



ADMINISTRATIVE RULES OF MONTANA



24.210.641 UNPROFESSIONAL CONDUCT

- (1) In addition to all other statutes and rules administered by the board, the following are considered unprofessional conduct:
 - (a) acting as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313, MCA.
 - (b) engaging in activities that constitute the practice of law;
 - (c) failing to advise their principal and any other party to the transaction with whom the licensee is directly working, that outside professional services should be secured when appropriate;
 - (d) engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;
 - (e) engaging or recommending the services of an attorney, title company, appraiser, escrow agent, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended;
 - (f) failing, when entering into a listing agreement, to promptly verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing;
 - (g) failing to disclose the fact that the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another;
 - (h) falsifying documents, placing any party's signature on a document, or altering or amending a document on behalf of any party without authority of a written power of attorney from the party;
 - (i) advising that an offer or counter offer has been accepted without the licensee having in the licensee's possession a document signed by the party evidencing the party's acceptance;
 - (j) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

- (k) knowingly entering, or willfully continuing in any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or the licensee's principal is to commit any of the following acts:
 - (i) using or conspiring with others to obtain inflated property appraisals;
 - (ii) influencing others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA);
 - (iii) filing an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, HUD or VA regulations; or
 - (iv) acquiring as an investor, or personally, properties subject to a loan guaranteed or insured by HUD, collect rents thereon, while purposely failing to make mortgage payments on the property;
- (l) failing to document in writing and obtain signatures by the parties to all agreements. Licensees shall document in writing, and have signed by the parties, any changes to the terms and provisions of the agreement which occur between the time a buy/sell is executed and the closing of a transaction;
- (m) failing, as a seller's agent, to participate in negotiations as defined in 37-51-102, MCA, unless the seller has waived this obligation in writing;
- (n) failing, as a seller's agent, to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates unless the seller waives these obligations in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller;
- (o) failing, as a buyer agent, to participate in negotiations as defined in 37-51-102, MCA, unless the buyer has waived these obligations in writing;
- (p) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted or the buyer broker agreement terminates, unless the buyer waives these obligations in writing. Buyer agents are not obligated to show properties to their buyer after an offer has been accepted unless directed in writing to do so by the buyer;
- (q) representing to any lender, guaranteeing agency, or other interested party, either orally or through the preparation of false documents, an amount other than the true and actual sale price of the real estate or terms differing from those actually agreed upon;
- (r) when acting as a listing agent, disclosing the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers. This shall not prohibit the listing agent from disclosing that an offer has been made;
- (s) when acting as a buyer agent, disclosing to a client who is a principal to a real estate transaction, the name of a competing client who is also making an offer on the same property or disclosing the amount, terms or provisions of the competing client's offer;
- (t) violating the residential tenants' security deposits laws of Title 70, chapter 25, MCA;

- (u) violating the landlord and tenant residential and commercial laws of Title 70, chapter 26, MCA;
- (v) violating the Montana Residential Mobile Home Lot Rental Act of Title 70, chapter 33, MCA;
- (w) violating as a seller's agent, the radon disclosure requirements of Title 75, chapter 3, MCA;
- (x) violating the Residential Lead-Based Paint Disclosure Program of Title X, section 1018 of the United States Code;
- (y) violating the landlord tenant laws of Title 70, chapter 24, MCA;
- (z) violating the state and federal fair housing statutes;
- (aa) violating the Americans with Disabilities Act;
- (bb) soliciting, selling, or offering for sale real property by conducting lotteries, raffles, or contests for the purpose of influencing a purchaser or prospective purchaser of real property. Door prizes can be awarded so long as the participant is not required to pay any consideration or enter into any contract arrangement in order to participate in the door prize drawing;
- (cc) paying a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to any principals, reducing the commission owed by any principals, or payments made to the seller of a real estate brokerage business even if the seller is no longer a licensee is not considered payment of a commission to an unlicensed person;
- (dd) failing to disclose in advertising the licensee's name and identifying that the advertisement is made by a real estate licensee or that the advertising is made by a brokerage company;
- (ee) failing to comply with Internet advertising subject to the provisions of ARM 24.210.430;
- (ff) failing to disclose their identity as a real estate licensee at first contact;
- (gg) failing to comply with all completion and reporting requirements for continuing education as established by the board;
- (hh) failing to respond to a request from the board;
- (ii) engaging in or conducting business as a real estate licensee, or advertising as a real estate licensee, or conducting the business of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status;
- (jj) acting as a buyer agent without a written buyer broker agreement;
- (kk) acting as a seller agent without a written listing agreement;
- (ll) acting as a dual agent in a transaction if the licensee is a principal;
- (mm) acting as a dual agent in a transaction without a written agreement from each principal;
- (nn) acting as a seller agent in a transaction if the licensee is the buyer in the same transaction;
- (oo) acting as a buyer agent in a transaction if the licensee is the seller in the same transaction;
- (pp) submitting a competing offer as a principal in a transaction with the licensee's client;
- (qq) failing to account for or misappropriation of funds being held in trust;

- (rr) failing to document any agreement allowing an agent's principal to negotiate directly with an opposing agent;
 - (ss) failing as a listing agent on an entry-only listing to comply with all other statute and rule requirements of a real estate licensee;
 - (tt) as a supervising broker, failing to immediately inform the broker's supervised salespersons that the supervising broker's license or endorsement has expired; or
 - (uu) failing as a supervising broker to adequately supervise his or her salespeople. A supervising broker endorsement may be limited or revoked as a consequence of violating this subsection.
- (2) The revocation, suspension, or other disciplinary treatment of any other professional or occupational license or privilege, held by the licensee in this state or another jurisdiction, may be grounds for license discipline in this state if the board determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity.
 - (3) Real estate licensees are responsible for the actions of their employees who aid or assist the real estate licensee in the performance of real estate functions. At no time may an unlicensed employee perform an activity for which a license is required.

Authorizing statute(s): 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-136, 37-1-137, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, MCA

History: Eff. 12/31/72; NEW, 1978 MAR p. 203, Eff. 2/24/78; AMD, 1979 MAR p. 1548, Eff. 12/14/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 105, Eff. 1/31/86; AMD, 1987 MAR p. 588, Eff. 5/15/87; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93; AMD, 1994 MAR p. 297, Eff. 2/11/94; AMD, 1994 MAR p. 667, Eff. 4/1/94; AMD, 1994 MAR p. 1585, Eff. 6/10/94; AMD, 1995 MAR p. 468, Eff. 3/31/95; AMD, 1995 MAR p. 2397, Eff. 11/10/95; AMD, 1997 MAR p. 399, Eff. 2/25/97; AMD, 1997 MAR p. 1026, Eff. 6/24/97; AMD, 1998 MAR p. 2861, Eff. 10/23/98; AMD, 1998 MAR p. 3277, Eff. 12/18/98; AMD, 1999 MAR p. 405, Eff. 3/12/99; AMD, 2001 MAR p. 785, Eff. 5/11/01; AMD, 2002 MAR p. 2905, Eff. 10/18/02; TRANS, from Commerce, 2005 MAR p. 2455; AMD, 2007 MAR p. 1329, Eff. 9/7/07; AMD, 2007 MAR p. 1815, Eff. 11/9/07; AMD, 2008 MAR p. 808, Eff. 4/25/08; AMD, 2009 MAR p. 748, Eff. 5/15/09; AMD, 2010 MAR p. 532, Eff. 2/26/10; AMD, 2012 MAR p. 1776, Eff. 9/7/12; AMD, 2017 MAR p. 1145, Eff. 7/22/17; AMD, 2018 MAR p. 1163, Eff. 6/23/18; AMD, 2021 MAR p. 619, Eff. 5/29/21; AMD, 2024 MAR p. 2153, Eff. 9/7/24.