EXHIBIT 3
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SB 256

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Bill Memo
SB 256 – Revise laws relating to real estate brokers
Sponsor: Sen. Kim Gillan

Hearing
House Business and Labor, Tuesday, Mar. 8, 8 am, Rm 172

SB 256 amends Montana's real estate license statute to accomplish three goals:

1. To allow the Board of Realty Regulation to adopt rules allowing a real estate salesperson to temporarily associate with a supervising broker other than the salesperson's listed supervising broker;
2. To clarify a supervising broker's liability for certain personal transactions of the salesperson or salespeople over whom the supervising broker provides supervision; and
3. To amend certain portions of Title 37, Chapter 51 to clarify the obligations of a real estate broker who has or wants to obtain a supervising broker endorsement.

Temporary Association with Another Supervising Broker

Montana law currently provides that a salesperson may not be associated with or under contract to more than one licensed broker. MCA § 37-51-309(1). The effect of this law is that if a supervising broker becomes ill or desires to take a vacation, during that temporary absence the supervising broker must either continue to supervise salespeople associated or under contract with that supervising broker or, prior to said illness or vacation, the supervising broker must transfer the license of the salespeople to another supervising broker. The latter choice requires notification to the Board of Realty Regulation ("BRR"), payment of a fee, return of the license of the supervised salespeople, the issuance of a new license by the BRR and is clearly designed to apply when the transfer of salespeople to a new supervising broker is intended to be permanent.

Other states where a salesperson is supervised by a broker, such as Oregon, have adopted laws whereby a salesperson may be temporarily supervised by a "substitute" supervising broker. The primary purpose of SB 256 is to allow for a simple transfer of the primary supervising broker's obligation due to the temporary absence of the primary supervising broker. SB 256 proposes to allow BRR the ability to adopt rules allowing for a salesperson to temporarily associate with a real estate broker with a supervising broker endorsement other than the salesperson's listed supervising broker.

Clarification of a Supervising Broker's Liability for the Personal Transactions of a Salesperson

MCA § 37-51-309(4) allows licensed salespersons to engage in real estate transactions involving the sale, purchase, lease, rental or exchange of real property owned or to be acquired by the salesperson. Such transactions are defined as "personal transactions." Montana law states that a supervising broker is not responsible or liable for the personal transactions of a salesperson and requires that a salesperson

disclose in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's broker or real estate firm. MCA 37-51-309(4)(c).

The problem with the way that the existing law is drafted is that supervising brokers are automatically not responsible for the personal transactions of the salespeople over who they supervise and the salesperson must provide notice that the transaction does not involve the salesperson's supervising broker or real estate firm. In short, there is no choice for supervising brokers to remain involved in a personal transaction of a salesperson. Moreover, the law requires that a salesperson give notice that the salesperson's supervising broker is not involved in a personal transaction even if it is the desire of the supervising broker and the salesperson that the supervising broker remain involved in a personal transaction.

Often times it is the desire of supervising brokers to supervise and train their salespeople even in transactions involving real property personally owned by a salesperson. There are various reasons for this. The supervising broker may feel that the best way to limit his or her liability for a salesperson's personal transactions is to supervise said transactions. The supervising broker may desire to offer some level of training due to the nature of the personal transaction. Most commonly, however, the salesperson desires to use certain "benefits" associated with the supervising broker or the real estate firm with whom the salesperson is associated. These benefits can include access to a multiple listing service and use of advertising signs or other firm materials.

The proposed change to MCA § 37-51-309(4) will allow the supervising broker and the salesperson to make a choice when a transaction involves the personal real estate holdings of a salesperson. The personal transaction can be handled as any other transaction, with the supervising broker providing training and oversight. In such a situation the salesperson need not give notice of the personal transaction but the supervising broker has the same responsibilities as if the transaction did not involve property personally owned by the salesperson. If, however, the supervising broker does not want to be responsible or liable for the personal transaction, the salesperson must provide the required notice and the salesperson may not involve the salesperson's supervising broker or real estate firm. In essence, the salesperson will need to market and sell his or her personally owned property without using the benefits of the supervising broker or the real estate firm.

Remaining Amendments

The remaining amendments to Title 37, Chapter 51 are merely designed to provide clarification. Prior to 2007, the Session in which the supervising broker endorsement was added, any real estate licensee with a broker's license could supervise real estate salespeople. With the adoption of the 2007 law, only brokers with a supervising broker endorsement may supervise salespeople.

The remaining amendment to Title 37, Chapter 51 as set forth in SB 256 amend existing law to insert supervising broker endorsement requirements where these requirements were missed when the supervising broker endorsement law was passed in 2007. In effect, it merely cleans-up some areas where the law should require the existence of a supervising broker endorsement but where the law currently only requires that the licensee be a licensed broker.