
MONTANA REAL ESTATE

Volume 9, Issue 4

November 2004

Floberg named to the Board

Marilyn Floberg, a long time broker from Billings was named to the Board of Realty Regulation by Governor Judy Martz. Ms. Floberg is a partner in Prudential Floberg Realtors.

Marilyn has a B.S. degree in Mathematics from NDSU and has completed post-graduate work in Mathematics and Education at MSU-Billings and the University of Montana. She spent several years in the teaching profession, including three years at MSU-Billings, before joining her husband, Don, in his real estate firm. In addition to creating the training curriculum for their own firm, she helped develop the first state-sponsored course for applicants for the real estate licensing examination. She is the author of a textbook entitled "Practice in Real Estate Mathematics", which was published by Harper & Row, Inc. and distributed nationwide.

Marilyn is President and Co-Owner of Prudential Floberg REALTORS®, the real estate firm established by her husband in 1959. Strategic planning and the implementation of change are her major strengths and interests. The company has now grown to over 50 associates, staff and network members serving the Billings/Laurel/Red Lodge area. They offer services in residential, commercial and farm/ranch real estate as well as business opportunities. The company has maintained its leading

Continued on Page 6

From The Chair

By Vicky Hammond

GOOD-BYE AND HELLO!

Our Board of Realty Regulation meetings are usually held in Helena; however, in May we traveled to Billings for our board meeting. For our chair Laura Odegaard, it was her last meeting with us as her term on the Board expired in May and it was a chance for all of us to say good-bye to her in her home town. She has served as an industry member on our board for 8 years. We thank Laura for her dedication and service to the Board of Realty Regulation and the real estate industry.

We now welcome Marilyn Floberg also from Billings as our newest board member. Marilyn is a real estate broker with many years of real estate experience both in sales and management. She and her husband Don own Prudential Floberg Realtors. We are happy to have Marilyn as part of our Board and we know she will be a great asset in our decision making process.

DID YOU KNOW?????

A supervising broker has responsibilities for their salespersons' performance as real estate licensees as provided by administrative rule. They must provide supervision and on going training. The supervising broker has the responsibility to assure all documents for a real estate transaction prepared by the sales person are appropriately prepared and executed.

There is a general practice in some offices where the supervising broker reviews the listing documents of their salespersons AFTER they have been signed by the seller. In some cases this is the following day or several days AFTER the listing has been signed by the seller. The agent puts the property in MLS, on the internet, puts up a sign and in some cases has an ad in the paper all before the listing is effective. This is putting the broker and salesperson at risk if a complaint is filed against them and it is also putting them in a position of violating their MLS rules.

Let's take a close look at rule 8.58.423 (8) (9)

(8)All listings obtained by a salesperson must be reviewed, signed and dated by the supervising broker

Continued on Page 2

INSIDE THIS ISSUE

- 2 Complaint Update
- 3 Education Notes
- 3 Contested Case Resolution
- 4 What You See Is What You Get
- 6 Buyer Broker Agreements
- 7 Property Managers.....

THE HONORABLE JUDY MARTZ
GOVERNOR OF MONTANA

Real Estate Board and Staff

406-444-2961

fax: 406-841-2323

e-mail: dlibsdrre@state.mt.us

www.discoveringmontana.com/dli/rre

Board Members

Vicky Hammond, Licensee, Chairman

Teddy Beebe, Public Member

Mike Basile, Licensee

Terry Hilgendorf, Public Member

Marilyn Floberg, Licensee

Staff:

Grace Berger, Administrative Officer

Mike Meredith, Education Director

Barb McAlmond, Administrative Assistant

Vacant, Auditor/Education Coordinator

The views expressed in the reprinted articles are those of the author and not necessarily those of the Board and are intended as informational only.

Complaint Update

By Mike Basile

I was recently appointed Chair of the Board of Realty Regulation Complaint Screening Committee by the incoming Board Chair, Vicky Hammond. We met twice over the summer and had a busy agenda for both meetings.

During the June meeting we reviewed the results of 17 trust account audits, seven of which had no exceptions. See the list of Auditor All-Stars for their names. Great job to all of you! We also considered a total of 17 complaints. Six complaints were dismissed with prejudice, six were dismissed without prejudice, two were sent for investigation and three were tabled. One investigative report was reviewed and the Committee voted to notice the licensee for possible disciplinary action.

The July meeting was equally busy. We reviewed the results of a whopping 54 trust account audits. Twenty-seven audits had no exceptions. Again, refer to the Auditor All-Star list for those shining stars. We reviewed 16 complaints. Six were dismissed without prejudice, 4 were dismissed with prejudice, 5 were sent for investigation and 1 was tabled. Two investigations were

Continued on Page 5

Continued from Page 1

before the listing is effective.

(9) The supervising broker has the responsibility to exercise adequate supervision to assure that all documents for a real estate real estate transaction prepared by a salesperson under his/her supervision are appropriately prepared and executed.

The rules are very clear, however, that managing brokers are not responsible to provide supervision of the brokers who are associated with their office. So the above information is provided to you about the relationship of the broker and their salesperson in a listing and sales transaction. Hopefully this helps the salesperson understand why many brokers have office policies in place to make sure the above rules are followed.

BUYER BROKER AGREEMENT

There seems to be continued confusion about buyer broker agreements and exactly what forms are needed in a sales transaction in which you are acting as a buyer agent or dual agent. The statute is very clear that you need a relationship disclosure AND you need a buyer broker agreement: that is two forms.

I refer you to 37-51-102 Definitions (6) (7)

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

37-51-314 (3) (a)

A buyer agent shall make the required relationship disclosures as follows:

The initial disclosure, as provided in subsection (6) must be made to the buyer at the time the buyer broker agreement is executed.

When our auditor reviews closed transaction files she is looking to see if the disclosure is made and the buyer broker agreement signed prior to the purchase agreement. Montana does not require the disclosure at "point of first contact" as some states do, but as you can see it is an agreement to "locate real estate". So, in essence, it should be signed prior to locating property. The board acknowledges that could all take place on the same day, however, we are seeing many of these dated on the day of closing which clearly is not the intent of this law.

EDUCATION NOTES

By Mike Meredith

CONTINUING EDUCATION AUDIT

Board Auditor Andy Carter and I have completed the continuing education audit of 2003 education. We audited 749 licensees including thirty licensed property managers. Once again we had a very small number of folks whose attendance certificates did not match what had been reported on their Continuing Education Reporting Form. Nearly all of the problems arose from inaccurate reporting of carryover hours. Some licensees did not have certificates from past years to validate the hours of carryover that were claimed. Others had forgotten that they had used some of their accumulated six carryover hours in a previous year and they inadvertently used them a second time. Please keep ALL attendance certificates from past years.

A few licensees also discovered that a course that they thought had been submitted and approved by the Board for continuing education did not qualify for continuing education.

One further problem occurred when licensees reported hours from property management and broker prelicensing courses as continuing education. Prelicensing course hours cannot be counted to meet continuing education requirements.

In addition to carryover hour problems the next largest problem occurs when our office receives no response to the audit request due to licensees traveling out of state for the winter. If you leave Montana for warmer climes in the winter make certain that you can still get your mail from our office.

In the not too distant future we hope to have a computer program for collecting and recording course attendance and hours directly from course providers to our office. This would eliminate the need for the continuing education audit and perhaps the Continuing Education Reporting Form which needs to be completed and submitted each year.

ROOKIE CE

As of the writing of this article we have licensed 609 new real estate salespeople this year. Last year we licensed over 500 new salespeople. In previous years we were licensing between 300 and 400 new salespeople per year. These significantly higher numbers of new licensees have resulted in larger Rookie CE classes than had been anticipated. We plan to change our schedule in 2005 to help balance the class sizes. In past years we have held a May class in the Kalispell area, but the number of new licensees attending has been much smaller than numbers in our other classes. In 2005, we will hold the Kalispell class in September rather than in May which will most likely increase the

size of both the Kalispell and Bozeman classes.

We have two Rookie CE classes remaining for 2004. Those classes will be held in Billings on November 18 and 19 and in Helena on December 9 & 10.

Contested Case Resolution

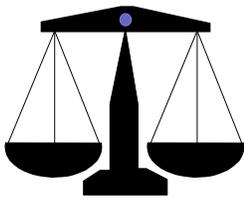
A property manager was noticed as a result of findings from a trust account audit. The Screening Committee found reasonable cause to determine that the property manager had violated a number of rules including:

- The separate account was not designated as a trust account.
- There was no individual ledger identifying the property manager's personal funds in the account.
- Payments of personal indebtedness of the property manager were made from the fund.
- Money owed the property manager was not withdrawn within 5 days of it being due.
- Complete records were not maintained of all funds received.
- No record was maintained showing chronological sequence of funds received.
- A journal was not properly kept specifying the date, payee and the amount(s).
- A running balance was not kept after each transaction.
- The ledger did not show receipts and disbursements as they affect particular transaction(s).
- The trust account was not reconciled on a monthly basis.

The Department and the property manager agreed that the property manager's license be placed on probation for 3 months, a CPA be retained to set up a trust account in full compliance with board requirements, licensee will attend the property management pre-licensing course above the normal continuing education requirements, and the Department will re-audit the trust account. The Adjudication Panel concurred and voted to accept the stipulated agreement.

A title company complained that a salesperson improperly retained a real estate commission that was incorrectly sent to him at his new office instead of the brokerage firm where he previously worked. The salesperson claimed the previous broker owed him money and kept the entire commission and called it even.

The Department and the salesperson agreed the salesperson would pay a \$250 fine and obtain 8 hours of continuing education – 4 in ethics and 4 on forms – in addition to the education normally required to meet the annual CE requirement. The Adjudication Panel concurred and voted to accept the stipulated agreement.



What You See Is What You Get

Reprinted with permission from ALQ
Winter 2004 Real Estate Intelligence
Report.

Many real estate cases recently decided by the courts focus on the intent of the people involved in the transaction, rather than the letter of their contract.

In the first case, for instance, the court said a buyer could rely on the works and actions of a farmer who essentially said, “I want to sell the land that goes from here to there” – disregarding the specific legal description of the land.

In the case of *Perfect vs. McAndrew* (NO. 15A05-0303-CV-139, 5th Indiana Appl.), Clyde and Ella Mae Perfect were approached by Michael McAndrew and asked if they wanted to see the property.

Based upon acreage listed in the deed that had originally conveyed the property to the Perfects, the Perfects thought that the property consisted of 81.1 acres. McAndrew offered the Perfects \$250,000. The Perfects countered at \$252,500, and a deal was struck.

On the day after the agreement, McAndrew and his wife and their real estate agent, Betsy Bates of StarOne Realtors, met with Clyde Perfect to view the property and its boundaries.

Because of a knee problem, Perfect could not walk with them but drove his tractor along much of the boundary while the others walked. When they encountered an area that Perfect could not traverse with his tractor, he described remaining boundaries to the McAndrews and the real estate agent. The McAndrews and the agent then walked the remaining boundaries.

According to court records, McAndrew had no further conversation with the Perfects regarding the acreage.

The purchase agreement included various standard contingencies – including arrangement of financing, removal of debris and most importantly, as it turned out, verification of lot lines.

While some of the contingencies were quickly cleared, the “arrange financing” contingency took about a week longer than the contract allowed. But when the survey was returned, it indicated that instead of containing 81.1 acres, the property actually measured out to be 96.2815 acres.

According to testimony, after receiving the survey, Clyde Perfect “was quite surprised and thought about it for a while and decided he didn’t want to give away 15 acres.”

What followed was a series of exchanges between the Perfects and McAndrew. The Perfects attempted to renegotiate the contract. McAndrew refused to renegotiate, and demanded the Perfects go to closing. The Perfects attempted to nullify the contract because the financing hadn’t been arranged on time. Finally, McAndrew filed a lawsuit to force the Perfects to close the deal.

The trial courts held that the fact that the loan commitment was not received by the Perfects’ agent until a week

after the original deadline was not a material breach of the contract. More significantly, it ruled the transaction was an “in gross sale” rather than a specific “price per acre sale.”

It ruled “the law is with McAndrew” and ordered the Perfects to close the deal. The Perfects appealed.

In looking at the case, the appeals court upheld the lower court decision.

The high court noted there was nothing in the contract to suggest that the boundaries of the land were ever in question. It also noted that the actual number of acres did not become material until the Perfects found there was more land there than what they had thought.

The high court also dismissed the argument that the contract should be nullified because there was a “mutual mistake of fact” about the size of the property sale.

“There is no evidence that the parties were mistaken about the actual tract of land to be sold,” the court said. “In fact, Clyde (Perfect) testified that ‘there wasn’t any question about which piece of property (they) were dealing for. The only question was how many acres it really was.’”

“There is also no evidence that the exact acreage was the essence of the parties’ agreement. It is not enough that McAndrew and the Perfects were mistaken about the acreage. Rather, to constitute a mutual mistake of fact, the fact complained of must be one that is “of the essence of the agreement.”

Self Dealing

The case of *Roberts vs. Lomanto* (CO41900, 3rd Calif. Appl) is a case where a real estate agent’s intentions changed when she found she could deal herself into her client’s transaction.

In this commercial case, Cable Park Shopping Center was owned by Jerry L. Roberts. He hired Patricia Lomanto as his real estate agent to sell the property. She was to receive a commission based on the price of the sale.

In the course of the listing, Lomanto offered to buy the property herself and the parties executed a purchase agreement for \$11 million, meaning a \$110,000 commission for Lomanto.

While still acting as Roberts’ agent, however, Lomanto assigned the contract to a third-party buyer, with Robert’s consent. Although Lomanto disclosed to Roberts that the third party was paying her an assignment fee, she refused to disclose the amount of the fee or the price the buyer had agreed to pay.

After the deal had gone through, and Lomanto received her \$110,000 commission, Roberts learned that Lomanto’s assignment fee was \$1.2 million and the buyer had paid \$12.2 million for the property (including the fee.)

Roberts filed suit against Lomanto, claiming among

Continued on Page 5

Continued from Page 4 – What you see is what you get

other things that she had breached her fiduciary duty to him. The trial court, however, found Lomanto had committed no breach and dismissed the case.

Roberts appealed, and the appeals court agreed with Roberts that Lomanto had violated her agency responsibilities.

“We disagree with the trial court’s conclusion that Lomanto breached no duty to Roberts,” the high court said. “Rather, we conclude that Lomanto, who was at all times acting as Roberts’ agent and owed him a fiduciary duty, breached that duty by refusing to disclose to Roberts the details of the assignment transaction. We shall therefore reverse the summary judgment.”

In reversing the case, the high court noted that Lomanto’s offer was unsolicited, that she had represented to Roberts that the property was not worth more than \$11 million, and that at no time did she present any buyers other than herself to Roberts.

The court added that even after she informed Roberts that she had assigned her contract to the new buyer, Lomanto continued to maintain that the property was worth no more than \$11 million.

“Lomanto knew it was worth much more, but misrepresented the facts to induce Roberts to sell it for less than its true value,” the court ruled.

Do not fax means do not fax

John Lary vs. Tom Taylor Agency (2020920, Alabama Civ. App. 2003) is a classic case of good intention not only going wrong, but even breaking the law against sending uninvited fax solicitations to those who don’t want them.

According to court records, on Feb. 12, 2002, John Lary – doing business as the Internal Medicine Clinic – received an unsolicited fax from the Tom Taylor Agency that carried information about leasing opportunities in commercial property.

Lary filed a lawsuit against the Taylor agency, complaining that it had violated the U.S. Telephone Consumer Protection Act (TCPA) and sought damages totaling \$49,999.99.

In response, the Taylor Agency filed a motion asking that the case against it be dismissed and included an affidavit from company president Randy Taylor explaining his company’s position.

Taylor admitted the agency had sent a single fax advertisement to Lary’s Internal Medicine Clinic offering a lease of commercial property, but said his agents had “no actual or constructive notice” Lary objected to receiving fax advertisements. He also noted that the fax was a one-time only solicitation, that it was not directed toward an individual and did not seek personal information about an individual. He also said the fax was not sent in knowing or willful violation of any law, that it was not sent for harassing or offensive purposes, and that the fax was not false or misleading.

Largely based on that affidavit, the trial court entered

a summary judgment in favor of the Tom Taylor Agency. Lary appealed.

The appeals court did not look so kindly on the Taylor case – reversing the lower court and essentially finding that the brokerage (and the trial judge) should have known better.

Said the appeals court, “While we agree that that (Taylor affidavit) might be pertinent to whether the conduct of the Tom Taylor Agency was ‘willful or knowing’ so as to warrant an enhanced penalty or damages award, the undisputed evidence reveals that the Tom Taylor Agency, on one occasion did send a fax advertisement to Lary; in contract there is no evidence that Lary offered an ‘express invitation or permission’ to the Tom Taylor Agency to send him a fax advertisement seeking to lease commercial land.

“In light of the undisputed facts of this case, we conclude that the trial court erred in entering a summary judgment in favor of the Tom Taylor Agency.”

Continued from Page 2 - Complaint Update

reviewed and both were dismissed without prejudice.

Many of the complaints we see are from buyers claiming misrepresentation or unfair treatment from agents. Some transactions involve a dual agent, some have both a listing agent and a buyer’s broker. The buyer claims an agent (usually the listing agent) had information about property defects OR SHOULD HAVE KNOWN about property defects and remained silent. Recently, buyers seem to make up a majority of the complainants coming before the board. It is important to note that buyers have a high expectation of services from a real estate agent. Some of those expectations may not be realistic, but are seldom discussed with the buyer prior to a transaction. In addition to completing the various required agency disclosure documents, like the Relationships in Real Estate form or a Buyer Broker Agreement, it is advisable that you take a few extra minutes to educate the buyer on realistic expectations and services provided by the real estate licensees in the transaction.

If you want to receive copies of board agendas, rule notices and other board mailings, fax your name and address to the board office at 406-841-2323 and ask to be added to the interested persons list.

position in the area real estate market for over three decades. Prudential Floberg REALTORS® has been honored by Prudential Real Estate Affiliates as one of the forty top firms in their real estate network and has been listed in REALTRENDS 500, a list of the top 500 firms in the nation.

Marilyn has achieved the GRI (Graduate Realtors Institute) and the CRB (Certified Real Estate Brokerage Manager) designations from the National Association of REALTORS®. She has served on the local Multiple Listing Service Committee for the Billings Association of REALTORS®, on the National Association of REALTORS® Committee on State and Municipal Legislation and as the Regional Chairman for the National CRB Ambassadors. She also served on the National Advisory Council for The Prudential Real Estate Affiliates. She currently serves on the Montana Board of Realty Regulation.

Marilyn is a Past Chair of the Board of Directors for the Billings Chamber of Commerce and was the first woman in 86 years to serve in this capacity. She is also a Past Chair of the Deaconess Billings Clinic Board of Directors. She is a currently a member of the Advisory Board of Directors for First Interstate Bank-Billings, the Business Advisory Board for the College of Business at MSU-Billings, the MSU-B Foundation Board and the MSU-B National Campaign Leadership Council. She also belongs to Rotary International. She is a past member of the Board of Trustees for the Yellowstone Art Museum and in 1996-97; she served as Co-Chair of the final phase of the \$6,100,000 capital campaign to construct the new art museum. She previously served on the Board of Directors for the Montana Chamber of Commerce, the Deaconess Research Institute, the United Way Board, and the Board of Trustees at Rocky Mountain College, the Rimrock Foundation Board, the Billings Preservation Board, and the Junior League of Billings Board.

In 1988, she received the MSU-Billings Outstanding Alumni Award for Professional Recognition in Business. In 1989, she was honored by the Small Business Administration as Montana's Advocate of the Year for Women in Business. She also received the Citizen of the Year Award for the United Way of Billings in 1993. In 1997, she was awarded a Paul Harris Fellowship by the Billings Downtown Chapter of Rotary International for her service to community. In 1999, she was honored as one of the recipients of the annual YWCA "Salute to Women" Awards. The same year, she received one of the "Mothers of the Year" Awards from the Girl Scouts of America. In 2001, she was honored by the MSU-B College of Business with honorary membership in Sigma Beta Delta, the International Honor Society for Business, Management and Administration. In 2004, she was honored with the Friend of Deaconess Billings Clinic Award.

Marilyn and her husband, Don are creators of the Maps For Kids program, which, through the help of sponsors, distributed colorful, laminated maps to all first and fourth

graders in Montana's public school system in 2004.

Marilyn and Don are privileged to have five children and eight grandchildren and enjoy traveling, camping in beautiful Montana and family trips to near and far. They maintain a very close relationship with their former foreign student and his family in Austria. Marilyn's hobbies include traveling, watercolor painting, reading and the joy and challenge of continual learning.

Buyer Broker Agreements – Not just a good idea, it's the law

During the course of auditing broker trust accounts the board has noticed in a large number of closed sales files that licensees are not getting a signed, written buyer broker agreement when the licensee is working as an agent for the buyer.

A buyer agent is defined in law [MCA, 37-51-102 (6)] as "a broker or salesperson who, **pursuant to a written buyer broker agreement**, is acting as the agent of the buyer in a real estate transaction...(emphasis added)

It is not enough to simply have a buyer sign the form "Understanding Relationships in Real Estate." This form does **not** create an agency relationship. It simply informs a buyer or seller of the various agency relationship options available in Montana. Checking the box next to the Buyer Broker definition does not satisfy the requirement to have a written agreement before acting as a buyer broker.

As you are aware, you cannot act as a dual agent without consent from both the buyer and seller. You also cannot be a dual agent unless you have an agency relationship established with both the buyer and the seller. You establish that agency relationship with the seller through the listing agreement. You establish that agency relationship with the buyer through the buyer broker agreement.

In the past when a licensee has failed to obtain a written buyer broker agreement the board has issued a letter of instruction directly to the licensee. The board is using this opportunity to issue an instruction to all licensees by way of this newsletter. Further violation of this requirement will result in potential disciplinary action against the licensee and, when appropriate, the supervising broker.

Take the time needed to thoroughly explain the agency options to both buyers and sellers. Take the time to get all necessary written agreements signed and dated by the necessary parties....Your license could depend on it!

File your education and renew on-line for immediate receipt and confirmation by the board.

Property Managers.....

Reprinted by permission from the ARELLO 2004 Law Committee Report

Reasonable Accommodation

Giebeler v. M&B Associates, et al., 343 F.3d 1143 (2003)
U.S. Court of Appeals for the 9th Circuit

Facts: A man suffering from AIDS, who was disabled and could not work, was unable to meet the financial qualifications of an apartment complex where he sought to live in order to be near his mother, who could assist in his daily care. The mother, who did meet the financial qualifications, offered to rent the apartment for her son. This offer was rejected due to a management policy against cosigners. The disabled man sued, contending that the refusal to waive this policy was a violation of the Fair Housing Amendments Act (FHAA). The trial court rendered a summary judgment in favor of the apartment owner and the property manager.

Issue: Whether the refusal to accommodate the financial arrangement proposed by the prospective tenant was a violation of FHAA.

Held: Reversed and remanded. The FHAA required a reasonable accommodation of the disability by making an individual assessment of the financial risk of nonpayment posed by the proposed financial arrangement rather than by the invocation of an inflexible policy prohibiting cosigners. The proposal was a request for an accommodation which was both reasonable and necessary to afford equal opportunity.

Liability for Contaminated Water

Tucker v. Hayford, 75 P.3d 980 (2003)
Washington Court of Appeals

Facts: Hayford purchases a lot and mobile home in 1994. A well supplied water to the house. The water had been tested in 1993, and the Health Department had found exceptionally high levels of nitrate in the water. The Health Department recommended that a sanitary seal be properly installed and that the well be tested yearly. Hayford claimed not to have read the report. In 1998, Hayford leased the home to the Tuckers, who had four children. The Tuckers specifically asked Hayford about the water, and he replied that it was fine so long as they used a filter on their faucet. The family became ill, and upon testing the well, they discovered high levels of bacteria in the water. The Tuckers sued Hayford for personal injuries arising from the contaminated water. The trial court granted summary judgment for Hayford.

Issue: Whether the Tuckers can sue Hayford based on their rental contract for personal injuries stemming from the consumption of contaminated water.

Held: Reversed. Lease contracts have covenants of habitability, quiet enjoyment, and of proper maintenance. Without water, a property is uninhabitable. Unsafe drinking water renders a home uninhabitable, which "by definition interfered with the quiet enjoyment of the home." Also,

contaminated water may be enough evidence that the landlord breached the maintenance repair covenant of the lease. When deciding how much knowledge the landlord must have of the unsafe condition, "a should have known" standard is enough.

Landlord Duty to Visitors

Merrill v. Jansma, 86 P.3d 270 (2004)
Wyoming Supreme Court

Fact: A tenant rented a mobile home from Landlord Jansma. A front step became loose while the tenant occupied the home. The tenant notified Jansma that the step was loose. Although Jansma attempted to fix the step, he was unsuccessful. In the meantime, the tenant's mother, Merrill, fell on the loose step and injured her shoulder. Merrill sued Jansma, alleging among other things, negligence for failing to properly maintain the rental property. Jansma filed a motion for summary judgment arguing that she owed no legal duty to Merrill as Merrill was a visitor to the home. The trial court granted the summary judgment motion and Merrill appealed.

Held: Reversed and remanded. The court held that Wyoming, like many other states, has recently modified the rule of landlord immunity. Wyoming statutes now impose a duty on owners of rental property to maintain the property in a fit and habitable condition. The court further held that the duty establishes a standard of reasonable care under the circumstances and the standard of care abrogates the common law of landlord immunity and its exceptions. Although the statutory provisions require the tenant to give notice to the landlord and an opportunity to repair before a tenant can take action for a remedy under the statute, failure to give the notice does not preclude an action for personal injury. Nothing in the statutory framework suggests that the remedies provided for in the statute be the exclusive remedies available in all landlord/tenant actions.

Auditor All-stars

These brokers and property managers were given a clean audit of their trust account with no exceptions. Congratulate them next time you see them.

Barbara Asper	Breemen Ainsworth
David Barth	Thomas Clark
Dianne Click	Robert Davis
Carla Dingman	William Elfland
Robyn Erlenbush	Maria Evanson
Diane Fuhrman	Carrie Giomi
Nathan Hecht	Diane Kolberg
Jackie LaClair	Evan McCaw
Pam McDonald	Colleen Meade
Joyce Miller	Janice Nisbet
Phillip Olsen	Dean Petty
Daniel Reddick	Michele Reiser
Richard Rothing	Larry Wilcox

**BOARD OF REALTY REGULATION
CALENDAR AT A GLANCE**

NOVEMBER

- 11/11/04 OFFICE CLOSED – VETERANS’ DAY
- 11/17/04 MEETING OF THE BOARD OF REALTY REGULATION – HELENA
- 11/18-19/04 ROOKIE EDUCATION COURSE – BILLINGS
- 11/25/04 OFFICE CLOSED – THANKSGIVING

DECEMBER

- 12/9-10/04 ROOKIE EDUCATION COURSE – HELENA
- 12/24/04 OFFICE CLOSED – CHRISTMAS
- 12/31/04 RENEWAL/EDUCATION REPORTING FORM DEADLINE
- 12/31/04 OFFICE CLOSED – NEW YEARS