



*Twilite
Technology
Center*

**MONTANA
REAL ESTATE
RULES**

HIGH SPEED INTERNET COMMUNICATION FROM A CLASSROOM SETTING
THAT REACHES AROUND THE STATE, THE COUNTRY & THE WORLD

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Montana State Test Information

The following are the only ones not required to have a real estate license to sell real estate for others:

WHO DOES NOT NEED A LICENSE TO LEASE, LIST OR SALE REAL ESTATE IN MONTANA:

1. An owner or lessor selling or leasing the owner's property
2. An auctioneer employed by the owner to sell the property at a public auction
3. An attorney at law providing legal services for the owner of a property
4. An administrator or executor of an estate.

TYPES OF REAL ESTATE LICENSES:

1. Supervising Broker - the broker who manages the real estate firm (may be the owner also but it is not necessarily so).
2. To obtain a broker license requires 2 years experience in real estate.
3. Salesperson - a person sponsored by and trained by a supervising broker. The supervising broker is responsible for the actions of a salesperson and other brokers under supervision.

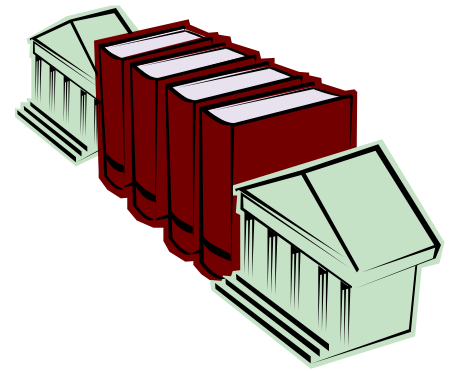
NOTE: Brokers and Salespersons are considered to be licensees by the State Board of Realty Regulation

4. Property Manager - a person who leases or rents property for the owner and charges a fee to do so but does not list or sell property. This is a separate license. A person with a property manager license is not considered a licensee. Licensed salespersons may act as a property manager with the brokers consent without a property manager license.
5. Timeshare condominium sales license - this is a special federal securities license required by anyone, licensees included, who sell timeshare condominiums.

THE BOARD OF REALTY REGULATION

(division of the Department of Labor)

1. The board consists of 8 persons appointed by the governor (2 members non licensees)
2. The board regulates the licensing of applicants and the conduct and practice of licensees. Settles disputes between licensees and buyers or sellers regarding particular transactions or forms. It can give advise on its own rules and regulations.
3. The board basically adopts rules to safeguard the interests of the public. The rules set forth by the board have the power of law as far as licensees are concerned. Violations of these rules may be misdemeanors.
4. Board hires an executive secretary to carry out the duties prescribed by the Board



LICENSEE EXAMINATION

1. All applicants must submit 60 hours of approved pre-licensing education obtained within a period of 18 months immediately preceding the date of the submission of the application.
2. Broker and Sales Candidates must pass a predetermined score based on the IPS national and state test.

LICENSEE APPLICATION REQUIREMENTS

1. SALESPERSON APPLICATION REQUIREMENTS

- A. be at least 18 years of age
- B. have completed 2 years of high school or its educational equivalent
- C. submit a 2 X 2 inch photograph
- D. Provide a letter of recommendation from your broker
- E. provide a certified license history from any state where a licensee candidate was previously licensed.
- F. submit an application certifying that a principal broker has agreed to supervise and train the licensee
- G. Submit proof of successful completion of a 60 hour state approved licensing course

BROKER APPLICATION REQUIREMENTS

- A. have a high school diploma or its equivalent
- B. have 2 years of active real estate sales experience as a license salesperson or have had equivalent experience or acceptable education (normally a college degree in real estate)
- C. provide a letter of recommendation from your broker
- D. provide a certified license history from any state where a licensee candidate was previously licensed.
- E. Submit proof of successful completion of a 60 hour state approved licensing course
- F. LICENSED AND POCKET CARD The board will issue both a license and a pocket card. The license is to be delivered to the supervising broker and is to be prominently displayed in the supervising broker's real estate office where the licensee is employed.

NONRESIDENT LICENSES

- A. A licensee who is a broker or salesperson in another state having a reciprocal agreement with Montana may obtain a Montana nonresident license. A licensee in Montana may obtain a license in another state having a reciprocal agreement with Montana if the principal broker is licensed in that state.

REAL ESTATE OFFICE

- 1. A resident licensed broker must maintain an physical office location in this state (not just a post office box). The office may be used to conduct other business in addition to real estate as long as the salespersons are properly supervised.

FEES PAID TO NON LICENSED PARTIES

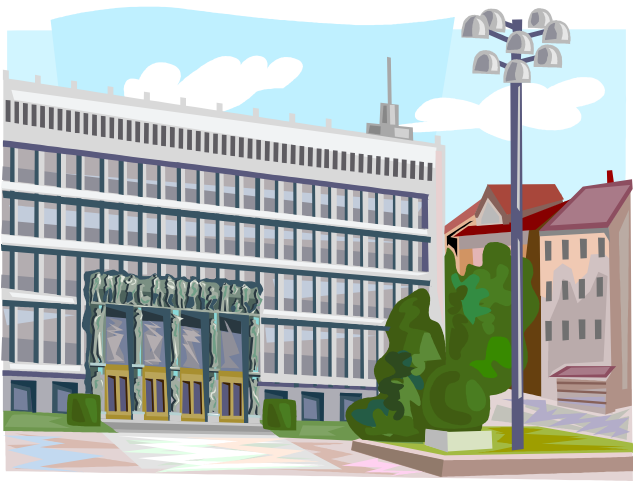
- 1. To receive a referral fee, a finder's fee or commission a real estate license is required
- 2. A broker may not pay a fee or commission to another broker's salespersons.

RECOVERY/SURETY FUND

1. Each person initially licensed pays \$35 to the recovery account (included in license fee)
2. The recovery fund pays fraud claims (not negligence) if a judgment against a licensee is not paid by licensee (unsatisfied judgment).
3. Any person with an unsatisfied fraud judgment against a licensee may apply to the Board for an order directing payment out of the recovery fund for an amount up to \$25,000.
4. Upon payment, the Board holds licensee liable for the amount paid plus interest. The person originally holding the judgment subrogates their rights to the Board against the licensee.

EMPLOYMENT OF SALESPERSONS

1. The supervising broker is responsible for the supervision, conduct and training of the salesperson.
2. To switch supervising brokers a licensed salesperson must notify the Board promptly in writing, have the new supervising broker submit a transfer of license form with the original supervising broker and new supervising broker's signatures, pay the required fee, and obtain a new license and pocket card prior to performing any license related services for the new supervising broker. All listings and transactions remain with the old broker.
3. On termination of a salesperson or broker, the supervising broker must immediately return the old wall license and pocket card to the Board, regardless of any ongoing disputes between the supervising broker and the licensee.
4. Upon termination of a salesperson, the supervising broker **MUST** immediately notify all third parties known to have been dealing with that salesperson.
5. Salespersons are not required to use their supervising broker's firm when listing, purchasing or leasing their own property.



INACTIVE LICENSES

An inactive licensee cannot handle any real estate transactions. They must fulfill the **12** hours of continuing education requirements each year even though their license is inactive.

LICENSEE FEES

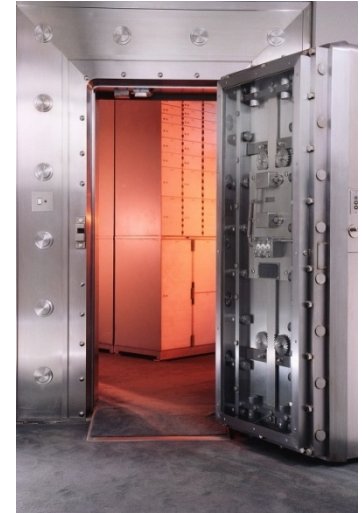
1. Licenses are renewed on an annual basis. Renewal fees are due and payable for the following year during the month of October. Failure to remit the annual fees before November 1 automatically cancels the license.

NOTE: Cancellation of the supervising broker's license (not the salesperson's) cancels all listings. Cancellation of the supervising broker's license suspends the salesperson's license.

2. A licensee who allows his or her license to lapse may have the license reinstated within 45 days after November 1, with a satisfactory explanation for failure to renew and by paying the renewal fee and a \$100 late fee.

CONTINUING EDUCATION

Each licensee (active or inactive) must complete 12 hours of continuing education each year
can be all elective subjects



TRUST ACCOUNT RULES

1. All monies of others must be accounted for at all times
2. In a separate account (trust account) - the supervising broker may not commingle (his or her money must be kept separate).
3. Supervising broker may have \$1,000 in the trust account to cover bank charges. It must be in a federally insured bank
4. If there is more than one broker in an office one trust account may be used for all brokers.
5. All earnest money must be deposited within 72 hours (3 business days) from the time and date of the executed contract
6. Salespersons are required to give earnest money funds to the supervising broker as soon as possible (this is usually done only after a contract has been agreed to and signed by both buyer and seller)
7. The trust account may be an interest bearing account. To do so requires that the person who gets the interest is agreed to in writing between all concerned parties. It can be compensation to the supervising broker for escrow work if agreed to

8. Funds must stay in the trust account until the transaction is completed unless both buyer and seller agree otherwise.
9. The buy - sale agreement states who is to hold the earnest money, buyer or seller agent
10. No commission may be paid to supervising broker until the termination of the deal and the commission has been earned.
11. Records:
 - A. The supervising broker must complete and keep the records
 - B. Monthly statements are to be kept by the supervising broker
 - C. The trust account is to be reconciled monthly
 - D. The records are to be kept for 8 years.
 - E. The Board of Realty Regulation or one of its auditors may look at the records at any time
 - F. The information obtained from the supervising broker cannot be disclosed to the public. The supervising broker is to post the closing information and if commission is owed, to transfer the commission out of the trust account no later than 5 days from closing to prevent commingling.

ETHICS: *The following actions will cause a licensee to lose his or her license*

1. Any action that is considered to be fraudulent- No Fraud.
Cannot use intentionally misleading, untruthful, or inaccurate advertising. All ads must either state the firm name or indicate that the ad has been placed by a licensed person. A supervising broker operating under a franchise must use the firm name along with the franchise name and must conspicuously display, on all printed materials available to the public, a statement that the office is independently owned and operated.

2. Guaranteeing anything – Don't guarantee a sale, future value, etc.
3. Appraising property that is outside of the licensee's expertise (licensees do not do appraisals unless licensed to do so)
4. Practicing law without a license - if you are not a lawyer don't give legal advice
5. Failure to recommend legal counsel when requested or needed.
6. Failure to provide written documents - anyone who signs a legal document must have a copy
7. Using the term Realtor unless you are one
8. Paying a finder fee to anyone who is not licensed
9. Not disclosing commissions received by the licensee, to all parties involved
10. Intentionally interfering with a contract – don't get involved with another licensee's listing
11. By failing to disclose agency relationships with all parties involved prior to an offer being made
12. Conducting a lottery to sell a property
13. Paying any commission to any unlicensed person. Cannot pay a finder's fee, commission or referral fee to an unlicensed person
14. Failing to advise buyer or seller to have a title checked when it is not marketable
15. Failing to take all offers to seller
16. Failing to send or deliver an offer made by a potential buyer to the principal which was received prior to closing
17. Failure to make a prompt, reasonable, visual inspection of properties listed.
18. Cannot use unlawful inducements

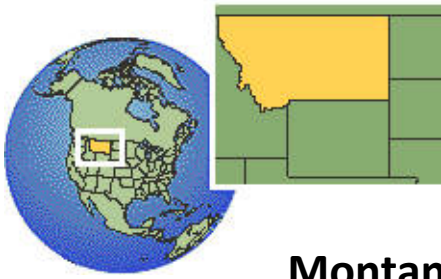
19. Failure to disclose to principals and cooperating firms all material facts. Definition - A fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:
Materially affects the value
affects structural integrity
Presents a documented health risk to occupants of the property or
Materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract
Note: the fact that an occupant of the property had AIDS or other communicable disease, or that the property was the site of a homicide, suicide, or other felony is not considered to be a material fact
20. Failing to inform the client of the approximated amount of closing costs and points that the client will have to pay at closing
21. Failing to inform a property owner that you are a licensee when inquiring about the owner's property
22. Failing to respect the confidentiality of a person making an offer by not disclosing the person's name or the details of the offer to another party interested in making an offer

CRIMINAL PROSECUTION

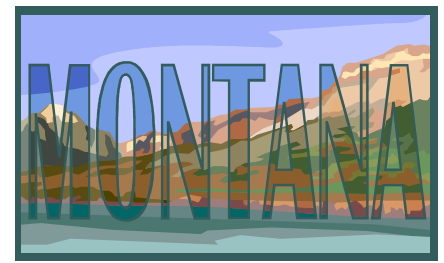
1. Licensed or unlicensed individuals who violate any provision of the licensing law is guilty of a misdemeanor and upon conviction in a District Court may be fined \$100 to \$500
2. Subsequent convictions of license law violations will increase the fines to \$500 to \$2,000

BOARD DISCIPLINARY ACTIONS

1. Before revoking or suspending a license, the Board must give notice and set the matter for hearing
2. All Board disciplinary decisions may be appealed to the Montana District Court



MONATANA AGENCY SUMMARY



Montana recognizes the following Agency relationships:

1. Seller Agent (Broker/salesperson) - Working pursuant to a written listing agreement. They act as the agent of the seller and includes seller subagent (working pursuant to an offer of subagency) and in-house seller agent designate
2. Buyer Agent (Broker/salesperson) - Working pursuant to a written buyer broker agreement and acting as the agent of the buyer in a real estate transaction and includes a buyer subagent (working pursuant to an offer of subagency) and an in-house buyer agent designate.

NOTE: Buyer Broker Agreement -in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

3. Dual Agent (Broker/salesperson) - Working pursuant to a written listing agreement or buyer Broker agreement or as a buyer or seller subagent who acts as the agent of both the buyer and the seller with written authorization. This does not include in-house buyer or seller agent designate. They have the same obligations to seller as seller's agent and the same obligations to the buyer as buyer's agent.
4. In-House Buyer Agent Designate - Broker associate/salesperson employed by or associated as an independent contractor with a broker owner and are designated by the broker owner as the exclusive agent for a buyer for a designated transactions and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

5. In-House Seller Agent Designate - Broker associate/salesperson employed by or associated as an independent contractor with a broker owner and are designated by the broker owner as the exclusive agent for a seller for a designated transactions and who may not be considered to be acting for other than the seller with respect to the designated transaction
6. Statutory Agent (Broker/salesperson) - Assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed as required by the new law, a relationship other than the statutory broker. A statutory broker is not the agent of the buyer or seller.

MONTANA RADON CONTROL ACT

- (1) A radon disclosure statement must be provided prior to the execution of any contract or the purchase of inhabitable/habitable (has a building) real estate.
- (2) The seller or seller's agent must provide the following statement to the buyer who must acknowledge receipt by signing a copy of the disclosure statement:
"RADON GAS; RADON IS A NATURALLY OCCURRING RADIOACTIVE AS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT." (3) If a building has been tested for radon gas, the buyer must be given a copy of the results of that test and evidence of any subsequent radon gas mitigation.

WATER RIGHT TRANSFER CERTIFICATE

Water right transfer certificates must be filed with the Water Rights Bureau at the Department of Natural Resources and Conservation.

SUBDIVISIONS (1) The creation of any parcel less than 160 acres is considered a subdivision.

SELECTED STATE RESIDENTIAL LANDLORD-TENANT LAWS

- (1) 30 days written notice must be given to terminate a month-to-month lease.
- (2) If a tenant fails to pay rent, the property manager may terminate the lease after giving 3 days written notice
- (3) Any licensee desiring to show rented property to a prospective purchaser must give the tenant 24 hours notice.
- (4) 5 days after a landlord reasonably believes that a tenant has terminated a lease and abandoned personal property, the landlord may inventory and store the tenant's personal property in a commercial storage facility and charge the tenant for the storage charges. (Upon termination of the lease, the balance of the security deposit (less itemized deductions for rent, cleaning or damages) must be returned to the tenant within 30 days. If there are no deductions, the deposit must be returned within 10 days.
- (5) Deductions from a tenant's security deposit for cleaning may only be made after the tenant has been given 24 hours to come back and complete any required cleaning.