

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

In the matter of the proposed amendment ) NOTICE OF PROPOSED  
of ARM 24.210.641 unprofessional ) AMENDMENT  
conduct )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On March 29, 2008, the Board of Realty Regulation (board) proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and 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 March 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail bmcaldmond@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(y) remain the same.

(z) paying ~~consideration~~ a commission in connection with to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to the principal or ~~reducing.~~ Reducing the commission owed by the principal ~~who pays the commission~~ is not considered payment of a commission to an unlicensed person. ~~Licensees may not solicit business by offering gifts, rebates, or promotional items;~~

(aa) through (6) remain the same.

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

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonably necessary to amend this rule and delete the prohibition of business solicitation through the offering of gifts, rebates, or promotional items. Following the board's August 2007 amendment of this rule, the United States Department of Justice advised the board that the language may be

improper. This proposed amendment returns the rule language to substantially the same form as existed prior to the 2007 rule amendment.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [bmcalmond@mt.gov](mailto:bmcalmond@mt.gov), to be received no later than 5:00 p.m., March 27, 2008.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [bmcalmond@mt.gov](mailto:bmcalmond@mt.gov). The comments must be received no later than March 27, 2008.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 635 persons based on approximately 6350 licensees.

7. An electronic copy of this Notice is available through the department and board's site on the World Wide Web at [www.realestate.mt.gov](http://www.realestate.mt.gov). The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Realty Regulation 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 the person wishes to receive notices regarding all Board of Realty Regulation 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) 841-2323, e-mailed to bmcaldmond@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF REALTY REGULATION  
MARILYN FLOBERG, CHAIRPERSON

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 19, 2008