

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

In the matter of the amendment of)
ARM 24.210.401 fee schedule,)
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)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On July 30, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. 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/83371415506>
Meeting ID: 833 7141 5506, Passcode: 883306
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 833 7141 5506, Passcode: 883306

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 July 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Dan Ritter, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; 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 (15) remain the same.
~~(16) Original recovery account assessment~~ 35
(17) and (18) remain the same but are renumbered (16) and (17).

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: The 2019 Montana Legislature enacted Chapter 354, Laws of 2019 (House Bill 376), an act repealing the real estate recovery account and providing deadlines for the transfer of remaining money (February 1, 2021) and claims to the account (January 31, 2021). The board determined it is reasonably necessary to now amend this rule and ARM 24.210.426, 24.210.801, and 24.210.828 to align with the repeal of the recovery account.

The board is striking the \$35 recovery account assessment fee paid by licensees at the time of initial licensure from this rule and from ARM 24.210.801. The fees were deposited into the real estate recovery account and used to pay claims based on unsatisfied judgments against licensees. Because these fees were never a part of the board's special revenue account for operating expenses, eliminating the fees will have no impact to annual revenue.

Implementation citations are also being amended to remove citations of now-repealed statutes.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (4) remain the same.

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

IMP: 37-1-131, 37-1-319, 37-51-313, 37-51-321, 37-51-324, ~~37-51-503~~,
MCA

24.210.801 FEE SCHEDULE (1) through (9) remain the same.

~~(10) Original recovery account assessment~~ ~~35~~

(11) through (13) remain the same but are renumbered (10) through (12).

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

IMP: 37-1-134, 37-1-141, 37-51-207, MCA

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(u) remain the same.

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

(w) through (ac) remain the same but are renumbered (v) through (ab).

(4) and (5) remain the same.

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

IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-316, 37-1-319, ~~37-51-508~~, ~~37-51-512~~, 37-51-607, MCA

4. The proposed new rules are as follows:

NEW RULE I REASONABLE SUPERVISION (1) Supervising brokers shall provide reasonable supervision for licensed salespersons with two or more years of experience that shall include, but not be limited to, compliance with the following:

(a) maintaining a written office policy describing the duties and responsibilities of licensees affiliated with the broker. A copy of the written policy shall:

- (i) be given to, read, and signed by each licensee; and
- (ii) be available for inspection, upon request, by any authorized representative of the board;
- (b) auditing all transaction files to ensure compliance with all applicable laws and regulations;
- (c) consulting with and/or assisting throughout the transaction;
- (d) communicating directly in person or by electronic communication on a regular basis;
- (e) providing regular training on applicable real estate law, contracts, and current business practices; and
- (f) overseeing all advertising, in any media, of any service for which a license is required.

(2) Nothing in this rule shall prohibit a supervising broker from delegating supervisory authority to other experienced licensees or staff. 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.

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

IMP: 37-1-131, 37-1-319, 37-51-302, MCA

REASON: A 2015 legislative audit of the board revealed a need to strengthen supervision requirements for supervising brokers. While very general supervision guidance exists in ARM 24.210.601(8) and (9), the board, staff, and stakeholders drafted the new rules as a preferred alternative to statutory remedies. To ensure proper supervision of licensees by supervising brokers and in response to the audit recommendations, the board is adopting NEW RULES I and II.

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

- (a) provide specific training in office policies and procedures;
 - (b) review and provide assistance in preparing contracts;
 - (c) monitor transactions from contract to closing; and
 - (d) review documents in preparation for closing.
- (2) Nothing in this rule shall prohibit a supervising broker from delegating supervisory authority to other experienced licensees. 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.

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

IMP: 37-1-131, 37-1-319, 37-51-302, MCA

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) 841-2305, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

6. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/realty-regulation/> (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) 841-2305; 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, 24.210.426, 24.210.801, and 24.210.828 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II 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) 841-2244; facsimile (406) 841-2305; or to dlibsdrre@mt.gov.

10. Dan Ritter, 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/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 29, 2021.