~~broker or property manager licensee~~ responsible for the maintenance of the trust account personally or mailed by certified mail.

(2) A ~~broker or property manager licensee~~ who receives a citation has five business days from the receipt of the citation to either pay the fee or file a written dispute. Failure to either pay the fine or file a written dispute within five business days is unprofessional conduct and subject to board discipline.

~~(3) Significant violations shall be forwarded to the complaint screening panel. Significant violations may include:~~ If a licensee disputes a citation, the citation and dispute will be forwarded to the screening panel for consideration.

~~(a) an excessive number of violations in a single audit;~~

~~(b) repeat violations; or~~

~~(c) a single, severe violation.~~

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

IMP: 37-51-324, MCA

REASON: In late 2018, department staff noticed that the regularly conducted trust account audits had resulted in increased use of the board's cite and fine authority. Board legal counsel further noted the procedure for licensees to dispute citations was not clear. Following counsel's suggestions, the board is amending this rule to clarify that the screening panel will consider all disputed citations.

Authority citations are being amended to accurately provide the complete sources of the board's rulemaking authority.

24.210.660 PRELICENSING EDUCATION – SALESPERSONS AND BROKERS (1) through (9) remain the same.

(10) Prelicensing ~~course~~ courses to obtain a sales license must consist of at least 70 hours of instruction of and must include theory and practical application of each of the following topics:

~~(a) practices, principles, and essentials of real estate~~ key steps in a real estate transaction, including listings, contracts for sale, inspections and due diligence, financing, and closing;

~~(b) real estate law,~~ including Title 37, chapter 51, MCA, the board's administrative rules, and federal real estate marketing rules;

~~(c) real estate taxation;~~

~~(d) property management and leasing,~~ including the Montana Residential Landlord Tenant Act of 1977;

~~(e) remains the same.~~

~~(f) estimating closing costs, escrow, and closing, and settlement practices;~~

~~(g) finance~~ real estate financing, including mortgages, trust deeds and indentures, seller financing, commercial financing, mortgage brokers and bankers, and government involvement in real estate financing;

~~(h) hazardous waste or environmental issues;~~

~~(i) agency law;~~

~~(j) contract law and documents,~~ including listings and contracts of sale;

~~(k) state rules and regulations;~~

(l) remains the same but is renumbered (k).

~~(m)~~ (l) forms of real estate ownership, including estates, condominiums, and cooperatives;

~~(n)~~ (m) title and transfer of title, including buyer inspection of title, legal aspects of a deed, methods of property conveyance, clouds on the title, and selling mortgaged properties;

(o) remains the same but is renumbered (n).

~~(p)~~ (o) negligence or misrepresentation (risk management) encumbrances and easements;

~~(q)~~ (p) real estate security instruments public and private land use controls, including the police power;

(r) remains the same but is renumbered (q).

~~(s)~~ (r) Regulation Z; and

~~(t)~~ landlord tenant law.

(s) land descriptions;

(t) appraisal and valuation; and

(u) math and financial calculations.

(11) through (14) remain the same.

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

IMP: 37-1-131, 37-51-302, MCA

REASON: The board is amending and repealing several rules in this notice to move the post-licensure rookie course into pre-licensing course content. See REASON for ARM 24.210.661. It is reasonably necessary to amend this rule to increase the hours of instruction and update the content and required topics to align with and facilitate the other rule changes.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (3) remain the same.

~~(4) The required hours shall be in real estate related topics approved by the board.~~

(5) through (7) remain the same but are renumbered (4) through (6).

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

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

REASON: Following the elimination of CE pre-approval, staff noticed that the board continued to review and post a list of acceptable CE topics. During a rule review, staff suggested that the practice of real estate is broad enough to allow for CE in many areas beyond any certain list of topics. The board agreed and is amending this rule and ARM 24.210.835 to no longer approve CE topics or produce a topics list. The board does not want to limit licensees' ability to improve their practice and trusts them to select quality CE that fits the profession.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (3) remain the same.

~~(4) The required hours shall be in property management related topics approved by the board.~~

(5) and (6) remain the same but are renumbered (4) and (5).

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

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

REASON: See REASON for ARM 24.210.667.

4. The rule proposed to be repealed is as follows:

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION – SALESPERSONS

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

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

REASON: Over the past several years, the board received input regarding the post-licensure rookie course. Specifically, limited numbers of instructors and course hosts could not guarantee a scheduled rookie course within the 120-day completion requirement. Additionally, supervising brokers proposed that it would be ideal for salespersons to know the rookie course subject matter prior to licensure. Instructors and professional association members requested the board eliminate the post-licensure rookie course and instead incorporate its content into the pre-licensing course.

In 2019, the Montana Legislature enacted Chapter 51, Laws of 2019 (Senate Bill 77) to address legislative audit findings and provide recommendations to the department. The bill amended 37-51-302, MCA, thus allowing the board to expand pre-licensing education to salespersons.

Following the bill's passage, the board appointed a rules committee to explore ways to address the concerns about the post-licensure course. On January 16, 2020, the board accepted the committee's recommendations and is now repealing this rule and amending several other rules in this notice to move the post-licensure rookie course into pre-licensing course content. These changes will also streamline the learning process for new applicants, providing the needed education at the time of initial licensure.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., January 21, 2021.

6. An electronic copy of this notice of public hearing is available at www.realestate.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system

maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.401, 24.210.641, 24.210.643, 24.210.660, 24.210.667, and 24.210.835 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.210.661 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2323; or to dlibsdrre@mt.gov.

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

BOARD OF REALTY REGULATION
RIC SMITH
PRESIDING OFFICER

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 15, 2020.