

# Memo

**To:** Amy Jo Fisher, Government Affairs Director, the Montana Association of REALTORS®, Inc.  
**From:** James A. Bowditch, Boone Karlberg P.C., Missoula, Montana  
**Date:** December 22, 2014  
**Subject:** HB 102

---

At the request of Political Affairs Committee during the telephonic meeting on December 18, 2014, I am providing you with comments concerning HB 102 for the Committee to consider at its next regularly scheduled meeting.

First, Section One of HB 102 adds a fairly comprehensive definition of Property Manager. As drafted, the proposed revisions would define the term "Property Manager" to include an individual who "aids or offers to aid, for a fee, any person in locating or obtaining a real estate for lease in this state." This is a fairly broad definition and would seem to include individuals employed and paid by large retail chains who are in Montana as site locators. I don't know whether the Montana Association of REALTORS® necessarily has any concerns about this language, *per se*, but I at least wanted mention it and bring it to everyone's attention.

Second, the definition of Property Manager also includes an individual who pays or receives compensation from a licensed broker or salesperson for the referral of a prospect. I don't have any concern about language but mention it because it would appear that this language will allow a Property Manager to pay and/or receive a referral fee from a licensed real estate agent in Montana. That is not the case under the current laws in Montana.

Third, Section Three of HB 102 clarifies the activity for which a Montana real estate license is required. Specifically, new subsection (a) would make it unlawful for an individual who is not licensed in the state of Montana to market property in Montana unless they have a valid Montana real estate license. The proposed changes to M.C.A. § 37-51-301 as set forth in Section Three of HB 102 would not allow, for example, a California real estate licensee to market property for sale in Montana without a valid Montana real estate license even if that individual never stepped foot in the state of Montana.

Finally, Section Five of HB 102 adds language to M.C.A. § 37-51-313 and the duties imposed upon real estate agents located therein. Specifically, under HB 102 a new subsection (10) of M.C.A. § 37-51-313 will require that a broker or salesperson's licensee have an appropriate written agreement prior to performing the acts of a real estate agent. I have some concerns with the language as drafted and feel that it should be revised for clarification. My initial suggested change to the proposed subsection (10) is as follows:

A broker or salesperson must obtain an appropriate written buyer-broker agreement or listing agreement prior to performing the acts of a buyer agent or a seller agent. A broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer-broker agreement or listing agreement is nevertheless obligated to comply with the requirements of this chapter.