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


NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 18, 2022, 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. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:
      Meeting ID: 864 6867 0445, Passcode: 348382
   -OR-
   b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
      Meeting ID: 864 6867 0445, Passcode: 348382

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 11, 2022, 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 (3) remain the same.

(4) Original broker license $475.90
(5) Active renewal for broker license $475.90
(6) Inactive renewal for broker license $87.50.45
(7) Original salesperson license $150.80
(8) Active renewal for salesperson license $150.80
(9) Inactive renewal for salesperson license $75.40
(10) through (13) remain the same.
(14) Activating a salesperson license on inactive status $75.40
(15) Activating a broker license on inactive status $87.50.45
(16) and (17) remain the same.


REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, which requires the board to set fees that provide adequate funding for board operations. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. The board is reducing renewal fees to gradually decrease the board's cash balance and meet the statutory requirements while ensuring adequate revenue to support board activities through the next biennium. The board estimates these fee reductions will affect 5,287 salesperson licensees and applicants and 2,501 broker licensees and applicants and will decrease revenue by approximately $524,433 annually.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (13) remain the same.

(14) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired or suspended broker license or supervising broker endorsement must request to be placed on inactive status or transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising broker's broker license or supervising broker endorsement has expired. The salesperson no longer has an active broker license or endorsement. A salesperson shall not conduct licensed activity during this unsupervised period.

(15) A supervising broker must immediately inform the broker's supervised salespeople that the supervising broker's broker license or supervising broker endorsement has expired. The broker no longer has an active broker license or endorsement.

(16) through (18) remain the same.

AUTH: 37-1-131, 37-51-203, MCA
REASON: In response to a 2015 legislative audit recommendation, the board recently adopted two new rules to strengthen supervision requirements for supervising brokers (MAR Notice No. 24-210-47). After the proposal notice was filed, staff noticed potential ambiguity in this rule regarding suspended licensure of a supervising broker. The board determined it is reasonably necessary to amend this rule to clarify that inactive license status includes both expired and suspended licenses. These amendments are needed to be clear to both salespersons and brokers since salespersons cannot practice without having an active status supervising broker.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

24.210.604  SUPERVISING BROKER ENDORSEMENT  (1) A supervising broker endorsement will be issued to any broker completing the supervising broker pre-endorsement course. The course will be part of the overall continuing education requirement.
(2) through (9) remain the same.

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

REASON: The board is amending this rule to clarify that the supervising broker pre-endorsement course is acceptable toward required continuing education (CE). Board staff consistently receives questions about this course, and historically, the board has accepted the course when submitted during the CE audit process.

24.210.611  APPLICATION FOR LICENSE–SALESPERSON AND BROKER
(1) remains the same.
(2) No application for license will be accepted by the board until the individual has made application for and successfully completed the examination, except as allowed by ARM 24.210.610.
(3) through (7) remain the same.
(8) In addition to (1) through (7), all applicants for licensure as a salesperson must:
   (a) submit proof of completing 60 70 hours of approved prelicensing education obtained within a period of 24 months immediately preceding the date of the submission of the application; and
   (b) through (9)(b)(ii) remain the same.
   (A) three points for an associate associate's degree in real estate;
   (B) remains the same.
   (C) five points for a bachelor bachelor's degree or higher in business management;
   (D) five points for a law degree juris doctorate; or
(E) five points for a bachelor bachelor's degree or higher in real estate.
(iii) through (c) remain the same.
(d) Closed real estate transactions of property owned by the applicant, by a
corporation, partnership, trust, or other entity in which the applicant has an interest
or by such an entity which employed the applicant as an employee, shall not qualify
as experience under (6)(b) (9)(b), or under 37-51-302, MCA.
(e) through (10) remain the same.

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

REASON: Because ARM 24.210.610 is proposed for repeal in this notice, the board
is striking its reference from (2). Following the 2019 passage of Senate Bill 77, the
board amended ARM 24.210.660 to reflect the new 70-hour prelicensing education
requirement for salespersons. The board is amending (8)(a) now as this change
was inadvertently missed in this rule. Other amendments correct terminology for
several educational degrees and an internal subsection's reference.

24.210.801 FEE SCHEDULE (1) through (3) remain the same.
(4) Original property management license $105 50
(5) Active renewal for property management license 130 50
(6) Inactive renewal for property management license 65 25
(7) and (8) remain the same.
(9) Activating an inactive license 65 25
(10) through (12) remain the same.

AUTH: 37-1-134, 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: The board determined it is reasonably necessary to amend this rule to
comply with the provisions of 37-1-134, MCA, by setting fees that provide adequate
funding for board operations. The fee changes are also necessary to comply with
17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed
twice the annual appropriation amount. The board is reducing renewal fees to
gradually decrease the board’s cash balance and meet the statutory requirements
while ensuring adequate revenue to support board activities through the next
biennium. The board estimates these fee reductions will affect 1,131 property
management licensees and applicants and will decrease revenue by approximately
$71,514 annually.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER
REQUIREMENTS (1) A property management licensee who changes the office
location must notify the board office in writing within ten business days of the
change. The proper fee must accompany such notice. The board office will then
issue a corrected pocket card for the remainder of the renewal year.

AUTH: 37-1-131, 37-51-203, MCA
REVISED: In MAR Notice No. 24-210-45 (2019), the board removed the fee for changing place of business or affiliation, but inadvertently missed striking the fee reference from this rule. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

(6) The licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee manages, shows, negotiates for the rental, or otherwise is involved.

(3)(g) through (ab) remain the same but are renumbered (3)(f) through (aa).

(4) and (5) remain the same.


REASON: The board is renumbering this subsection for proper grammar and clarity.

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

24.210.610 PREDETERMINATION FOR LICENSING

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


REASON: A 2016 legislative audit division report on the licensing of real estate professionals revealed the infrequent use of predeterminations since this rule's adoption in 1990 and recommended eliminating this rule. Department staff also concluded that the board is the only licensing board to use such a process. In 2019 the board removed the predetermination application fee from the fee schedule in MAR Notice No. 24-210-45, and removed the application form from the website. With such infrequent use and per the audit's finding, the board determined it is reasonably necessary to repeal this rule. Additionally, the board recently adopted ARM 24.101.406 to achieve greater consistency among all boards' analyses of applicants with criminal convictions.

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 dlibsdrrr@mt.gov, and must be received no later than 5:00 p.m., January 20, 2022.

6. An electronic copy of this notice of public hearing is available at www.realestate.mt.gov (department and board's website). Although the department
strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website 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.


Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.210.610 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. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
DAN WAGNER
PRESIDING OFFICER

/s/ DARCEE L. MOE        /s/ LAURIE ESAU
Darcee L. Moe           Laurie Esau, Commissioner
Rule Reviewer            DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.