

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 210

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Subchapter 1

Organizational Rule

24.210.101 BOARD ORGANIZATION (1) The board of realty regulation hereby adopts and incorporates the organizational rules of the department of labor and industry as listed in chapter 1 of this title. (History: 37-51-203, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2005 MAR p. 2455.)

Subchapter 2

Procedural Rules

24.210.201 PROCEDURAL RULES (1) The board of realty regulation hereby adopts and incorporates the procedural rules of the department of labor and industry as listed in chapter 2 of this title. (History: 37-51-203, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2005 MAR p. 2455.)

Subchapter 3

Definitions

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) "Act" shall include a failure to act.

(2) "Advertising" means information in whatever form used to promote real property for sale, lease, rent, exchange, or purchase, or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer at the individual's request shall not be deemed advertising for the purpose of these rules.

(3) "Agency" or "agency relationship" shall include those relationships which are expressed in 37-51-102 and 37-51-313, MCA, and specifically do not include the common law of agency.

(4) "Agent" shall include subagent.

(5) "Agricultural," "farm," and "ranch" shall include real estate parcels over 30 acres in size principally used for, or capable and intended for use in, the production of plant or animal crops.

(6) "Buy" or "buyer" shall include purchase, purchaser, lease, lessee, and like terms.

(7) "Commercial property" shall include real estate that is principally used for, or capable and intended for use in, the production, distribution, or sale of goods or services, and any real estate which has over four residential units when transferred as a group of units.

(8) "Designated broker" is a broker who has been designated by other brokers of a real estate brokerage company to be the broker with the authority for the maintenance of a trust account, if any.

(9) "Distance education" is a course or courses in which the instruction does not take place in a traditional classroom setting but rather through other media where the teacher and student are separated by distance and sometimes by time.

(10) "Hour" of education is equal to 50 minutes of instructional time.

(11) "Internet" means the Internet, the World Wide Web or Internet-based electronic information distribution networks and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless or other analogous linkages to a computer, computer network or networks, including but not limited to Web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multimedia advertising, links and/or banner advertisements.

(12) "Internet advertising" means advertising conducted via the Internet.

(13) "Licensee" shall include anyone who has been issued a license by the board or who has made application for a license from the board. A former licensee is subject to disciplinary action for conduct engaged in during the period in which they were licensed.

(14) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name or brokerage company and that the advertisement is made by a real estate licensee.

(15) "Principal" shall include the seller or buyer with whom the agent has a contract.

(16) "Residential property" shall include real estate having four or less units that are principally used for, or capable and intended for use as, residences, and any single unit in a group of units when transferred as a single unit.

(17) "Seller" shall include vendor, lessor, and like terms.

(18) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons, pursuant to 37-51-302, MCA.

(19) "Supervision" shall include substantially day-to-day, active overseeing.

(20) "Third-party" shall include any person who is not the principal or agent. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-1-136, 37-51-202, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 951, Eff. 5/11/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Subchapter 4

General Provisions

24.210.401 FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) Fees are deemed earned by the board upon receipt.

(3) Examination fees are payable to the national testing service under contract with the board.

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| (4) Original broker license | \$100 |
| (5) Renewal of a broker license | 100 |
| (6) Original sales license | 87.50 |
| (7) Renewal of a sales license | 87.50 |
| (8) Broker change of place of business or each salesperson change of broker | 45 |
| (9) Reinstatement of a license suspended or revoked within a license period | 50 |
| (10) Placing active license on inactive status | 10 |
| (11) Activating a license on inactive status | 45 |
| (12) Original recovery fund assessment | 35 |
| (13) Continuing education course application for approval or renewal | 75 |
| (14) Education course instructor application for approval or renewal | 50 |
| (15) Rookie continuing education course registration | 100 |
| (16) Prelicensing course application for approval and renewal | 150 |
| (17) Predetermination application fee | 50 |
| (18) Each additional course hour-option from one course outline | 20 |

(19) Additional standardized fees are specified in ARM 24.101.403. (History: 37-1-131, 37-1-134, 37-51-203, MCA; IMP, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-311, MCA; Eff. 12/31/72; AMD, Eff. 12/5/74; AMD, Eff. 12/4/76; AMD, 1977 MAR p. 110, Eff. 9/23/77; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 592, Eff. 3/26/82; AMD, 1985 MAR p. 1754, Eff. 11/15/85; AMD, 1987 MAR p. 2089, Eff. 11/13/87; AMD, 1987 MAR p. 2236, Eff. 12/11/87; AMD, 1989 MAR p. 754, Eff. 6/16/89; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1994 MAR p. 3186, Eff. 12/23/94; AMD, 1997 MAR p. 1819, Eff. 10/7/97; AMD, 1998 MAR p. 2861, Eff. 10/23/98; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2000 MAR p. 3166, Eff. 11/10/00; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rules 24.210.402 through 24.210.404 reserved

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24.210.405 APPLICATION OF RULES--SUBCHAPTER DISTINCTION

(REPEALED) (History: 37-51-203, 37-53-104, MCA; IMP, 37-51-203, 37-53-104, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.406 SEVERABILITY (1) If any section, subsection, sentence, clause

or phrase of these rules be for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of said rules. The Montana Board of Realty Regulation hereby declares that it would have passed and adopted these rules in each section, subsection, sentence, clause or phrase thereof, separately and irrespective of the fact that any one or more of them be held invalid. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-203, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455.)

Rules 24.210.407 through 24.210.409 reserved

24.210.410 PURPOSE OF BOARD (1) It is the purpose of this board to regulate the licensing of applicants and the practice of licensees in order to safeguard the public interest and require knowledge, competency, accountability, and professional conduct by all licensees doing business in the state of Montana. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-1-316, 37-51-202, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 661, Eff. 4/25/86; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.411 BOARD MEETINGS (1) Board meetings shall be scheduled at a time and place as may be determined by the board. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-1-307, 37-51-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.412 PUBLIC RECORDS (1) The public record of the meetings of the board is available for public inspection at the office of the board during usual business hours. (History: 37-51-203, MCA; IMP, 37-51-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.413 through 24.210.415 reserved

24.210.416 APPLICATIONS FOR EXAMINATION AND LICENSE IN GENERAL -- BROKER AND SALESPERSON (1) The board may establish procedures for review of applications for licensing or equivalency.

(2) The board may appoint a testing entity to process and conduct any examination required by the board. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, 37-51-303, MCA; Eff. 12/31/72; AMD, Eff. 12/4/76; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1981 MAR p. 1613, Eff. 11/26/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.417 through 24.210.425 reserved

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) Offices or firms having more than one broker may utilize a single trust account.

(2) A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these trust account requirements whether by the delegating broker or the designated broker.

(3) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed.

(4) If a broker elects to hold trust funds, the broker must comply with the following:

(a) All monies, belonging to others and accepted by the broker while acting in the capacity as a broker, shall be deposited in an insured account at an institution located in Montana;

(b) The name of such account shall be identified by the words "trust account";

(c) Trust funds shall be retained in this trust account until the transaction involved is closed or terminated;

(d) However, trust funds may be disbursed to the closing agent in anticipation of closing upon written agreement of the buyers and sellers. The broker must account for trust account funds at all times;

(e) At the client's instructions, trust funds may be retained in the trust account although there is no purchase, lease, or rental agreement in existence, or when the transaction has been terminated;

(f) No payments of personal indebtedness of the broker shall be made from a trust account;

(g) Money held in the trust account which is due and payable to the broker must be withdrawn within ten business days after such money becomes due and payable to the broker;

(h) A broker shall not be entitled to any part of the earnest money or other monies paid to the broker in connection with any real estate transaction as part or all of the commission or fee until the transaction has been closed or terminated. If there is a division of forfeited earnest money between the broker and seller, it shall be pursuant to a written agreement between them;

(i) Maintenance of a trust account shall include the broker or designated broker keeping at the broker or designated broker's office complete record of all funds received, in the following manner:

(i) a bank deposit slip showing the date of deposit, amount, source of the money, and where deposited;

(ii) monthly bank statements are to be retained and kept on file;

(iii) trust account checks shall be numbered and all voided checks retained. The checks shall denote the broker's business name, address, and should be designated as "trust account";

(iv) a record which shows the chronological sequence in which funds are received and disbursed;

(v) for funds received, the record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(vi) the record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;

(vii) for disbursements, the record must include the date, the payee, and the amount;

(viii) a running balance must be shown after each entry;

(j) A record shall be kept to show the receipts and the disbursements as they affect a single, particular transaction. The record must include the names of the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each entry;

(k) The trust account must be reconciled monthly;

(l) Trust account records shall be maintained for five years from the date of receipt of any funds or property;

(m) The board is authorized to examine each broker's trust account. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative;

(n) A salesperson, or a broker who has delegated the broker's obligation to maintain a trust account to a designated broker pursuant to (1), shall place all funds for deposit in the custody of the supervising or designated broker in adequate time for the supervising or designated broker to comply with all trust account requirements.

(5) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker. Personal funds may be distributed to the broker or the financial institution for payment of trust account bank charges.

(6) A broker may maintain more than one trust account.

(7) All licensees shall ensure that all real estate funds which they receive are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of the broker's or salesperson's (whichever is earlier) receipt of the money, unless otherwise agreed to by the parties.

(8) The broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by the broker, the broker's salesperson, or funds received by the broker as a designated broker pursuant to (1) on behalf of customers or clients.

(9) All required trust account records may be maintained electronically but must be maintained in a manner that permits auditing. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, MCA; Eff. 12/31/72; AMD, Eff. 4/4/74; AMD, Eff. 7/5/76; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1981 MAR p. 1613, Eff. 11/26/81; AMD, 1982 MAR p. 1199, Eff. 6/18/82; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.427 through 24.210.429 reserved

24.210.430 INTERNET ADVERTISING RULES (1) Licensees who engage in any form of Internet advertising, either directly or indirectly, shall comply with the Internet advertising rules set out in this rule. This rule does not apply to traditional forms of advertising or promotion, such as newspaper, television, radio advertisements, yard signs, or direct mailings.

(2) All Internet advertising shall truthfully and accurately describe the real property or service advertised. Real property advertisements shall identify the city, town, or county in which the real property is located.

(3) All Internet advertising shall provide licensee identification. The timing and placement of such licensee identification shall vary, depending upon the nature of the advertisement or promotion, as follows:

(a) Whenever a licensee or brokerage company owns a web page or controls its content, every viewable page should include (or link to) a licensee identification. (A viewable page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.)

(b) E-mail shall include a licensee identification at the beginning or end of each message, unless the licensee has previously provided licensee identification to all recipients of the e-mail.

(c) News groups, discussion lists, and bulletin boards shall include licensee identification at the beginning or end of each message.

(d) Licensee identification is not necessary in connection with instant messages if the licensee provided the written licensee identification via another format or medium (e.g., e-mail or letter) prior to providing or offering to provide, licensable services.

(e) Licensee identification is required prior to providing or offering to provide licensable services during a chat session or in text visible on the same web page that contains a chat session if the licensee or brokerage company controls the web site hosting the chat session.

(f) Licensee identification is required prior to the advertising message or in text visible on the same web page that contains a voice over net (VON) session.

(g) Licensee identification is not necessary for audible messaging if it was provided via another medium (i.e., e-mail, letter) prior to providing or offering to provide licensable services.

(h) Licensee identification should be visible as part of the advertising message when using multimedia advertising (e.g., Web based, executable e-mail, attachments, etc.).

(i) Banner ads should link to a web page that has licensee identification, unless the banner ad has licensee identification contained in it.

(4) Licensees' Internet advertising may include real properties on which neither the licensee nor the brokerage company is the listing agent so long as the listing agent has offered cooperation and has consented to Internet advertising by the licensee engaging in the Internet advertising and the owners of the property have consented to the same. The offer of cooperation and consent to Internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the Internet advertising, are both participating (provided the multiple listing system gives the listing agents the option of prohibiting Internet advertising of some or all of their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them. The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given. Licensees' Internet advertising of real properties, on which neither the licensee nor the brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent or brokerage company, including the office mailing address or e-mail address. The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such property data may be formatted differently and be condensed and further advertised if the advertisement contains the following statement or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property." No licensee shall be responsible for errors or misrepresentations of others, who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation.

(5) All Internet advertising must be current as of the date of the advertisement and must be updated promptly in the event of material changes to the listing, such as its expiration, termination, or amendment, and/or in the event of material changes to the information otherwise found in the Internet advertising. Internet advertising shall indicate the date on which it was created and last updated.

(6) All information, disclosures, statements, and the like required by this rule to be included in a licensee's Internet advertising shall be displayed in a size, color, typestyle, and location that a reasonable person will notice and be able to read.

(7) When a third-party controls or manages the web site or medium displaying the Internet advertising on behalf of a licensee, the licensee is responsible to assure such Internet advertising and the third-party comply with the provisions of this rule. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-51-102, 37-51-321, MCA; NEW, 2001 MAR p. 785, Eff. 5/11/01; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.431 through 24.210.434 reserved

24.210.435 INVESTIGATIONS COMMITTEE (REPEALED) (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-322, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

Subchapter 5 reserved

Subchapter 6

Brokers and Salespersons

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) Any time that a salesperson's association with the supervising broker is terminated, the supervising broker shall immediately mail the salesperson's license to the board office with a letter noting the termination.

(2) A dispute between a salesperson and the supervising broker shall not be cause for failing to immediately mail the salesperson's license to the board office.

(3) When required in writing to do so by a salesperson formerly associated with a supervising broker, the supervising broker shall promptly provide the former salesperson with a certified statement on the form prescribed by the board identifying all real estate transactions in which the salesperson was involved in connection with the salesperson's association with the supervising broker within the three years preceding the request.

(4) Upon termination of a salesperson's association with the salesperson's supervising broker, the supervising broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the supervising broker and that the listings and pending transactions are the responsibility of the supervising broker.

(5) Listings and pending transactions of a salesperson are the responsibility of the supervising broker upon termination of the association between the salesperson and supervising broker.

(6) Supervising brokers are responsible for the performance of salespeople under the supervising brokers' supervision. If a complaint is submitted to the Board of Realty Regulation alleging improper conduct on the part of a salesperson, a copy of the complaint shall be provided to the supervising broker who shall also provide a response to the complaint.

(7) Supervising brokers must provide ongoing real estate training to all salespeople under their supervision in order to assure competent practice of the profession.

(8) A listing obtained by a salesperson is not effective until it is reviewed, signed, and dated by the supervising broker.

(9) Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction prepared by salespeople under their supervision are appropriately prepared and executed.

(10) A broker shall not sign the application of a salesperson unless the broker and salesperson will be in lawful association, through employment contract or otherwise. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-51-202, 37-51-308, 37-51-309, 37-51-313, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.602 EXAMINATION (1) License examinations may be held at such times and places determined by the board.

(2) The rules established by the examination provider shall be obeyed by all persons taking an examination. A violation of the examination provider's rules may result in imposition of any sanction found in 37-1-312, MCA.

(3) The board may from time to time review and amend the examination type, format, and the score upon which the pass or fail determination is made.

(4) For the broker examination, the pass-fail score is 80 percent.

(5) For the salesperson examination, the pass-fail score is:

(a) 80 percent for the uniform examination portions; and

(b) 70 percent for the state examination portion.

(6) All test scores may be scaled and equated for the specific examination either by the board or by the testing agency that provides or administers the examination. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-1-312, 37-1-316, 37-51-202, 37-51-302, 37-51-303, MCA; Eff. 12/31/72; AMD, Eff. 11/4/74; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 46, Eff. 1/12/07; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.603 APPLICATION FOR EXAMINATION -- SALESPERSON AND BROKER (REPEALED) (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, 37-51-303, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.604 through 24.210.609 reserved

24.210.610 PREDETERMINATION FOR LICENSING (1) Any applicant may make application for a predetermination prior to completing the examination and required course of education for the sole purpose of determining whether the applicant's qualifications, other than examination and education, are sufficient.

(2) Application for predetermination of whether the applicant's qualifications, other than examination and course of education, are sufficient shall be made to the board on forms approved by the board and accompanied by the nonrefundable predetermination application fee.

(3) Any approval of an application for predetermination which is made by the board shall remain valid for 90 days.

(4) At the time the applicant has completed the required education and examination, the applicant must submit an application for licensing and pay the required fees, certify in writing the information submitted for predetermination remains current, or provide any changes that may have occurred since the predetermination was filed. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND

BROKER (1) Applicants for license must make application on forms approved by the board and accompanied by the required fee, and must include a recent 2" x 2" photograph for identification of the applicant.

(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) All individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate the examination results.

(4) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a certified license verification from that licensing jurisdiction is required before a Montana license will be issued.

(5) In addition to (1) through (4), all applicants for licensure as a salesperson must:

(a) submit proof of completing 60 hours of approved prelicensing education obtained within a period of 24 months immediately preceding the date of the submission of the application; and

(b) submit the proposed supervising broker's certification of the applicant's good repute and the broker's written acceptance of responsibility for supervising the licensed activities of the salesperson.

(6) In addition to (1) through (4), all applicants for licensure as a broker must:

(a) submit proof of completing 60 hours of approved prelicensing education obtained within a period of 18 months immediately preceding the date of the submission of the application; and

(b) submit for the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson," evidence acceptable to the board that the salesperson has performed functions as a licensee as follows:

(i) 30 closed real estate property transactions in the last three years from the date of application for a residential applicant, no more than five of which can be leases;

(ii) ten closed real estate transactions within the last three years for an agricultural, farm, ranch, or commercial applicant. No more than two commercial transactions other than listings and/or sales may be used; or

(iii) a combination of (6)(b)(i) and (ii).

(iv) Upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

(c) The experience required by (6)(b) must be legally obtained while licensed as a real estate licensee in this state, or licensed in another jurisdiction.

(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), or under 37-51-302, MCA.

(e) In order for a listing to be considered a closed real estate transaction, the listing must have sold. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-51-202, 37-51-302, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1992 MAR p. 2274, Eff. 10/16/92; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.612 through 24.210.614 reserved

24.210.615 APPLICATION FOR DETERMINATION OF EQUIVALENT EXPERIENCE FOR BROKER LICENSING (1) A salesperson who has been licensed for the preceding 18 months may apply to the board for a determination that the applicant possesses experience equivalent to that required for broker licensing.

(2) Applications for determination of equivalent experience shall be made on forms approved by the board. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1994 MAR p. 1585, Eff. 6/10/94; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.616 WAIVER OF EXPERIENCE REQUIREMENT FOR BROKER LICENSING PROHIBITED (1) There shall be no waiver of the experience qualifications for a broker license or reciprocity broker license. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, 37-51-306, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455.)

Rules 24.210.617 through 24.210.620 reserved

24.210.621 NONRESIDENT LICENSE -- SALESPERSON AND BROKER (REPEALED) (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-302, 37-51-306, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.622 and 24.210.623 reserved

24.210.624 INACTIVE LICENSES (1) A licensed broker or salesperson not engaged in licensed activities may place the licensee's license on inactive status by:

- (a) paying the required fee in accordance with ARM 24.210.401;
 - (b) forwarding the license to the board office for cancellation of the active license; and
 - (c) submitting a written request that the license be placed inactive.
- (d) A salesperson must also forward a release from the salesperson's supervising broker.

(2) A licensee whose license is on inactive status with the board has the sole responsibility to keep the board informed as to any change of the licensee's residency or mailing address during the period of time the real estate licensee remains on inactive status.

(3) In order to avoid lapse, expiration, or termination of the license, an inactive licensee must renew the inactive license each renewal period.

(4) An inactive licensee does not need to report continuing education until converting the license to active status as found in ARM 24.210.625.

(5) An inactive licensee may not receive compensation for real estate activity not earned while the license was active. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-319, 37-51-202, 37-51-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/75; AMD, 1978 MAR p. 203, Eff. 2/4/78; AMD, 1979 MAR p. 200, Eff. 3/1/79; AMD, 1979 MAR p. 1548, Eff. 12/14/79; AMD, 1980 MAR p. 1280, Eff. 4/25/80; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2091, Eff. 11/25/82; AMD, 1989 MAR p. 1339, Eff. 9/15/89; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS (1) For an inactive real estate licensee to become active, the licensee must:

- (a) file a change of address application;
- (b) provide evidence of completing 24 hours of continuing education within the proceeding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; and
- (c) pay the required fee in accordance with ARM 24.210.401. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-311, MCA; Eff. 12/31/72; AMD, Eff. 7/5/75; AMD, 1978 MAR p. 203, Eff. 2/24/78; AMD, 1979 MAR p. 200, Eff. 3/1/79; AMD, 1979 MAR p. 1548, Eff. 12/14/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1989 MAR p. 1339, Eff. 9/15/89; AMD, 1998 MAR p. 1496, Eff. 6/12/98; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.626 through 24.210.628 reserved

24.210.629 RECIPROCITY (1) Subject to 37-51-306, MCA, the board may enter into an agreement with any other jurisdiction establishing the conditions through which residents of the other jurisdiction may obtain a nonresident license in this state, and establishing terms of nonresident practice in this state, if the other jurisdiction grants Montana resident licensees the same privileges. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-304, 37-51-202, 37-51-302, 37-51-306, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.630 through 24.210.634 reserved

24.210.635 RENEWALS (1) Each licensee will renew on or before the date set by ARM 24.101.413.

(2) Renewal notices will be sent as specified in ARM 24.101.414. Active salesperson licensee renewals will be sent to the address of the salesperson's broker of record. Inactive licensee renewals will be sent to the licensee's address of record on file with the board. Each licensee is required to renew.

(3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the date as set by ARM 24.101.413, or the late penalty fee as specified in ARM 24.101.403 will be required. An unrenewed license will lapse, expire, or terminate per 37-1-141, MCA.

(4) The provisions of ARM 24.101.408 apply. (History: 37-1-319, 37-51-203, MCA; IMP, 37-1-141, 37-1-319, 37-51-202, MCA; NEW, 1997 MAR p. 1819, Eff. 10/7/97; AMD, 2000 MAR p. 2013, Eff. 7/28/00; AMD, 2000 MAR p. 3166, Eff. 11/10/00; AMD, 2001 MAR p. 2291, Eff. 11/22/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.636 through 24.210.640 reserved

24.210.641 UNPROFESSIONAL CONDUCT (1) A licensee involved in any real estate transaction shall comply with the generally accepted standards of practice.

(2) A licensee shall not act as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313, MCA.

(3) Violation of 37-51-321, MCA, constitutes unprofessional conduct.

(4) The board may take disciplinary action and impose any penalty found in 37-1-312, MCA, against any licensee who violates any statute or rule administered by the board.

(5) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:

(a) engaging in activities that constitute the practice of law;

(b) failing to advise their principal and any other party to the transaction with whom the licensee is directly working, that outside professional services should be secured when appropriate;

(c) engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, or other like person or entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(d) engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(e) failing, when entering into a listing agreement, to promptly verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing;

(f) failing to disclose the fact that the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another;

(g) falsifying documents, placing any party's signature on a document, or altering or amending a document on behalf of any party without authority of a written power of attorney from the party;

(h) advising that an offer or counter offer has been accepted without the licensee having in the licensee's possession a document signed by the party evidencing the party's acceptance;

(i) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

- (j) knowingly entering, or willfully continuing in any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or the licensee's principal is to commit any of the following acts:
- (i) using or conspiring with others to obtain inflated property appraisals;
 - (ii) influencing others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA);
 - (iii) filing an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, HUD or VA regulations; or
 - (iv) acquiring as an investor, or personally, properties subject to a loan guaranteed or insured by HUD, collect rents thereon, while purposely failing to make mortgage payments on the property;
 - (k) failing to make reasonable efforts to perform all obligations arising from any agreement entered into;
 - (l) failing to document in writing and obtain signatures by the parties to all agreements. Licensees shall document in writing, and have signed by the parties, any changes to the terms and provisions of the agreement which occur between the time a buy/sell is executed and the closing of a transaction;
 - (m) failing, as a seller's agent, to continue to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates, unless the seller has waived this obligation in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller.
 - (n) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted. Buyer agents have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise directed in writing to do so by the buyer;
 - (o) representing to any lender, guaranteeing agency, or other interested party, either orally or through the preparation of false documents, an amount other than the true and actual sale price of the real estate or terms differing from those actually agreed upon;
 - (p) failing to inform the seller in writing of the estimated costs and fees associated with the sale at the time a listing is taken and when an offer is presented;
 - (q) failing, as a licensee, to repay the recovery account for any amounts paid from the account based on an unsatisfied judgment against the licensee;
 - (r) when acting as a listing agent, disclosing the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers. This shall not prohibit the listing agent from disclosing that an offer has been made;
 - (s) disclosing to a buyer principal the terms and provisions of a competing principal's offer when a buyer's broker has more than one principal making offers on the same property;

(t) failing, while managing property for owners, to abide by the requirements of 37-51-607, 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;

(u) violating the landlord tenant laws of Title 70, chapter 24, MCA;

(v) violating the state and federal human rights statutes;

(w) violating the Americans with Disabilities Act;

(x) guaranteeing or authorizing a person to guarantee future profits which may result from the resale of real property;

(y) soliciting, selling, or offering for sale real property by conducting lotteries, raffles, or contests for the purpose of influencing a purchaser or prospective purchaser of real property. Door prizes can be awarded so long as the participant is not required to pay any consideration or enter into any contract arrangement in order to participate in the door prize drawing;

(z) paying consideration in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker. 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) failing to disclose in advertising the licensee's name and identifying that the advertisement is made by a real estate licensee or that the advertising is made by a brokerage company. Internet advertising is subject to the provisions of ARM 24.210.430;

(ab) failing to disclose their identity as a real estate licensee at first contact;

(ac) failing to comply with all completion and reporting requirements for continuing education as established by the board;

(ad) failing to respond to a request from the board; or

(ae) a licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status.

(6) The revocation, suspension, or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state may be grounds for license discipline in this state, if the board determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity. (History: 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; Eff. 12/31/72; NEW, 1978 MAR p. 203, Eff. 2/24/78; AMD, 1979 MAR p. 1548, Eff. 12/14/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 105, Eff. 1/31/86; AMD, 1987 MAR p. 588, Eff. 5/15/87; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1994 MAR p. 297, Eff. 2/11/94; AMD, 1994 MAR p. 667, Eff. 4/1/94; AMD, 1994 MAR p. 1585, Eff. 6/10/94; AMD, 1995 MAR p. 468, Eff. 3/31/95; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1997 MAR p. 399, Eff. 2/25/97; AMD, 1997 MAR p. 1026, Eff. 6/24/97; AMD, 1998 MAR p. 2861, Eff. 10/23/98; AMD, 1998 MAR p. 3277, Eff. 12/18/98; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 785, Eff. 5/11/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rules 24.210.642 through 24.210.645 reserved

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE (1) The board, in its discretion, may impose disciplinary action against a licensee violating any law or rules of the board. The board shall decide on a case-by-case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

- (a) the seriousness of the infraction;
- (b) the detriment to the health, safety, and welfare of the people of Montana;

and

- (c) past or pending disciplinary actions relating to the licensee.

(2) In addition to any sanction provided in 37-1-312, MCA, the board may impose one or more of the following sanctions against a licensee who violates one or more of the laws or rules of the board:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions

determined by the board;

- (c) suspension of the right to practice for a period not exceeding one year;

- (d) placing a licensee on probation;

- (e) public or private reprimand or censure of a licensee;

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper;

(g) limitation or restriction of the scope of the license and the licensee's practice;

(h) deferral of disciplinary proceedings or imposition of disciplinary sanctions;

or

- (i) ordering the licensee to successfully complete appropriate training.

(3) When a license is revoked or suspended, the license must immediately be surrendered to the board.

(4) Any order of license discipline, when final, including those reached by settlement agreement, may be published. (History: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA; IMP, 2-4-623, 37-1-319, 37-51-202, 37-51-321, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.647 through 24.210.650 reserved

24.210.651 REINSTATEMENT (1) Unless a specific period of suspension or revocation is set out in any final order of the board, a suspension shall be for one year and a revocation shall be permanent.

(2) As a condition to the reinstatement of a suspended license, in addition to any other conditions allowed by law, the board may require the applicant to take and pass a qualifying examination, or course, or both as determined by the board.

(History: 37-1-131, 37-1-136, 37-51-203, MCA; IMP, 37-1-314, 37-51-202, 37-51-321, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.652 through 24.210.659 reserved

24.210.660 PRELICENSING EDUCATION -- SALESPERSONS AND BROKERS (1) Request for approval of a prelicensing education course and instructor approval must be made on forms approved by the board and submitted 60 days prior to the initial course offering date.

(2) Expiration of course approval or instructor approval is three years from the date of approval, but may be revoked for cause.

(3) Distance education courses may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under this rule;

(c) the distance education course provider must be certified by the Association of Real Estate License Law Officials (ARELLO) and provide appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.

(4) Advanced nationally recognized designation courses may be submitted and may be approved in part to fulfill specific topics of the broker prelicensing education requirement.

(5) Instructors teaching more than 25 percent of a prelicensing course must be approved by the board as prelicensing instructors.

(6) The course provider is responsible for the actions and representations of all instructors who aid or assist in the instruction of the prelicensing education course.

(7) No more than eight hours of instruction may be offered per day. Examination time does not count as hours of instruction.

(8) Approved instructors must have:

(a) a bachelor's degree in a field traditionally associated with the subject matter being taught; or

(b) advanced training on instruction methods and adult learning; and

(c) one year's experience in real estate education.

(9) Prelicensing course to obtain a sales license must consist of the following topics:

- (a) practices, principles, and essentials of real estate;
- (b) real estate law;
- (c) taxation;
- (d) construction and land development;
- (e) property management and leasing;
- (f) ethics and standards of practice;
- (g) estimating closing costs, escrow, and closing and settlement practices;
- (h) finance;
- (i) hazardous waste or environmental issues;
- (j) agency;
- (k) contract law and documents;
- (l) state rules and regulations;
- (m) forms of ownership;
- (n) title and transfer of title;
- (o) recording acts;
- (p) negligence or misrepresentation (risk management);
- (q) real estate security instruments;
- (r) fair housing;
- (s) Regulation Z; and
- (t) landlord tenant law.

(10) Effective January 1, 2003, the 60 hours of board approved broker prelicensing education will consist of the following modules:

- (a) business management;
- (b) contracts;
- (c) financial management;
- (d) liability pertaining to real estate practice;
- (e) professional conduct; and
- (f) property management.

(11) Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(12) The applicant must attend 90 percent of each hour of the approved course time in order to receive credit for attendance.

(13) A board representative may, at no charge, audit all board-approved courses for rule compliance. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-51-302, MCA; NEW, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) Effective January 1, 2007, all new sales licensees will receive an interim license that will expire October 31 of the year of the initial license date.

(2) Effective January 1, 2007, all new sales licensees are required to complete the board mandated new licensee mandatory continuing education requirement commonly known as the 12-hour rookie course by the renewal date as set by ARM 24.101.413 following their original license issue date.

(3) A new license will be issued upon completion of the new licensee mandatory continuing education required by this rule.

(4) The new licensee mandatory continuing education does not replace the 12-hour continuing education requirement which begins with the second year of licensing.

(5) All licensees are required to submit the renewal form and renewal fee by the date set by ARM 24.101.413 of their license renewal year. (History: 37-1-131, 37-1-306, 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; NEW, 2000 MAR p. 2013, Eff. 7/28/00; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1171, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.662 through 24.210.666 reserved

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) Each active licensee is required to complete a minimum of 12 hours of continuing real estate education every year.

(2) The licensee must attend 90 percent of each hour of the approved course time in order to receive credit for attendance.

(3) The required hours shall be in real estate related courses approved by the board.

(4) By August 1 of each year, the board will identify topics in which the 12 hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

(5) No mandatory hours may be carried over except as elective credits. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed.

(6) No licensee shall repeat a course for credit in the same reporting year.

(7) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.

(8) Course and instructor evaluation forms, approved by the board, must be provided and may be collected by a board representative and forwarded to the board office.

(9) A board representative may, at no charge, audit all board-approved courses for rule compliance.

(10) All approved education must be available to all licensees.

(11) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

(12) Instructors or their designee must report all education attendance in a format approved and provided by the board.

(13) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course approval or withdrawal of the instructor approval.

(14) All continuing education courses must be taken and completed within the reporting period. No carry over hours will be accepted from one reporting period to another.

(15) The board may grant continuing education credit to board members for actively preparing and participating in board meetings. Credit will be limited to no more than three hours of credit per meeting. (History: 37-1-131, 37-1-136, 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; NEW, 1987 MAR p. 157, Eff. 2/14/87; AMD, 1987 MAR p. 1780, Eff. 10/16/87; AMD, 1989 MAR p. 1339, Eff. 9/15/89; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 2233, Eff. 9/17/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1998 MAR p. 2861, Eff. 10/23/98; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2000 MAR p. 184, Eff. 1/28/00; AMD, 2000 MAR p. 2013, Eff. 7/28/00; AMD, 2001 MAR p. 785, Eff. 5/11/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1171, Eff. 5/5/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rules 24.210.668 through 24.210.673 reserved

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE

APPROVAL (1) Requests for approval of a continuing real estate education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.

(2) The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause.

(3) Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(4) The board or its designee may, at its discretion and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) courses approved by another jurisdiction's real estate licensing authority;
or

(b) courses which lead to designations or certifications by board recognized trade or professional associations.

(5) Distance education courses may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under ARM 24.210.667;

(c) the distance education course provider is certified by the Association of Real Estate License Law Officials (ARELLO) and provides appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules. (History: 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, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 785, Eff. 5/11/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.675 and 24.210.676 reserved

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL

(1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended instruction with payment of the required fee.

(2) The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Approval may be revoked if the instructor fails to demonstrate effective teaching skills.

(3) Approved instructors must have:

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally-recognized instructor designation.

(4) Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers, may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee. (History: 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, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Subchapter 7 reserved

Subchapter 8

Property Management

24.210.801 FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services provided to property management licensees and listed below. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) No part of the fees paid in accordance with the provisions of this chapter is refundable. Fees are deemed earned by the board upon receipt.

(3) Examination fees are payable to the national testing service under contract with the board.

| | |
|-----------------------------------------------------------------------------|-------|
| (4) For each original license | \$ 60 |
| (5) For each annual renewal | 75 |
| (6) For each change of place of business or affiliation | 45 |
| (7) Reinstatement of a license suspended or revoked within a license period | 50 |
| (8) For placing an active license inactive | 10 |
| (9) For activating an inactive license | 45 |
| (10) For each original recovery account assessment | 35 |
| (11) Continuing education course application | 75 |
| (12) Continuing education instructor application | 50 |
| (13) Prelicensing course | 250 |

(14) Additional standardized fees are specified in ARM 24.101.403. (History: 37-1-134, 37-51-202, 37-51-203, MCA; IMP, 37-1-134, 37-1-141, 37-51-207, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 2000 MAR p. 3166, Eff. 11/10/00; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

Rule 24.210.802 reserved

24.210.803 PROPERTY MANAGEMENT DEFINITIONS The terms used in this chapter shall have their common meaning as used in the property management industry and, unless the content otherwise requires, the following meanings shall also apply:

(1) "Salaried employee" means an individual employed by an owner to manage the property of that owner. This term does not include an unlicensed real estate or property management secretary or the holder of a similar position employed to manage many owners' property for a single broker or property manager. Property manager is one who is engaged in property management as defined in 37-51-602, MCA.

(2) "Board" means the Board of Realty Regulation provided in 2-15-1867, MCA. (History: 37-1-131, 37-51-202, 37-51-203, MCA; IMP, 37-51-102, 37-51-602, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.804 reserved

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) Each property manager will maintain a trust account which will be designated by the words "trust account," wherein all deposits, rent payments, or other trust funds received by the property manager on behalf of any other person shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account.

(2) Trust funds must be deposited in an insured account in a financial institution located in Montana.

(3) All funds belonging to others and accepted by the property manager must be deposited in an insured account in a financial institution located in Montana. The account must be identified by the words "trust account."

(4) Funds deposited in a property manager trust account in connection with a property management transaction shall not be commingled with the property manager's personal funds or other funds in the trust account with the exception that the property manager may deposit and keep a sum not to exceed \$1000 in the trust account from the property manager's personal funds, including the interest earned on the trust account which accrues to the property manager. Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges.

(5) A property manager may maintain more than one trust account, but must notify the board of each and every account by name and number.

(6) All monies belonging to others which are received by a property manager in a residential lease or rental transaction must be deposited in the property manager's trust account within three business days. All monies belonging to others which are received by a property manager in a nonresidential lease or rental transaction must be deposited into the property manager's trust account within three business days, unless otherwise provided in the lease or rental agreement.

(a) When the property management agreement is terminated but the rental agreement is still in effect and the licensee is holding funds deposited by a tenant, the licensee shall promptly and in writing advise the tenant that the funds will be transferred to the property owner or the owner's designee within 30 days of the notification. The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.

(b) The property manager shall timely transfer funds pursuant to the notice to the tenant.

(7) Maintenance of the trust account will be the responsibility of the property manager. Property managers are responsible for all funds accepted by them or their property management staff.

(8) Except for personal funds referenced in (4), no payments of personal indebtedness of the property manager shall be made from such trust account.

(9) Money held in the trust account which is due and payable to the property manager must be withdrawn within ten business days after such money becomes due and payable or when the property ledger is reconciled except as exempted in (4).

(10) Maintenance of a property management trust account shall include the property manager keeping at the property management office a completed record of all funds received in the following manner:

(a) a bank deposit slip showing the date of deposit, amount, source of money, and where deposited;

(b) monthly bank statements are to be retained and kept on file;

(c) trust account checks must be numbered and all voided checks retained.

The checks must denote the property manager's business name, address, and must be designated as "trust account";

(d) a record which shows the chronological sequence in which funds are received and disbursed;

(i) for funds received, the record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(ii) a record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;

(iii) for disbursements, the record must include the date, the payee, and the amount;

(iv) a running balance must be shown after each entry.

(11) A ledger must be kept for each tenant showing all rents, deposits, and disbursements. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(12) A record must be kept for each property owner showing all income, expenses, and disbursements. The record entries must clearly identify the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, the payee, and the amount must be shown. A running balance must be shown after each entry.

(13) The trust account must be reconciled monthly except in the case where there has been no activity during that month.

(14) Every property manager shall keep all records required by (10) and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than five years from the date the property management agreement terminates.

(15) All required trust account records may be maintained electronically but must be maintained in a manner to permit auditing.

(16) The board is authorized to examine each property manager's trust account. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours.

The property manager is required to fully cooperate with the board representative. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rule 24.210.806 reserved

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER

REQUIREMENTS (1) A licensee who changes the office location or affiliation 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. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-605, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rule 24.210.808 reserved

24.210.809 PRELICENSURE PROPERTY MANAGEMENT COURSE

REQUIREMENTS (1) A property management application must provide evidence of successfully completing a minimum of 30 hours of prelicensure education approved by the board.

(2) The prelicensure curriculum must consist of the following topics:

(a) landlord tenant law (Title 70, chapter 24, MCA);

(b) federal and state fair housing laws;

(c) Americans with Disabilities Act;

(d) state licensing law and rules;

(e) trust accounts;

(f) accounting procedures;

(g) definitions;

(h) contract law;

(i) agency; and

(j) leasing principles. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-601, 37-51-603, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 2001 MAR p. 789, Eff. 1/1/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.810 and 24.210.811 reserved

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

- (1) An applicant for a property management license must:
- (a) submit a completed original application on forms approved by the board and pay the required fees;
 - (b) provide the account number and bank name where the property management trust account is held; and
 - (c) provide a recent 2" x 2" photo of the applicant.
- (2) Real estate brokers and salespersons wishing to obtain a property management license must meet all existing property management licensing requirements, including completion of the precicensing course described in ARM 24.210.809, passing the examination, submitting the license application, and paying the required fee.
- (3) Applicants for licensure as a property manager must submit proof of completing a board approved property management precicensing course obtained within a period of 24 months immediately preceding the date of the submission of the application.
- (4) All individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate examination results. (History: 37-1-131, 37-51-203, MCA; IMP, 37-51-202, 37-51-601, 37-51-603, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 468, Eff. 3/31/95; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.813 and 24.210.814 reserved

24.210.815 APPLICATION FOR PROPERTY MANAGEMENT EXAMINATION (REPEALED) (History: 37-1-131, 37-51-202, 37-51-203, MCA; IMP, 37-51-603, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; TRANS, from Commerce, 2005 MAR p. 2455; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.816 and 24.210.817 reserved

24.210.818 PROPERTY MANAGEMENT EXAMINATION (1) License examinations may be held at such times and places as determined by the board.

(2) The rules established by the examination provider shall be obeyed by all persons taking an examination. A violation of a rule may result in imposition of any sanction found in 37-1-312, MCA.

(3) The board may from time to time review and amend the examination type, format, and the score upon which the pass or fail determination is made.

(4) The passing score is 80 percent. (History: 37-1-131, 37-51-203, MCA; IMP, 37-1-131, 37-1-312, 37-1-316, 37-51-601, 37-51-603, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.819 through 24.210.824 reserved

24.210.825 RENEWALS (1) Except for new licensees as provided in ARM 24.210.827, all active and inactive licensees will be required to renew as set by ARM 24.101.413.

(2) Renewal notices will be sent as specified in ARM 24.101.414. Each licensee is required to renew.

(3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal date set forth in ARM 24.101.413. An unrenewed license will lapse, expire, or terminate per 37-1-141, MCA.

(4) The provisions of ARM 24.101.408 apply. (History: 37-1-131, 37-1-141, 37-51-203, MCA; IMP, 37-1-101, 37-1-141, 37-51-601, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2799, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 2291, Eff. 11/22/01; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.826 INACTIVE TO ACTIVE STATUS - PROPERTY MANAGEMENT LICENSES (1) In order to become active, an inactive property management licensee must:

- (a) file a change of address application;
- (b) provide evidence of completing 24 hours of continuing education within the proceeding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; and
- (c) pay the required fee in accordance with ARM 24.210.801. (History: 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; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1999 MAR p. 405, Eff. 3/12/99; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.827 INACTIVE STATUS (1) A licensee not engaged in licensed activities may place the licensee's license on inactive status by:

- (a) paying the required fee;
 - (b) forwarding the license to the board office for cancellation of the active license; and
 - (c) submitting, in writing, a request that the license be placed on inactive status.
- (2) In order to avoid lapse, expiration, or termination of their license, inactive licensees must renew their inactive license each renewal period.
- (3) Inactive licensees do not need to report continuing education until they reactivate their license as found in ARM 24.210.826.
- (4) Inactive licensees may not receive compensation for property management activity not earned while their license was active. (History: 37-1-131, 37-1-141, 37-1-319, 37-51-203, MCA; IMP, 37-1-101, 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA; NEW, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY
MANAGEMENT LICENSEES

(1) In any transaction in which a property management licensee is involved as a licensee or as a party, has held self out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee has failed to meet the generally accepted standards of practice.

(2) If the board determines that a licensee has committed an act that violates a statute or the rules administered by the board, such act shall be deemed an act against the interest of the public for which the board may take disciplinary action permitted by law against the licensee.

(3) In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:

(a) failing to maintain a level of knowledge customary for licensees of this state, including laws and rules administered by the board;

(b) violating laws and rules affecting any transaction in which the licensee acts;

(c) engaging in activities that constitute the practice of law;

(d) engaging the services of any attorney, insurance agent, or other like person or like entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(e) engaging or recommending the services of an attorney, insurance company, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or property management agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(f) 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;

(g) falsifying documents, or placing signatures on documents without authority of a written power of attorney from the party, or committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

(h) entering into a transaction or agreement with the intent not to perform;

(i) failing to make reasonable efforts to perform all obligations arising from any agreement entered into;

(j) acting as a broker without holding that license separately;

(k) violating the landlord tenant laws of Title 70, chapter 24, MCA;

(l) violating the state and federal human rights statutes;

(m) violating the Americans with Disabilities Act;

(n) when entering into a management agreement failing to make a prompt effort to verify that the principal entering the agreement is the owner or is authorized by the owner to enter such agreement;

(o) failing to disclose to all customers and clients their contractual relationship;

(p) openly advertising property belonging to others, whether by means of printed material, radio, television, or display, or by other means, without a signed property management agreement from the owner of the property. The agreement must be valid as of the date of advertisement. Internet advertising is subject to the provisions of ARM 24.210.430;

(q) failing to include the name of the property management company, or the term "property manager" in any real estate advertising, including property owned by the licensee. Internet advertising is subject to the provisions of ARM 24.210.430.

(r) failing to disclose the fact that the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another.

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

(t) managing property without a written property management agreement in place, signed by the owner;

(u) failing to comply with all continuing education completion and reporting requirements as established by the board;

(v) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(w) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act; or

(x) failing to respond to a request from the board.

(4) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or similar occupation or profession, shall be grounds for license discipline in this state, if the board, after appropriate notice and hearing, determines that the substantive grounds for that disciplinary treatment demonstrates the licensee's unworthiness or incompetency to act as a property manager.

(5) A licensed property manager is responsible for the actions of their employees who aid or assist the property manager in the performance of property management functions. At no time may an unlicensed employee perform an activity for which a license is required. (History: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA; IMP, 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-1-319, 37-51-202, 37-51-508, 37-51-512, 37-51-601, 37-51-607, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 468, Eff. 3/31/95; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1998 MAR p. 3277, Eff. 12/18/98; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 785, Eff. 5/11/01; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- PROPERTY MANAGER (1) All new property management licensees are required to complete 12 hours of new licensee mandatory continuing education by the second renewal date as set by ARM 24.101.413 following their original license issue date.

Six of those hours must consist of:

- (a) two hours of trust accounts;
- (b) two hours of leasing principles; and
- (c) two hours of state law update.

(2) New property managers will receive an interim license that expires on the second renewal date as set by ARM 24.101.413 following their original license issue date. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-306, 37-1-319, 37-51-603, MCA; NEW, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.830 through 24.210.834 reserved

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

- (1) Each active licensee is required to complete a minimum of 12 hours of board-approved continuing property management education every year.
- (2) The licensee must attend 90 percent of each hour of the approved course time in order to receive credit for attendance.
- (3) The required hours shall be in courses approved by the board.
- (4) By August 1 of each year, the board will identify topics in which the 12 hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.
- (5) No licensee may repeat a course for credit in the same calendar year.
- (6) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.
- (7) The course provider must provide board-approved course and instructor evaluation forms to course attendees. A board representative may collect the forms and forward them to the board office.
- (8) A board representative may, at no charge, audit all board-approved courses for rule compliance.
- (9) All approved education must be available to all licensees.
- (10) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.
- (11) Instructors or their designee must report all education attendance in a format approved and provided by the board.
- (12) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course approval or withdrawal of the instructor approval.
- (13) All continuing education courses must be taken and completed within the reporting period. No carryover hours will be accepted from one reporting period to another.
- (14) Failure to comply with the continuing education requirements established by the board is unprofessional conduct and will result in disciplinary action by the board. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2799, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 789, Eff. 1/1/02; AMD, 2001 MAR p. 2291, Eff. 11/22/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

24.210.836 CONTINUING PROPERTY MANAGEMENT EDUCATION REPORTING REQUIREMENTS (REPEALED) (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-101, 37-1-131, 37-1-306, 37-1-319, MCA; NEW, 2001 MAR p. 2291, Eff. 11/22/01; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; REP, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.837 through 24.210.839 reserved

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24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION --
COURSE APPROVAL

(1) Requests for approval of a continuing property management education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.

(2) The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause.

(3) Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(4) The board or its designee may, at its discretion and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) courses approved by another jurisdiction's real estate licensing authority, or

(b) courses which lead to designations or certifications by board recognized trade or professional associations.

(5) A distance education course may be approved if the board determines that:

(a) an appropriate and complete application has been filed and approved by the board;

(b) the distance education course meets the content requirements as established under ARM 24.210.835;

(c) the distance education course provider is certified by the Association of Real Estate License Law Officials (ARELLO) and provides appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and

(d) the distance education course meets all other requirements as prescribed in the statutes and rules. (History: 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, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2799, Eff. 11/10/95; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Rules 24.210.841 and 24.210.842 reserved

24.210.843 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL (1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the intended instruction with payment of the required fee.

(2) The initial approval of an instructor will be in effect for the remainder of that calendar year and the next calendar year in its entirety, expiring December 31. Approval may be revoked if the instructor fails to demonstrate effective teaching skills.

(3) Approved instructors must have:

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally recognized instructor designation.

(4) Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee. (History: 37-1-131, 37-1-319, 37-51-203, MCA; IMP, 37-1-131, 37-1-306, 37-1-319, 37-51-202, MCA; NEW, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1995 MAR p. 2799, Eff. 11/10/95; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07.)

Subchapter 9 reserved

Subchapter 10

Timeshare Licensure and Registration

24.210.1001 FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule.

(2) Fees are deemed earned by the board upon receipt and not refundable.

| | |
|--------------------------------------------------------------------------------------|-------|
| (3) For initial filing of an application for registration of the sale of a timeshare | \$500 |
| (4) For an amendment of registration of the sale of a timeshare | 200 |
| (5) For the renewal of registration of the sale of a timeshare | 200 |
| (6) For each original timeshare broker license application | 35 |
| (7) For each timeshare broker license renewal | 35 |
| (8) For each original timeshare salesperson license application | 15 |
| (9) For each timeshare salesperson license renewal | 15 |
| (10) For each timeshare correspondence course | 25 |
| (11) For the original exam registration and any subsequent exam registration | 35 |

(History: 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; NEW, 2007 MAR p. 1815, Eff. 11/9/07.)

Rule 24.210.1002 reserved

24.210.1003 TIMESHARE LICENSURE FOR LICENSED REAL ESTATE BROKERS AND SALESPERSONS

(1) Pursuant to 37-53-301, MCA, a person licensed as a real estate broker or real estate salesperson under Title 37, chapter 51, MCA, need not obtain a separate or additional license to act as a timeshare broker or salesperson, but must obtain a certificate of completion from the board.

(2) Certificates of completion may be obtained by written request to the board accompanied by satisfactory proof of successful completion of an approved course of education and payment of the required fee. (History: 37-1-131, 37-53-104, MCA; IMP, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1004 reserved

24.210.1005 LICENSURE OF TIMESHARE BROKERS (1) In addition to the definition of "timeshare broker" contained in 37-53-102(15), MCA, "timeshare broker" shall mean a timeshare licensee designated by a developer to supervise a sales staff.

(2) Except as provided in ARM 24.210.1003 applications for licensure as a timeshare broker shall be made on a completed form provided by the board accompanied by satisfactory proof of successful completion of an approved course of education and examination, a personal disclosure statement, and payment of the required fee. (History: 37-1-131, 37-53-104, MCA; IMP, 37-53-102, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1006 reserved

24.210.1007 LICENSURE OF TIMESHARE SALESPERSONS (1) Except as provided in ARM 24.210.1003 applications for licensure as a timeshare salesperson shall be made on a completed form provided by the board accompanied by satisfactory proof of successful completion of an approved course of education and examination, a personal disclosure statement, and payment of the required fee. (History: 37-1-131, 37-53-104, MCA; IMP, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rules 24.210.1008 through 24.210.1010 reserved

24.210.1011 REQUIREMENTS OF PERSONAL DISCLOSURE

STATEMENT REQUIRED FOR LICENSURE (1) Except as provided in ARM 24.210.1003 applicants for licensure as a timeshare broker or salesperson shall file, with application for licensure, a typewritten or printed personal disclosure statement, which shall contain, in the following order and in detail, including accurate dates, specific locations, and complete names, addresses, and phone numbers of persons having information, the following, for the ten years preceding application:

(a) a detailed narrative of the experience that the applicant has had in relation to the purchase and sale and negotiations for the purchase and sale, on the applicant's own behalf or the behalf of others, of timeshare, condominium, subdivision, and real estate interests;

(b) any and all licenses, certifications, registrations, and permits held by the applicant, including by a business organization of which the applicant had or has a director or management interest, which authorized or authorizes using a title, or practicing an activity, related to the registration, sale, purchase, lease, or other disposition of a timeshare, condominium, subdivision, or real estate;

(c) any and all violations by the applicant, including by a business organization of which the applicant had or has a director or management interest, of any timeshare, condominium, subdivision, real estate, or consumer protection law or regulation, whether such violation resulted in criminal, civil, or administrative action;

(d) any and all of applicant's convictions of a felony for any reason;

(e) any and all civil actions, in law or equity, related to timeshare, condominium, subdivision, real estate, consumer protection, or contract, in which the applicant or a business organization of which the applicant had a director or management interest was named as a defendant, cross-defendant, or counterclaim defendant;

(f) any and all voluntary or involuntary bankruptcy proceedings in which the applicant, including a business organization of which the applicant has or had a director or management interest, was named as a debtor;

(g) a narrative summary of the applicant's credit history and a current credit report, including three references for verification;

(h) three personal references; and

(i) three professional references, being persons that have been in a supervisory capacity over the applicant or persons that are not, and have not been, directly affiliated with the applicant. (History: 37-1-131, 37-53-104, MCA; IMP, 37-53-104, 37-53-301, 37-53-302, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1012 reserved

24.210.1013 TIMESHARE LICENSURE FOR NONRESIDENTS

(1) Nonresidents may license in this state by meeting the qualifications of the statutes and rules. An irrevocable consent to service of process, in form prescribed by and available from the board, shall be required of each nonresident license applicant. (History: 37-1-131, 37-53-104, MCA; IMP, 37-1-131, 37-53-104, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rules 24.210.1014 and 24.210.1015 reserved

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE (1) Each applicant for licensure or certificate of completion shall have successfully completed a course, or courses, of education related to the timeshare industry and approved by the board. An approved course of education under 37-53-301, MCA, shall consist of eight classroom hours of instruction or the equivalent in subjects approved by the board.

(2) The board shall provide a correspondence course equivalent to eight classroom hours of instruction. The course is available from the board office upon application and payment of the required fee. Persons taking the course must file an affidavit of completion included with the course packet prior to receiving a certificate of completion or taking the required examination for licensure.

(3) Request for approval for a course of study, other than the board's correspondence course, shall be made in writing and must contain all relevant available information about the course content and the instructors or administrators of the courses, sufficient to enable the board to evaluate timeshare relatedness and to confirm attendance and successful completion. No course will be approved for an applicant if attended more than two years prior to the application for certificate of completion or licensure. (History: 37-1-131, 37-53-104, 37-53-301, MCA; IMP, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; AMD, 1989 MAR p. 475, Eff. 4/28/89; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rule 24.210.1017 reserved

24.210.1018 TIMESHARE EXAMINATION REQUIREMENTS FOR LICENSURE (1) Examinations shall be administered by persons designated by the board at times and places designated by the board. Information about the examinations may be obtained from the board office.

(2) Application to take the examination shall be made to the board in writing and shall be received no less than 15 days prior to the date of examination, with the required fee.

(3) Successful completion of the examination shall be by obtaining a score of 80 percent or greater on each subject tested.

(4) For purposes of application for licensure, the examination score will qualify for two years. (History: 37-1-131, 37-53-104, MCA; IMP, 37-53-301, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rule 24.210.1019 reserved

24.210.1020 RENEWALS (1) Renewal notices will be sent as specified in ARM 24.101.414.

(2) All renewals shall include a typewritten, or printed, and sworn update to the personal disclosure statement. Incomplete renewal forms or renewals without the personal disclosure statement will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline or late renewal fees will be required.

(3) The provisions of ARM 24.101.408 apply. (History: 37-1-131, 37-53-104, MCA; IMP, 37-1-131, 37-1-141, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 1815, Eff. 11/9/07.)

Rules 24.210.1021 through 24.210.1024 reserved

24.210.1025 TIMESHARE REGISTRATION APPLICATION

REQUIREMENTS (1) Application for registration of a timeshare offering shall be made on a form provided by the board and include the required documents and the required fee. (History: 37-53-104, MCA; IMP, 37-53-104, 37-53-202, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1026 reserved

24.210.1027 ALTERNATIVE ACCEPTABLE DOCUMENTS FOR TIMESHARE REGISTRATION (1) Subject to (2), any document or set of documents actually filed with, or actually compiled in accordance with a rule of any agency of the United States or any other state shall be acceptable alternatives to the documents required to be filed with an application for registration of a timeshare offering under 37-53-202, MCA.

(2) If, in the board's discretion, the alternative documents do not provide reasonably equivalent material and recent information required by 37-53-202, MCA, and any applicable rule, the board may require that the alternative documents be supplemented accordingly. (History: 37-53-104, 37-53-204, MCA; IMP, 37-53-104, 37-53-204, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1028 reserved

24.210.1029 TIMESHARE REGISTRATION DISCLOSURE DOCUMENT REQUIREMENTS (1) The right to cancel any agreement for the purchase of a timeshare, as required in the disclosure document pursuant to 37-53-303, MCA, shall, in addition to the statutory requirements, include the correct mailing address of the developer or the developer's agent, the correct street address of the developer or the developer's agent, and shall be accompanied by a prepared legal document that will effectively cancel the agreement. (History: 37-53-104, 37-53-303, MCA; IMP, 37-53-303, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1030 reserved

24.210.1031 TIMESHARE CONDITIONS OF REGISTRATION REQUIREMENTS (1) It shall be a condition of registration that the registrant assures purchasers quiet enjoyment of the timeshare unit by providing satisfactory guarantee to the purchaser that all promises made that are yet to be performed or remain executory are covered by a performance bond, a trust, an escrow, or similar arrangement. (History: 37-53-104, 37-53-212, MCA; IMP, 37-53-104, 37-53-212, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1032 reserved

24.210.1033 TIMESHARE RENEWAL REGISTRATION REQUIREMENTS

(1) Application for renewal of a registered timeshare offering shall be made on a form provided by the board including attachment of the required documents and payment of the required fee. (History: 37-53-104, MCA; IMP, 37-53-104, 37-53-203, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1034 reserved

24.210.1035 TIMESHARE AMENDMENT FOR ADDITIONAL INTERVAL REGISTRATION REQUIREMENTS

(1) Amendment to an application for registration or renewed registration shall be made on a form provided by the board and accompanied by the required attached documents and payment of the required fee. (History: 37-53-104, MCA; IMP, 37-53-103, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)

Rule 24.210.1036 reserved

24.210.1037 TIMESHARE AMENDMENT FOR MATERIAL ADVERSE CHANGE REGISTRATION REQUIREMENTS

(1) Amendment to application for registration or renewed registration shall be made on a form provided by the board and accompanied by the required attached documents and payment of the required fee. (History: 37-53-104, MCA; IMP, 37-53-203, MCA; NEW, 1988 MAR p. 877, Eff. 5/13/88; TRANS, from Commerce, 2005 MAR p. 2455.)