

**Montana Association of REALTORS®**

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ISSUE BRIEF**LC520: Clarify relationship disclosure requirements for real estate broker and salesperson licensees acting as property managers**

Key Question: The statutes governing real estate broker and real estate salesperson licensees are very specific about the disclosures that the licensee must give all parties to the transactions involving real estate sales. The statutes governing property manager licensees do not specify relationship disclosure requirements; however, pertinent administrative regulations do specify that the property manager licensee must disclose his/her contractual relationship to all parties in the transaction. The pertinent administrative regulations, which were adopted shortly after the statute governing licensure of property managers was adopted, state that broker and salesperson licensees conducting property management transactions must comply with the statutes and regulations governing property manager licensees. However, the statutes governing real estate broker and salesperson licensees do not specify the nature of the disclosure that such licensees must give when they are conducting property management transactions.

Thus, there is confusion over what area of the law governs property management relationship disclosures for real estate broker and salesperson licensees. There is also a question whether relationship disclosure responsibilities of a real estate licensee performing property management duties vary according to the type of license held. This question was generated by a broker conducting property management who inquired about his disclosure requirements through MAR's legal hotline. The response from the hotline demonstrated confusion over whether a real estate broker or salesperson engaged in property management must provide relationship disclosures pursuant to MCA 37-51-314 or ARM 8.58.714(3)(n). ARM 8.58.714(3)(n) was intended, when adopted, to solve this problem. However, according to legal counsel for the Board of Realty Regulation and former legal counsel for the Montana Association of REALTORS®, the language of the real estate licensing statute for brokers and salespersons conflicts with the language of ARM 8.58.714(3)(n). We seek to remove this conflict by specifying that the disclosure required to consumers in property management transactions is the same regardless of the class of licensure.

Our position is supported by ARM 8.58.419(3)(q), which provides, "Licensees, while managing properties for owners, shall abide by the requirements of MCA 37-51-607 and the requirements of the board of realty regulation's rules for property management as set forth in ARM 8.58.712 and 8.58.714."

As a practical matter, it was not the intention of the Board of Realty Regulation that a broker, salesperson, or property manager licensee presents a landlord or a tenant with a relationship disclosure document pertaining to and defining buyer agent, seller agent, dual agent, and statutory broker in a property management transaction. Such a disclosure would be out of context with the transaction and serve no purpose for the consumer. Disclosure of the licensee's contractual relationship (as a property manager or as a tenant representative) is in context with

the transaction and such a disclosure does provide protection to the consumer, for the consumer is on notice as to whom the real estate licensee works for in the transaction.

Solution: LC520 (Clarify requirements for real estate agents acting as property managers) will enact the following changes:

Abide by existing statutes for property manager licensees: Amend MCA 37-51-313 (Duties, duration, and termination of relationship between broker or salesperson and buyer or seller) to by adding (8): While managing properties for owners, a licensed real estate broker or licensed real estate salesperson shall meet the requirements of Title 37, Chapter 51, Part 6, and the rules adopted by the board to govern property manager licensees.

Disclosure for broker/salesperson conducting property management: Amend MCA 37-51-314 (Relationship disclosure requirements) to read by adding (8): A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson. Additional disclosures are not required when a broker or salesperson is conducting property management activities.

Written disclosure sufficient for broker/salesperson conducting property management: Amend MCA 37-51-314(10) (Relationship disclosure requirements) by adding the underlined portion: A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction-, or to a customer or client if a broker or salesperson is managing properties for owners.

Penalties for failure to disclose: Amend 37-51-321(1) (Revocation or suspension of license – initiation of proceedings – grounds) by adding the underlined portion: The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 27-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(u) failing to meet the requirements of Title 37, Chapter 51, Part 6, or the rules adopted by the board of governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.

Additional license and qualifications not required: Amend 37-51-602 (Definition of property management – exemptions from application) by adding to (2) the underlined portion: A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson-, and without holding a separate property manager's license.