

## HOUSE BILL NO. 202

INTRODUCED BY T. BERRY

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO THE BOARD OF  
5 REALTY REGULATION; PROVIDING THAT THE BOARD IS ALLOCATED TO THE DEPARTMENT OF LABOR  
6 AND INDUSTRY ONLY FOR PLANNING AND COORDINATION PURPOSES; EXPANDING THE BOARD'S  
7 RULEMAKING AUTHORITY; CLARIFYING DUTIES AND RESPONSIBILITIES OF THE BOARD; AUTHORIZING  
8 THE BOARD TO HIRE AN EXECUTIVE DIRECTOR AND STAFF; TRANSFERRING FUNCTIONS FROM THE  
9 DEPARTMENT TO THE BOARD; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR THE BOARD;  
10 TRANSFERRING DUTIES WITH RESPECT TO TIMESHARES FROM THE DEPARTMENT TO THE BOARD;  
11 AMENDING SECTIONS 2-15-1757, 17-7-502, 37-51-102, 37-51-201, 37-51-204, 37-51-207, 37-51-208,  
12 37-51-209, 37-51-302, 37-51-305, 37-51-306, 37-51-308, 37-51-309, 37-51-311, 37-51-324, 37-51-603,  
13 37-51-605, AND 37-53-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **Section 1.** Section 2-15-1757, MCA, is amended to read:18 **"2-15-1757. Board of realty regulation.** (1) There is a board of realty regulation.

19 (2) The board consists of seven members appointed by the governor with the consent of the senate. Five  
20 members must be licensed real estate brokers, salespeople, or property managers who are actively engaged in  
21 the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be  
22 representatives of the public who are not state government officers or employees and who are not engaged in  
23 business as a real estate broker, a salesperson, or a property manager. The members must be residents of this  
24 state.

25 (3) Not more than five members, including the presiding officer, may be from the same political party.

26 (4) The members shall serve staggered terms of 4 years. A member may serve more than two terms but  
27 may not serve more than two consecutive 4-year terms or any portion of two terms.

28 (5) The board is allocated to the department for ~~administrative~~ the purposes only as prescribed in  
29 2-15-124 of planning and organization. The governance, management, and control of the board is vested in the  
30 board. The department shall provide services requested by the board and shall charge the board an amount that

1 is commensurate with the reasonable cost of the services provided."

2

3 **Section 2.** Section 17-7-502, MCA, is amended to read:

4 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
5 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
6 need for a biennial legislative appropriation or budget amendment.

7 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
8 of the following provisions:

9 (a) The law containing the statutory authority must be listed in subsection (3).

10 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
11 appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
13 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;  
14 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;  
15 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;  
16 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;  
17 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;  
18 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; [section 10]; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;  
19 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;  
20 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518;  
21 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and  
22 90-9-306.

23 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
24 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
25 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
26 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
27 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
28 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
29 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is  
30 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.

1 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and  
2 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.  
3 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the  
4 supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113  
5 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30,  
6 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

7

8 **Section 3.** Section 37-51-102, MCA, is amended to read:

9 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
10 apply:

11 (1) "Account" means the real estate recovery account established in 37-51-501.

12 (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as  
13 being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property  
14 and may be a fact that:

15 (i) materially affects the value, affects structural integrity, or presents a documented health risk to  
16 occupants of the property; or

17 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or  
18 existing contract.

19 (b) The term does not include the fact that an occupant of the property has or has had a communicable  
20 disease or that the property was the site of a suicide or felony.

21 (3) "Board" means the board of realty regulation provided for in 2-15-1757.

22 (4) "Broker" includes an individual who:

23 (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable  
24 consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real  
25 estate or of the improvements on real estate or collects rents or attempts to collect rents;

26 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,  
27 subleasing, or other disposition of real estate for consideration;

28 (c) engages in the business of charging an advance fee or contracting for collection of a fee in  
29 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other  
30 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for

1 referral of information concerning real estate to brokers;

2 (d) makes the advertising, sale, lease, or other real estate information available by public display to  
3 potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real  
4 estate for purchase or lease;

5 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for  
6 purchase or lease;

7 (f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson  
8 the name of a prospective buyer or seller of real property; or

9 (g) advertises or represents to the public that the individual is engaged in any of the activities referred  
10 to in subsections (4)(a) through (4)(f).

11 (5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who  
12 has entered into an agreement to acquire an interest in real property. The term includes tenants or potential  
13 tenants with respect to leases or rental agreements of real property.

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

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

19 (8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as  
20 the agent of a buyer.

21 ~~(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.~~

22 ~~(10)~~(9) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer  
23 broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written  
24 authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a  
25 dual agent.

26 ~~(11)~~(10) "Franchise agreement" means a contract or agreement by which:

27 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in  
28 substantial part by the franchisor;

29 (b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,  
30 trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

1 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the  
2 agreement.

3 ~~(12)~~(11) "In-house buyer agent designate" means a broker or salesperson employed by or associated  
4 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for  
5 a designated transaction and who may not be considered to be acting for other than the buyer with respect to the  
6 designated transaction.

7 ~~(13)~~(12) "In-house seller agent designate" means a broker or salesperson employed by or associated  
8 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for  
9 a designated transaction and who may not be considered to be acting for other than the seller with respect to the  
10 designated transaction.

11 ~~(14)~~(13) "Listing agreement" means a written agreement between a seller and broker for the sale of real  
12 estate, with the terms and conditions set out in the agreement.

13 ~~(15)~~(14) "Negotiations" means:

- 14 (a) efforts to act as an intermediary between parties to a real estate transaction;  
15 (b) facilitating and participating in contract discussions;  
16 (c) completing forms for offers, counteroffers, addendums, and other writings; and  
17 (d) presenting offers and counteroffers.

18 ~~(16)~~(15) "Person" includes individuals, partnerships, associations, and corporations, foreign and  
19 domestic, except that when referring to a person licensed under this chapter, it means an individual.

20 ~~(17)~~(16) "Property manager" includes a person who for a salary, commission, or compensation of any  
21 kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate  
22 belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

23 ~~(18)~~(17) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
24 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

25 ~~(19)~~(18) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
26 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
27 negotiation, and contract development and closing.

28 ~~(20)~~(19) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind  
29 is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or  
30 negotiate for the sale, purchase, exchange, or renting of real estate.

1           ~~(21)~~(20) "Seller" means a person who has entered into a listing agreement to sell real estate and includes  
2 landlords who have an interest in or are a party to a lease or rental agreement.

3           ~~(22)~~(21) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
4 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

5           ~~(23)~~(22) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts  
6 as the agent of a seller.

7           ~~(24)~~(23) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
8 estate transaction without acting as an agent or representative of any party to the real estate transaction.

9           (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
10 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has  
11 disclosed, as required in this chapter, a relationship other than that of a statutory broker.

12           ~~(25)~~(24) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated,  
13 directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or  
14 renting of real estate.

15           ~~(26)~~(25) "Supervising broker endorsement" means an endorsement to a broker's license that is required  
16 of any licensed broker who supervises licensed salespersons performing real estate activity."

17

18           **Section 4.** Section 37-51-201, MCA, is amended to read:

19           "**37-51-201. Presiding Board duties -- seal -- presiding officer -- seal -- records -- prohibition on**  
20 **membership in real estate associations.** ~~(1) The members of the board shall elect a presiding officer from~~  
21 ~~among their number.~~

22           ~~\_\_\_\_\_~~(2)(1) The board shall:

23           (a) adopt a seal of a design that it prescribes. Copies of records and papers kept by the department  
24 board, certified by the presiding officer, and authenticated by the seal of the board must be received in evidence  
25 in courts with the same effect as the original. Records of the board are open to public inspection under rules it  
26 prescribes.

27           (b) set and enforce standards and rules governing the licensing, certification, registration, and conduct  
28 of licensees under the board's jurisdiction;

29           (c) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license  
30 holder, impose a sanction provided by this chapter;

- 1           (d) (i) establish qualifications for applicants taking the licensure examination and determine the  
 2 standards, content, type, and method of examination required for licensure or reinstatement of a license; and  
 3           (ii) establish the acceptable level of performance for each examination and the standards and limitations  
 4 for reexamination if an applicant fails an examination;  
 5           (e) examine applicants for licensure at reasonable places and times or enter into contracts with  
 6 third-party testing agencies to administer examinations;  
 7           (f) establish license renewal, late renewal, lapse, expiration, and termination procedures for licenses  
 8 issued under board jurisdiction;  
 9           (g) require continuing education for licensees;  
 10           (h) annually prepare a budget and ensure that expenditures are necessary to carry out the provisions  
 11 of this chapter;  
 12           (i) comply with all recordkeeping, reporting, and relevant administrative and clerical requirements of the  
 13 state;  
 14           (j) establish and collect fees and deposit them in the proper fund or account. The fees may not be  
 15 diverted from the fund or account.  
 16           ~~(3) The department:~~  
 17           ~~(a)(k) shall keep a record of proceedings, transactions, communications, and official acts of the board;~~  
 18           ~~(b)(l) is act as custodian of the records of the board; and~~  
 19           ~~(c) shall perform other duties that the board, on the written request of two or more members of the board~~  
 20 ~~or at other times that the presiding officer, considers necessary.~~  
 21           (m) establish and provide for all administrative, legal, and clerical services needed by the board; and  
 22           (n) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or  
 23 potential member of the real estate profession subject to the board's jurisdiction. At the request of a party, the  
 24 hearing must be conducted by a hearings examiner when the board holds a contested case hearing. The  
 25 hearings examiner shall conduct the hearing in a proper and legal manner and shall report any findings to the  
 26 board.  
 27           (2) The board shall elect a presiding officer from among its members.  
 28           ~~(4)(3)~~ The presiding officer or an employee of the ~~department~~ board hired to provide services to the  
 29 board may not be an officer or paid employee of any real estate association or group of real estate dealers or  
 30 brokers."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**Section 5.** Section 37-51-204, MCA, is amended to read:

**"37-51-204. Educational programs.** (1) The board may, ~~subject to 37-1-101,~~ conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

~~(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.~~

~~(3)~~(2) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction."

**Section 6.** Section 37-51-207, MCA, is amended to read:

**"37-51-207. Schedule of fees.** The board shall adopt a schedule of fees to be charged ~~by the department~~ and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry."

**Section 7.** Section 37-51-208, MCA, is amended to read:

**"37-51-208. Deposit of money not otherwise provided for.** Whenever money is received by the board ~~or by the department for the use of the board~~ and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board."

**Section 8.** Section 37-51-209, MCA, is amended to read:

**"37-51-209. Executive secretary director and staff -- hiring and duties.** (1) The department may board shall:

(a) hire an executive ~~secretary~~ director to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law; and

(b) hire legal, administrative, and clerical employees necessary to enable the board to carry out its responsibilities and duties.

(2) Employees of the board are state employees for the purposes of benefits."

1            **NEW SECTION. Section 9. Disciplinary authority of board -- rulemaking.** In order to implement the  
2 sanctions provided for in 37-1-312, the board has the authority to adopt rules specifying grounds for disciplinary  
3 action subject to the provisions of 37-1-136 and 37-1-137.

4  
5            **NEW SECTION. Section 10. State special revenue account.** (1) There is established in the state  
6 special revenue fund an account for the use of the board of realty regulation. The account must be used to  
7 provide payment for the governance, management, and operation of the board in regulating the real estate  
8 profession under the provisions of this chapter. The board of realty regulation account is statutorily appropriated  
9 as provided in 17-7-502.

10            (2) Money earned on the investment of funds in the account must be credited to the account annually.

11  
12            **Section 11.** Section 37-51-302, MCA, is amended to read:

13            **"37-51-302. Broker's or salesperson's license -- qualifications of applicant -- supervising broker**  
14 **endorsement.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and  
15 competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the  
16 public.

17            (2) An applicant for a broker's license:

18            (a) must be at least 18 years of age;

19            (b) must have graduated from an accredited high school or completed an equivalent education as  
20 determined by the board;

21            (c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or  
22 have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily  
23 would receive during this 2-year period as determined by the board, except that if the board finds that an applicant  
24 could not obtain employment as a licensed real estate salesperson because of conditions existing in the area  
25 where the applicant resides, the board may waive this experience requirement;

26            (d) shall file an application for a license with the ~~department~~ board; and

27            (e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in  
28 addition to those required to secure a salesperson's license, in a course of study approved by the board and  
29 taught by instructors approved by the board and has satisfactorily passed an examination dealing with the  
30 material taught in each course. The course of study must include the subjects of real estate principles, real estate

1 law, real estate finance, and related topics.

2 (3) The board shall require information it considers necessary from an applicant to determine honesty,  
3 trustworthiness, and competency.

4 (4) (a) An applicant for a salesperson's license:

5 (i) must be at least 18 years of age;

6 (ii) must have received credit for completion of 2 years of full curriculum study at an accredited high  
7 school or completed an equivalent education as determined by the board;

8 (iii) shall file an application for a license with the ~~department~~ board; and

9 (iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in  
10 a course of study approved by the board and taught by instructors approved by the board and has satisfactorily  
11 passed an examination dealing with the material taught in each course. The course of study must include the  
12 subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

13 (b) The application must be accompanied by the recommendation of the licensed broker by whom the  
14 applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the  
15 broker will actively supervise and train the applicant during the period the requested license remains in effect.

16 (5) The ~~department~~ board shall issue to each licensed broker and to each licensed salesperson a license  
17 and a pocket card in a form and size that the board prescribes.

18 (6) (a) An applicant for a supervising broker endorsement must meet the education and experience  
19 requirements established by the board by rule except that:

20 (i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement ~~provided~~  
21 ~~that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention~~  
22 ~~to obtain the endorsement;~~

23 ~~———(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to~~  
24 ~~the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed~~  
25 ~~salespersons;~~

26 ~~(iii)~~(ii) continuing education requirements for a supervising broker endorsement may not be in addition  
27 to the continuing education requirements for a licensed broker with respect to the total number of hours or credits  
28 required.

29 (b) The board may not assess a licensing fee for obtaining or renewing a supervising broker  
30 endorsement."

1

2           **Section 12.** Section 37-51-305, MCA, is amended to read:

3           **"37-51-305. License -- delivery -- display -- pocket card.** (1) A license must bear the seal of the board.

4           (2) The license of a real estate salesperson must be delivered or mailed to the real estate broker with  
5 whom the real estate salesperson is associated and must be kept in the custody and control of the broker.

6           (3) A broker shall display the broker's own license conspicuously in the broker's place of business.

7           (4) The ~~department~~ board shall annually prepare and deliver a pocket card certifying that the person  
8 whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period  
9 for which fees have been paid and, on real estate salesperson's cards only, the name and address of the broker  
10 with whom the real estate salesperson is associated."

11

12           **Section 13.** Section 37-51-306, MCA, is amended to read:

13           **"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons --**

14 **consent to legal process.** (1) A licensed broker may not employ or compensate, directly or indirectly, a person  
15 for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However,  
16 a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident  
17 broker has not conducted and does not conduct in this state a service for which a fee, compensation, or  
18 commission is paid.

19           (2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a  
20 commenced or completed transaction may be commenced against the nonresident licensee in a county of this  
21 state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service  
22 of summons in this action may be served on the ~~department~~ board for and on behalf of the nonresident licensee,  
23 and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county.  
24 The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal."

25

26           **Section 14.** Section 37-51-308, MCA, is amended to read:

27           **"37-51-308. Broker's office -- notice to ~~department~~ board of change of address.** (1) A resident

28 licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license  
29 of each salesperson associated or under contract with the broker ~~shall~~ must be prominently displayed in the  
30 office. The address of the office and any branch office ~~shall~~ must be designated on the broker's license.

1 (2) In case of removal from the designated address, the licensee shall notify the ~~department~~ board before  
2 removal or within 10 days thereafter, designating the new location of this office and paying the required fee,  
3 whereupon a license for the new location must be issued for the unexpired period."  
4

5 **Section 15.** Section 37-51-309, MCA, is amended to read:

6 "**37-51-309. Broker -- salesperson -- personal transactions of salesperson -- notice to ~~department~~**  
7 **board of change of association.** (1) A salesperson may not be associated with or under contract to more than  
8 one licensed broker or perform services for a broker other than the one designated on the license issued to the  
9 salesperson.

10 (2) When a licensed salesperson desires to change association or contractual relationship from one  
11 licensed broker to another, the salesperson shall notify the ~~department~~ board promptly in writing of these facts,  
12 pay the required fee, and return the salesperson's license; and a new license and pocket card must be issued.  
13 A salesperson may not directly or indirectly work for or with a broker until the salesperson has been issued a  
14 license to work for or with that broker. On termination of a salesperson's association or contractual relationship,  
15 the salesperson shall surrender the salesperson's license to the salesperson's broker, who shall return it to the  
16 ~~department~~ board for cancellation.

17 (3) Only one license may be issued to a salesperson to be in effect at one time.

18 (4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal  
19 transactions, and the provisions of this chapter do not require a broker to exercise any supervision or provide any  
20 training for a salesperson with respect to personal transactions of the salesperson.

21 (b) A broker is not responsible or liable for the personal transactions of a salesperson.

22 (c) Prior to entering into a personal transaction, a salesperson shall disclose in writing to the other party  
23 that the transaction is a personal transaction with respect to the salesperson and that the transaction does not  
24 involve the salesperson's broker or real estate firm.

25 (5) For the purposes of this part, "personal transaction" includes the following:

26 (a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

27 (b) the leasing or renting of real property owned by the salesperson."  
28

29 **Section 16.** Section 37-51-311, MCA, is amended to read:

30 "**37-51-311. Fees -- deposit of fees.** The fees prescribed by the board must be ~~charged by the~~

1 department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6)."

2

3 **Section 17.** Section 37-51-324, MCA, is amended to read:

4 **"37-51-324. Penalty for failure to comply with trust account requirements.** (1) An employee of the  
5 department board may issue a citation to a broker or property manager responsible for maintenance of a trust  
6 account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

7 (2) The citation must include:

8 (a) the time and date on which the citation is issued;

9 (b) the name, title, mailing address, and signature of the person issuing the citation;

10 (c) reference to the statute or rule violated;

11 (d) the name, title, and mailing address of the person to whom the citation is being sent, along with  
12 information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the  
13 violation; and

14 (e) the amount of the applicable fine.

15 (3) The applicable civil fine for failure to comply with trust account maintenance requirements is \$50 for  
16 each cited violation.

17 (4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the  
18 state special revenue account to the credit of the board.

19 (5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the  
20 board within 5 business days of the date of issuance.

21 (6) A person who refuses to sign and accept a citation but who does not file a written dispute of the  
22 violation is demonstrating unprofessional conduct."

23

24 **Section 18.** Section 37-51-603, MCA, is amended to read:

25 **"37-51-603. Qualification of property manager applicants -- examination -- form of licenses.** (1)

26 The board by rule shall require an applicant for licensure to provide information that the board believes is  
27 necessary to ensure that a person granted a property manager license is of good repute and competent to  
28 transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

29 (2) (a) The board shall require an applicant for a property manager license to:

30 (i) apply for licensure to the department board;

1 (ii) furnish written evidence that the applicant has completed the number of classroom hours that the  
2 board determines appropriate in a course of study approved by the board and taught by instructors approved by  
3 the board; and

4 (iii) satisfactorily complete an examination dealing with the material taught in the course of study.

5 (b) The course of study must include the subjects of real estate leasing principles, real estate leasing  
6 law, and related topics.

7 (3) An applicant for licensure as a property manager must be at least 18 years of age and must have  
8 graduated from an accredited high school or completed an equivalent education as determined by the board.

9 (4) The license must bear the seal of the board. A property manager shall display the license  
10 conspicuously in the property manager's place of business.

11 (5) The ~~department~~ board shall prepare and deliver to the licensee a pocket card in a form and at times  
12 prescribed by the board."

13

14 **Section 19.** Section 37-51-605, MCA, is amended to read:

15 **"37-51-605. Property manager's office -- notice of change of address.** A property manager shall  
16 maintain a fixed office in this state at which the original license of the property manager must be prominently  
17 displayed. The office manager must be designated on the license. If the property manager changes the location  
18 of the office, the property manager shall notify the ~~department~~ board of the new address within 10 days after the  
19 change of address."

20

21 **Section 20.** Section 37-53-301, MCA, is amended to read:

22 **"37-53-301. Licensure of timeshare salespersons -- licensee duties.** (1) A person offering timeshare  
23 intervals in a project located in Montana must be licensed as a timeshare salesperson and affiliated with at least  
24 one registered timeshare project unless the offering is exempt under 37-53-205.

25 (2) Licensure may be obtained upon:

26 (a) completion of an application;

27 (b) meeting the qualifications listed in subsection (3);

28 (c) demonstration to the board that the applicant is an individual of good repute and competent to  
29 transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;

30 (d) payment of fees set by the board by rule; and

1 (e) successful completion of a course of education related to the timeshare industry that has been  
2 approved by the board.

3 (3) An applicant for a timeshare salesperson license must:

4 (a) be at least 18 years of age; and

5 (b) have graduated from an accredited high school or completed equivalent education as determined  
6 by the board.

7 (4) The board shall issue a certificate of completion to an applicant who successfully completes the  
8 course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the  
9 qualifications and licensure provisions.

10 (5) A licensed timeshare salesperson shall notify the ~~department~~ board of a change of affiliation within  
11 10 days of the change, designate the new license affiliation, and pay all required fees.

12 (6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson  
13 shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may  
14 reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees."

15  
16 **NEW SECTION. Section 21. Codification instruction.** [Sections 9 and 10] are intended to be codified  
17 as an integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [sections 9 and 10].

18  
19 **NEW SECTION. Section 22. Effective date.** [This act] is effective July 1, 2011.

20 - END -