

HOUSE BILL NO. 122

INTRODUCED BY C. SCHREINER

BY REQUEST OF THE BOARD OF REALTY REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LICENSING AND PROFESSIONAL CONDUCT REQUIREMENTS UNDER THE BOARD OF REALTY REGULATION; DELINEATING EXAMINATIONS; REMOVING THE REQUIREMENT FOR POCKET CARDS; AMENDING SECTIONS 37-51-204, 37-51-302, 37-51-308, 37-51-309, 37-51-313, 37-51-321, 37-51-603, AND 37-51-605, MCA; REPEALING SECTION 37-51-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** 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, 37-51-303, 37-51-603, and subsection (3) of this section, the board may not require examinations of licensees.

(3) 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.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306."

**Section 2.** Section 37-51-302, MCA, is amended to read:

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

- 1           (2) An applicant for a broker's license:
- 2           (a) must be at least 18 years of age;
- 3           (b) must have graduated from an accredited high school or completed an equivalent education as
- 4 determined by the board;
- 5           (c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or
- 6 have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily
- 7 would receive during this 2-year period as determined by the board, except that if the board finds that an applicant
- 8 could not obtain employment as a licensed real estate salesperson because of conditions existing in the area
- 9 where the applicant resides, the board may waive this experience requirement;
- 10          (d) shall file an application for a license with the department; and
- 11          (e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in
- 12 addition to those required to secure a salesperson's license, in a course of study approved by the board and
- 13 taught by instructors approved by the board and has satisfactorily passed an examination dealing with the
- 14 material taught in each course. The course of study must include the subjects of real estate principles, real estate
- 15 law, real estate finance, and related topics.
- 16          (3) The board shall require information it considers necessary from an applicant to determine honesty,
- 17 trustworthiness, and competency.
- 18          (4) (a) An applicant for a salesperson's license:
- 19           (i) must be at least 18 years of age;
- 20           (ii) must have received credit for completion of 2 years of full curriculum study at an accredited high
- 21 school or completed an equivalent education as determined by the board;
- 22           (iii) shall file an application for a license with the department; and
- 23           (iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in
- 24 a course of study approved by the board and taught by instructors approved by the board and has satisfactorily
- 25 passed an examination dealing with the material taught in each course. The course of study must include the
- 26 subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.
- 27          (b) The application must be accompanied by the recommendation of a licensed broker with a supervising
- 28 broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant
- 29 is of good repute and that the broker will actively supervise and train the applicant during the period the requested
- 30 license remains in effect.

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

3 (5) If the board determines that an applicant possesses the qualifications required by this chapter, the  
 4 department shall issue a license to the applicant.

5 (6) (a) An applicant for a supervising broker endorsement must meet the education and experience  
 6 requirements established by the board by rule except that continuing education requirements for a supervising  
 7 broker endorsement may not be in addition to the continuing education requirements for a licensed broker with  
 8 respect to the total number of hours or credits required.

9 (b) The board may not assess a licensing fee for obtaining or renewing a supervising broker  
 10 endorsement.

11 (c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a  
 12 supervising broker endorsement other than the supervising broker listed on the salesperson's ~~pocket card~~  
 13 license."

14

15 **Section 3.** Section 37-51-308, MCA, is amended to read:

16 **"37-51-308. Broker's office -- display -- notice to department of change of address.** (1) A licensed  
 17 broker shall maintain a designated physical address where the original license or a copy of the current license  
 18 of the broker and, if the broker is a supervising broker, the original license of each salesperson associated or  
 19 ~~under contract with the broker~~ must be prominently displayed. The designated address of the broker must be  
 20 indicated on the broker's license.

21 (2) (a) If the broker is a supervising broker, the broker shall prominently display at the broker's  
 22 designated physical address a copy of the current license of each salesperson associated or under contract with  
 23 the broker.

24 (b) The name of the broker and the designated address of the broker must be indicated on the  
 25 salesperson's license.

26 ~~(2)~~(3) In case of removal from the designated address, the broker shall notify the department before  
 27 removal or within 10 days after removal, designating the new physical address and paying the required fee. After  
 28 receipt of the information required under this subsection, the department shall issue a license to the broker for  
 29 the new location for the unexpired period."

30

1           **Section 4.** Section 37-51-309, MCA, is amended to read:

2           "**37-51-309. Broker -- salesperson -- for sale by owner personal transactions of salesperson --**  
3 **notice to department of change of association.** (1) A salesperson may not be associated with, ~~or~~ under  
4 contract to, or perform services for more than one supervising broker, ~~or perform services for a broker with a~~  
5 supervising broker endorsement other than the one designated on the license issued to the salesperson except  
6 on a temporary basis as provided in 37-51-302.

7           (2) ~~(a) When~~ If a licensed salesperson desires to change association or contractual relationship from one  
8 supervising broker to another, the salesperson shall notify the department promptly in writing ~~of these facts, and~~  
9 pay the required fee, ~~and return the salesperson's license, and~~

10           (b) The successor supervising broker shall notify the department in writing of acceptance of the  
11 salesperson.

12           (c) After the department receives written acceptance of the salesperson from the successor supervising  
13 broker, the department shall issue a new license and pocket card must be issued to the salesperson and a new  
14 endorsement to the supervising broker. A salesperson may not directly or indirectly work for or with a supervising  
15 broker until the salesperson has been issued a license to work for or with that supervising broker. ~~On termination~~  
16 ~~of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's~~  
17 ~~license to the salesperson's supervising broker, who shall return it to the department for cancellation.~~

18           (3) (a) If a licensed salesperson chooses to change association or contractual relationship from the  
19 salesperson's supervising broker, but the salesperson does not have another supervising broker who has  
20 accepted supervision of the salesperson, the salesperson shall notify the department promptly in writing, at which  
21 time the salesperson's license will automatically be put on inactive status.

22           (b) When the conditions in subsection (3)(a) apply, the department may not charge a fee for the change  
23 in status.

24           (c) The salesperson may not practice during a time when the salesperson has no supervising broker or  
25 when the salesperson's license is on inactive status.

26           (4) A supervising broker who wishes to terminate supervision of a salesperson shall notify the  
27 salesperson in advance or concurrently with notification to the board. Termination of supervision by the  
28 supervising broker is not effective under this subsection until the supervising broker has notified both the  
29 salesperson and the board.

30           ~~(3)(5)~~ (5) Only one license ~~may be~~ issued to a salesperson ~~to be~~ is in effect at one time.

1           ~~(4)(6)~~ (a) The provisions of this chapter do not prohibit a salesperson from engaging in ~~for sale by owner~~  
2 for-sale-by-owner personal transactions, and the provisions of this chapter do not require a supervising broker  
3 to exercise any supervision or provide any training for a salesperson with respect to ~~for sale by owner~~  
4 for-sale-by-owner personal transactions of the salesperson.

5           (b) A supervising broker or real estate firm is not responsible or liable for the ~~for sale by owner~~  
6 for-sale-by-owner personal transactions of a salesperson.

7           (c) Prior to entering into a ~~for sale by owner~~ for-sale-by-owner personal transaction, the salesperson shall  
8 disclose in writing to the other party that the transaction is a ~~for sale by owner~~ for-sale-by-owner personal  
9 transaction with respect to the salesperson and that the transaction does not involve the salesperson's  
10 supervising broker or real estate firm.

11           (d) A supervising broker or real estate firm is not responsible or liable for the failure of a salesperson to  
12 provide the disclosure required in subsection ~~(4)(c)~~ (6)(c).

13           ~~(5)(7)~~ For the purposes of this section, "~~for sale by owner~~ for-sale-by-owner personal transaction"  
14 includes the following:

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

16           (b) the leasing or renting of real property owned by the salesperson."  
17

18           **SECTION 5. SECTION 37-51-313, MCA, IS AMENDED TO READ:**

19           **"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and**  
20 **buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the  
21 relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of  
22 agents as provided elsewhere in state law and replace the common law as applied to these relationships. The  
23 terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are  
24 not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary  
25 depending upon the relationship with a party to a real estate transaction and are as provided in this section.

26           (2) A seller agent is obligated to the seller to:

27           (a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the  
28 seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale  
29 that may compete with the seller's property without breaching any obligation to the seller;

30           (b) obey promptly and efficiently all lawful instructions of the seller;

1 (c) disclose all relevant and material information that concerns the real estate transaction and that is  
2 known to the seller agent and not known or discoverable by the seller, unless the information is subject to  
3 confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or  
4 another seller;

5 (d) safeguard the seller's confidences;

6 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with  
7 the terms established in the listing agreement;

8 (f) fully account to the seller for any funds or property of the seller that comes into the seller agent's  
9 possession; and

10 (g) comply with all applicable federal and state laws, rules, and regulations.

11 (3) A seller agent is obligated to the buyer to:

12 (a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that  
13 are known to the seller agent, except that the seller agent is not required to inspect the property or verify any  
14 statements made by the seller;

15 (b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the  
16 veracity of information regarding adverse material facts that concern the property;

17 (c) act in good faith with a buyer and a buyer agent; and

18 (d) comply with all applicable federal and state laws, rules, and regulations.

19 (4) A buyer agent is obligated to the buyer to:

20 (a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the  
21 buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property  
22 or properties similar to the property in which the buyer is interested or show properties in which the buyer is  
23 interested to other prospective buyers without breaching any obligation to the buyer;

24 (b) obey promptly and efficiently all lawful instructions of the buyer;

25 (c) disclose all relevant and material information that concerns the real estate transaction and that is  
26 known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to  
27 confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer  
28 or a seller;

29 (d) safeguard the buyer's confidences;

30 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with

- 1 the terms established in the buyer broker agreement;
- 2 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's
- 3 possession; and
- 4 (g) comply with all applicable federal and state laws, rules, and regulations.
- 5 (5) A buyer agent is obligated to the seller to:
- 6 (a) disclose any adverse material facts that are known to the buyer agent and that concern the ability
- 7 of the buyer to perform on any purchase offer;
- 8 (b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the
- 9 veracity of information regarding adverse material facts that concern the property ability of the buyer to perform
- 10 on any purchase offer;
- 11 (c) act in good faith with a seller and a seller agent; and
- 12 (d) comply with all applicable federal and state laws, rules, and regulations.
- 13 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:
- 14 (a) disclose to:
- 15 (i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to
- 16 the statutory broker, except that the statutory broker is not required to inspect the property or verify any
- 17 statements made by the seller;
- 18 (ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that
- 19 concern the ability of the buyer to perform on any purchase offer;
- 20 (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and
- 21 (c) comply with all applicable federal and state laws, rules, and regulations.
- 22 (7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer
- 23 in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer
- 24 or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality
- 25 considerations.
- 26 (8) A dual agent may not disclose the following information without the written consent of the person to
- 27 whom the information is confidential:
- 28 (a) the fact that the buyer is willing to pay more than the offered purchase price;
- 29 (b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the
- 30 property;

1 (c) factors motivating either party to buy or sell; and

2 (d) any information that a party indicates in writing to the dual agent is to be kept confidential.

3 (9) While managing properties for owners, a licensed real estate broker or licensed real estate  
4 salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements  
5 for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

6 (10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or  
7 written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or  
8 salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written  
9 listing agreement is nevertheless obligated to comply with the requirements of this chapter.

10 (11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest  
11 of the following dates:

12 (i) completion of performance by the agent;

13 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

14 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

15 (b) A statutory broker's relationship continues until the completion, termination, or abandonment of the  
16 real estate transaction giving rise to the relationship.

17 (12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties  
18 to the principal, except as follows:

19 (a) to account for all money and property of the principal;

20 (b) to keep confidential all information received during the course of the agency relationship that was  
21 made confidential at the principal's direction, except for:

22 (i) subsequent conduct by the principal that authorizes disclosure;

23 (ii) disclosure of any adverse material facts that concern the principal's property or the ability of the  
24 principal to perform on any purchase offer;

25 (iii) disclosure required by law or to prevent the commission of a crime;

26 (iv) the information being disclosed by someone other than the broker or salesperson; and

27 (v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or  
28 salesperson, including employees, independent contractors, and subagents.

29 (13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory  
30 broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in



1 which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration,  
2 misrepresentation, or concealment of pertinent facts."

3

4 **Section 6.** Section 37-51-321, MCA, is amended to read:

5 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
6 ~~board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of~~  
7 ~~a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend~~  
8 ~~a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the~~  
9 ~~board of any of the following practices, in addition to the provisions of 37-1-316 and as provided in board rule,~~  
10 are considered unprofessional conduct for an applicant or a person licensed under this chapter:

11 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display,  
12 or other nature, if the advertising in any material particular or in any material way misrepresents any property,  
13 terms, values, policies, or services of the business conducted. A broker who operates under a franchise  
14 agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker  
15 does not incorporate the broker's own name or the trade name, if any, by which the office is known in the  
16 franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth  
17 in this subsection.

18 (b) making any false promises of a character likely to influence, persuade, or induce;

19 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through  
20 agents or salespersons or any medium of advertising or otherwise;

21 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia  
22 of membership in a real estate organization of which the licensee is not a member;

23 (e) failing to account for or to remit money coming into the ~~broker's or salesperson's~~ licensee's  
24 possession belonging when the money belongs to others;

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

27 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to  
28 disclose in advertisements for real property the person's dual capacity as broker and principal;

29 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the  
30 resale of real property;

- 1 (i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's  
2 authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;
- 3 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a  
4 new contract with another principal;
- 5 (k) accepting employment or compensation for appraising real property contingent on the reporting of  
6 a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an  
7 undisclosed interest;
- 8 (l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a  
9 seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing  
10 agreement or buyer broker agreement in connection with the property granting an exclusive agency to another  
11 broker;
- 12 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
13 influencing a purchaser or prospective purchaser of real property;
- 14 (n) as a salesperson, representing or attempting to represent a real estate broker other than the  
15 employer without the express knowledge or consent of the employer;
- 16 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its  
17 execution;
- 18 (p) unless exempted, paying a commission in connection with a real estate sale or transaction to a  
19 person who is not licensed as a real estate broker or real estate salesperson under this chapter;
- 20 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with  
21 this chapter;
- 22 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the  
23 salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity  
24 by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;
- 25 (s) demonstrating unworthiness or incompetency to act as a broker ~~or~~ a salesperson, or a property  
26 manager;
- 27 (t) conviction of a felony;
- 28 (u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing  
29 property management while managing properties for owners; or
- 30 (v) failing to disclose to all customers and clients, including owners and tenants, the ~~broker's or~~

1 ~~salesperson's~~ licensee's contractual relationship while managing properties for owners.

2 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether  
3 by means of printed material, radio, television, or display or by other means, unless the broker or salesperson  
4 has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date  
5 of advertisement.

6 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information  
7 on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson  
8 in materials dispensed to prospective customers.

9 ~~(c)(3)~~ (3) The license of a broker, ~~or salesperson, or property manager~~ who violates this ~~subsection (2)~~  
10 ~~section~~ may be ~~suspended or revoked~~ sanctioned as provided in ~~subsection (4)~~ 37-1-312."

11

12 **Section 7.** Section 37-51-603, MCA, is amended to read:

13 **"37-51-603. Qualification of property manager applicants -- examination -- form of licenses. (1)**

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

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

18 (i) apply for licensure to the department;

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

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

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

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

27 (4) If the board determines that an applicant possesses the qualifications required by this chapter, the  
28 department shall issue a license to the applicant.

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

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

3

4 **Section 8.** Section 37-51-605, MCA, is amended to read:

5 **"37-51-605. Property manager's office -- notice of change of address.** A property manager shall  
6 maintain a ~~fixed office~~ designated physical address in this state at which a copy of the original current license of  
7 the property manager must be prominently displayed. The designated address of the property manager must be  
8 indicated on the property manager's license. If the property manager changes the location of the office, the ~~The~~  
9 ~~property manager shall notify the department of the~~ a new address before removal or within 10 days after ~~the~~  
10 ~~change of address~~ removal. After receipt of the information required under this section and payment of the  
11 required fee, the department shall issue a license to the property manager for the new location for the unexpired  
12 period."

13

14 NEW SECTION. Section 9. Repealer. The following section of the Montana Code Annotated is  
15 repealed:

16 37-51-305. License -- delivery -- display -- pocket card.

17

18 NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

19 - END -