

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 24.210.301, 24.210.641, and)	PROPOSED AMENDMENT,
24.210.667, the adoption of NEW)	ADOPTION AND REPEAL
RULES I fee abatement and II)	
administrative suspension, and the)	
repeal of ARM 24.210.801,)	
24.210.803, 24.210.805, 24.210.807,)	
24.210.809, 24.210.812, 24.210.818,)	
24.210.820, 24.210.825, 24.210.826,)	
24.210.827, 24.210.828, 24.210.829,)	
24.210.835, 24.210.1001,)	
24.210.1007, 24.210.1016,)	
24.210.1020, 24.210.1025,)	
24.210.1027, 24.210.1031, and)	
24.210.1037 pertaining to property)	
management and timeshare)	
registration)	

TO: All Concerned Persons

1. On August 16, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to 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/89747560446>
Meeting ID: 897 4756 0446, Passcode: 105329
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 897 4756 0446, Passcode: 105329

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 department no later than 5:00 p.m., on August 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: The 2023 Montana Legislature enacted Chapter 482, Laws of 2023 (Senate Bill (SB) 455), an act generally revising laws related to realty regulation, eliminating timeshare registration, and transferring regulatory oversight of property managers from the Board of Realty Regulation to a department program. The bill was signed by the Governor on May 8, 2023, and

became effective October 1, 2023. New rules for the department's regulation of property managers were adopted December 23, 2023. It is reasonably necessary to now repeal the board's rules regarding property managers and timeshares to implement the bill.

The board is amending three rules and repealing 22 rules to implement the legislation and strike references to property management and timeshares. The board will identify additional specific reasons for the proposed new rules.

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

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and unless the context otherwise requires, the following meanings shall also apply:

(1) through (10) remain the same.

~~(11) "Designated property manager" is a property manager who has been designated by other property managers of a property management company to be the property manager with the authority for the maintenance of a trust account.~~

(12) through (21) remain the same but are renumbered (11) through (20).

~~(22)~~ (21) "Personal funds" means funds other than trust funds, which belong to the licensee ~~or the property management business~~. Uses may include, but are not limited to:

- (a) trust account maintenance;
- (b) financial institution fees;
- (c) designated interest earnings; and
- (d) purchasing checks.

~~(23)~~ (22) "Personal indebtedness" means the licensee's personal expenses ~~or expenses of the property management business~~ debited from a trust account, including, but not limited to:

- (a) personal bills or expenses;
- (b) recreational expenditures;
- (c) personnel wages, benefits, and incentives; and
- (d) business operating expenses.

(24) through (30) remain the same but are renumbered (23) through (29).

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

IMP: 37-1-131, 37-1-136, 37-51-103, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

24.210.641 UNPROFESSIONAL CONDUCT (1) through (1)(x) remain the same.

~~(y) failing, while acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of Title 37, chapter 51, part 6, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828, except for the advertising requirements of ARM 24.210.828(3)(u);~~

(z) through (av) remain the same but are renumbered (y) through (au).
(2) and (3) 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, 37-1-307, 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, MCA

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (2)(a) remain the same.

(b) endorsed by a national, state, or local Association of REALTORS®, or a national, state, or local real estate association, or a national, state, or local landlords', or property management association.

(3) through (6) remain the same.

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

5. The proposed new rules are as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Realty Regulation adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board is proposing this new rule to adopt and incorporate by reference the division's rule on fee abatement, ARM 24.101.301. The standardized abatement procedures have been in place for several years and the rest of the professional licensing boards have already adopted the rule.

NEW RULE II ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.210.801 FEE SCHEDULE

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

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

REASON: It is reasonably necessary to repeal all the property management rules in subchapter 8 to implement SB 455. The board no longer regulates property managers in Montana.

24.210.803 PROPERTY MANAGEMENT DEFINITIONS

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

IMP: 37-51-102, 37-51-602, MCA

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS

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

IMP: 37-1-131, 37-1-319, 37-51-324, MCA

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS

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

IMP: 37-1-131, 37-51-605, MCA

24.210.809 PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS

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

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

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

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

24.210.818 PROPERTY MANAGEMENT EXAMINATION

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

IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-601, 37-51-603, MCA

24.210.820 TRUST ACCOUNT COURSE REQUIREMENT

AUTH: 37-1-131, MCA

IMP: 37-1-131, MCA

24.210.825 RENEWALS

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, 37-1-141, MCA

24.210.826 INACTIVE TO ACTIVE STATUS - PROPERTY MANAGEMENT LICENSES

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-311, 37-51-601, MCA

24.210.827 INACTIVE STATUS

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

IMP: 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES

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, 37-51-607, MCA

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION – PROPERTY MANAGER

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

IMP: 37-1-306, 37-1-319, 37-51-603, MCA

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

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

24.210.1001 FEE SCHEDULE

AUTH: 37-1-131, 37-1-134, 37-53-104, MCA
IMP: 37-1-134, 37-1-141, 37-53-201, 37-53-202, 37-53-203, 37-53-204,
37-53-301, MCA

REASON: It is reasonably necessary to repeal all the timeshare licensing rules in subchapter 10 to implement SB 455. The board no longer regulates timeshare offerings in Montana.

24.210.1007 LICENSURE OF TIMESHARE SALESPERSONS

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-301, MCA

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-301, MCA

24.210.1020 RENEWALS

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-1-141, MCA

24.210.1025 TIMESHARE REGISTRATION APPLICATION REQUIREMENTS

AUTH: 37-53-104, MCA
IMP: 37-53-104, 37-53-201, 37-53-202, MCA

24.210.1027 ALTERNATIVE ACCEPTABLE DOCUMENTS FOR TIMESHARE REGISTRATION

AUTH: 37-53-104, 37-53-204, MCA
IMP: 37-53-104, 37-53-204, MCA

24.210.1031 TIMESHARE CONDITIONS OF REGISTRATION REQUIREMENTS

AUTH: 37-53-104, 37-53-212, MCA
IMP: 37-53-104, 37-53-212, MCA

24.210.1037 TIMESHARE AMENDMENT FOR MATERIAL CHANGE REGISTRATION REQUIREMENTS

AUTH: 37-53-104, MCA

IMP: 37-53-203, MCA

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 25, 2023, by electronic mail.

11. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
SHARON VIRGIN, PRESIDING OFFICER

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.