

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, ) ADOPTION  
24.210.426 trust account requirements, )  
24.210.801 fee schedule, 24.210.828 )  
unprofessional conduct for property )  
management licensees, and the )  
adoption of New Rules I reasonable )  
supervision and II high level of )  
supervision )

TO: All Concerned Persons

1. On July 9, 2021, the Board of Realty Regulation published MAR Notice No. 24-210-47 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 848 of the 2021 Montana Administrative Register, Issue No. 13.

2. On July 30, 2021, a public hearing was held on the proposed amendment and adoption of the above-stated rules via the videoconference and telephonic platform. Comments were received by the August 6, 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: One commenter asked if the statute authorizing the board to collect recovery account assessment fees would be eliminated.

RESPONSE 1: The 2019 Montana Legislature enacted House Bill 376 which repealed all the statutes related to the real estate recovery account, including 37-51-502, MCA, effective February 1, 2021. Following the statutes' repeal, the board has no remaining authority to collect the recovery fee.

COMMENT 2: One commenter inquired if the elimination of the recovery account fee will require errors and omission insurance for property managers.

RESPONSE 2: While House Bill 376 only repealed the real estate recovery account, House Bill 416 enacted requirements at 37-51-325, MCA, that licensed brokers and salespersons carry errors and omission insurance. The board does not have the authority to require that property managers carry errors and omission insurance.

COMMENT 3: Many commenters were concerned that sentence 1 in NEW RULE I(2) and NEW RULE II(2) could inaccurately lead readers to believe that any and all

aspects of supervision can be delegated to others. The commenters asked the board to clarify this further.

RESPONSE 3: The board agrees with the commenters and is amending the new rules accordingly.

COMMENT 4: Many commenters suggested the board amend NEW RULE II(1) by replacing "and/or" with "or."

RESPONSE 4: The board agrees and is amending the rule accordingly.

COMMENT 5: One commenter stated that proposed NEW RULES I and II were vague compared to existing rules that are already in place.

RESPONSE 5: The board notes that the new rules are meant to be read with existing rules to provide additional guidance for supervising brokers.

COMMENT 6: Many commenters stated that NEW RULE I lacks clarity for supervising brokers and does little to strengthen existing rules.

RESPONSE 6: The board intends for NEW RULE I to be read with existing rules and provide additional guidance for supervising brokers. It is not supposed to replace any existing rules.

COMMENT 7: Several commenters asserted that auditing transactions after completion in NEW RULE I(1)(b) is unnecessary if documents are being reviewed as required by ARM 24.210.601(11).

RESPONSE 7: See RESPONSE 6. Further, NEW RULE I does not mandate that auditing occur after a transaction's completion.

COMMENT 8: Many commented that NEW RULE I(1)(c) is more ambiguous than the current rule requiring supervising brokers to ensure documents are appropriately prepared.

RESPONSE 8: The board does not agree that the new rule is more ambiguous and notes that the new rule further instructs supervising brokers to assist salespersons throughout the transaction.

COMMENT 9: Many commenters believed that requiring regular communication in NEW RULE I(1)(d) is unnecessary and questioned what "regular" would mean.

RESPONSE 9: See RESPONSE 6. Further, the board places the responsibility and discretion on the supervising broker to determine necessary regular communication with supervised salespersons.

COMMENT 10: Several commenters stated that New Rule I(1)(e) is vague and may leave supervising brokers guessing on how often to provide training. They believed that new regulations are not needed, and the board should enforce current regulations.

RESPONSE 10: See RESPONSE 6. The board places the responsibility on supervising brokers to determine appropriate training for supervised licensees.

COMMENT 11: Many commented that NEW RULE I(1)(f) lacks specificity and pointed out that "overseeing" is a new term not used elsewhere in the proposed new rules or in any current rules.

RESPONSE 11: The board agrees and is changing the term "overseeing" to "reviewing" in NEW RULE I.

COMMENT 12: Many commenters stated that supervising brokers were previously not allowed to delegate supervising responsibilities as mentioned in NEW RULES I(2) and II(2) which could be considered unprofessional conduct under ARM 24.210.641.

RESPONSE 12: See RESPONSE 3. The board notes that supervising brokers are ultimately responsible for supervised salespersons and having others assist with activities outlined in the new rules does not relieve a supervising broker of those responsibilities.

COMMENT 13: Many commenters believed that NEW RULE II(1)(a) is not specific enough to provide adequate guidance to supervisors. The commenters also noted that current rules do not provide any guidance on office policies and procedures.

RESPONSE 13: Supervising brokers are in the best position to develop policies and procedures to meet operational needs and standards of practice for their offices. It is the supervising brokers' responsibility to ensure that supervisees are following established policies and procedures.

COMMENT 14: Several commenters observed that NEW RULE II(1)(b) does not specifically require supervisor review and assistance of contracts prior to execution and believed this should be the practice.

RESPONSE 14: The board determined the language in the rule does indicate such review should occur prior to execution with the phrase "in preparing contracts."

COMMENT 15: Two commenters appreciated the efforts to better define rules for supervising brokers and agreed there needs to be more accountability for supervising brokers. The commenters suggested the board obtain input from legal counsel of local professional associations to assist with the rule drafting.

RESPONSE 15: The board engaged in substantial discussion with stakeholders during multiple board meetings prior to moving forward with the rule changes, including those representing and advising professional organizations. The board also relied on its own professional expertise and legal advice from the board's attorney in drafting rule language. The board does not believe further review is necessary and is proceeding with the proposed changes.

COMMENT 16: One commenter believed there is good intent behind the new rules, but that the rules are too vague to help with supervision issues.

RESPONSE 16: The board concluded that NEW RULES I and II along with existing rules will provide additional helpful guidance for supervising brokers.

4. The board has amended ARM 24.210.401, 24.210.426, 24.210.801, and 24.210.828 exactly as proposed.

5. The board has adopted NEW RULE I (24.210.605) and NEW RULE II (24.210.606) with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (24.210.605) REASONABLE SUPERVISION (1) through (1)(e) remain as proposed.

(f) ~~overseeing~~ reviewing all advertising, in any media, of any service for which a license is required.

(2) Nothing in this rule shall ~~prohibit~~ prevent a supervising broker from ~~delegating supervisory authority to other experienced licensees or staff~~ engaging others to assist in providing the supervision outlined in (1). The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

NEW RULE II (24.210.606) HIGH LEVEL OF SUPERVISION (1) In addition to the requirements of ARM 24.210.605, a supervising broker shall provide a high level of supervision for licensed salespersons with less than two years of experience ~~and/or~~ or have less than ten transaction sides in a calendar year as follows:

(a) through (d) remain as proposed.

(2) Nothing in this rule shall ~~prohibit~~ prevent a supervising broker from ~~delegating supervisory authority to other experienced licensees~~ engaging others to assist in providing the supervision outlined in (1). The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

BOARD OF REALTY REGULATION  
DAN WAGNER  
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 November 30, 2021.