

SENATE BILL NO. 455

INTRODUCED BY T. VERMEIRE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO REALTY REGULATION; REVISING THE COMPOSITION OF THE BOARD OF REALTY REGULATION; TRANSFERRING THE OVERSIGHT OF PROPERTY MANAGERS FROM THE BOARD OF REALTY REGULATION TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING LICENSING REQUIREMENTS FOR PROPERTY MANAGERS; PROVIDING EXEMPTIONS; PROVIDING A PENALTY FOR FAILURE TO COMPLY WITH TRUST ACCOUNT REQUIREMENTS; REPEALING LICENSING AND REGISTRATION REQUIREMENTS FOR TIMESHARE SALES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-15-1757, 37-1-401, 37-51-102, 37-51-103, 37-51-204, 37-51-313, 37-51-321, AND 37-51-324, MCA; AND REPEALING SECTIONS 37-51-601, 37-51-602, 37-51-603, 37-51-605, 37-51-607, 37-51-608, 37-53-101, 37-53-102, 37-53-104, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-213, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-305, 37-53-306, 37-53-307, 37-53-308, AND 37-53-506, MCA."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Property manager" means an individual who engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate located in this state without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) engages in negotiations for the lease or sublease of any real estate or of the improvements on any real estate;

(b) promotes the lease, rental, exchange, or other disposition of real estate;

- 1 (c) assists in creating or completing real estate lease contracts;
- 2 (d) procures tenants;
- 3 (e) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease;
- 4 (f) makes the advertising of real property for lease available by public display to potential tenants;
- 5 (g) shows rental or lease properties to potential tenants;
- 6 (h) acts as a liaison between the owners of real estate and a tenant or potential tenant;
- 7 (i) generally oversees the inspection, maintenance, and upkeep of leased real estate;
- 8 (j) collects rents or attempts to collect rents;
- 9 (k) pays or receives a fee, commission, or other compensation for referral of the name of a
- 10 prospective lessor or lessee; or

11 (l) advertises or represents to the public that the individual is engaged in any of the activities
 12 referred to in this subsection (2).

13 (3) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
 14 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
 15 elsewhere.

16 (4) "Trust account" means an account for real estate trust funds maintained at a depository
 17 institution from which withdrawals or transfers can be made without delay, subject to any notice period that the
 18 depository institution is required to observe by law.

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20 **NEW SECTION. Section 2. Department powers and duties -- rulemaking.** (1) The department

21 shall:

- 22 (a) license and renew the licenses of qualified applicants; and
- 23 (b) adopt rules related to:
 - 24 (i) eligibility requirements and competency standards;
 - 25 (ii) license fees; and
 - 26 (iii) defining unprofessional conduct that is not included in 37-1-410.

27 (2) The department may:

- 28 (a) adopt rules necessary to implement the provisions of [sections 1 through 8]; and

1 (b) establish licensure requirements and procedures as appropriate.

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3 **NEW SECTION. Section 3. License required to manage property.** A person may not practice as a
4 property manager unless actively licensed under Title 37, chapter 1, and [sections 1 through 8].

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6 **NEW SECTION. Section 4. Exemptions from requirement of property manager license.** (1) The
7 property manager licensing provisions of [sections 1 through 8] do not apply to:

8 (a) the spouse of the property owner;

9 (b) the child, descendant of a child, sibling, parent, niece, nephew, aunt, or uncle of either the
10 property owner or the spouse of the property owner;

11 (c) a person who leases no more than four residential real estate units;

12 (d) a person acting as attorney-in-fact under a power of attorney;

13 (e) an attorney at law in the performance of duties as an attorney;

14 (f) a person acting pursuant to a court order or a trustee;

15 (g) an officer of the state or a political subdivision in the conduct of official duties;

16 (h) a person acting as a manager of a housing complex for low-income individuals subsidized by
17 any government agency or political subdivision of the United States;

18 (i) a person who receives reduced rent or salary, unless that person holds signatory authority on
19 the trust account;

20 (j) a person employed by the owner of the real estate if that person's property management duties
21 are incidental to the person's other employment-related duties; or

22 (k) a person employed on a salaried basis by only one person.

23 (2) A broker or salesperson licensed under Title 37, chapter 51, may act as a property manager. A
24 salesperson may not act as a property manager without a supervising broker.

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26 **NEW SECTION. Section 5. Qualification of property manager applicants -- examination --**
27 **issuance of license.** (1) An applicant for a property manager license must:

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

1 (b) have graduated from an accredited high school or completed an equivalent education as
2 determined by the department;

3 (c) apply for licensure to the department;

4 (d) have successfully completed a course of education approved by the department; and

5 (e) have passed an examination prescribed by the department.

6 (2) The course of education must include the subjects of real estate leasing principles, real estate
7 leasing law, and related topics.

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9 **NEW SECTION. Section 6. Penalty for failure to comply with trust account requirements.** (1) An
10 employee of the department may issue a citation to a property manager responsible for maintenance of a trust
11 account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-
12 319(4).

13 (2) The citation must include:

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

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

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

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

20 (e) the amount of the applicable fine.

21 (3) The applicable civil fine for failure to comply with trust account maintenance requirements is
22 \$1,000 for each cited violation.

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

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

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

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NEW SECTION. Section 7. Property manager's office -- notice of change of address. A property manager shall maintain a designated physical office. The designated address of the property manager must be indicated on the property manager's license. The property manager shall notify the department of a new address within 10 days.

NEW SECTION. Section 8. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 1 through 8].

(2) A person seeking to collect compensation for the lease of real estate shall demonstrate licensure or exemption from licensure.

Section 9. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

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

(3) The members shall serve staggered terms of 4 years. A member may not serve more than two consecutive terms or any portion of two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in

1 this part, the following definitions apply:

2 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an
3 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

4 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

5 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the
6 department, with respect to a complaint or other information before the department, that is carried out for the
7 purpose of determining:

8 (a) whether a person has violated a provision of law justifying discipline against the person;

9 (b) the status of compliance with a stipulation or order of the department;

10 (c) whether a license should be granted, denied, or conditionally issued; or

11 (d) whether the department should seek an injunction.

12 (4) "License" means permission in the form of a license, permit, endorsement, certificate,
13 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a
14 specific level in a profession or occupation governed by:

15 (a) Title 37, chapter 35, 72, ~~or 73~~, or [sections 1 through 8]; or

16 (b) Title 50, chapter 39, 74, or 76.

17 (5) "Profession" or "occupation" means a profession or occupation regulated by the department
18 under the provisions of:

19 (a) Title 37, chapter 35, 49, 72, ~~or 73~~, or [sections 1 through 8]; or

20 (b) Title 50, chapter 39, 74, or 76."

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22 **Section 11.** Section 37-51-102, MCA, is amended to read:

23 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following
24 definitions apply:

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

28 (i) materially affects the value, affects structural integrity, or presents a documented health risk to

1 occupants of the property; or

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

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

6 (2) "Asset management" means management, oversight, or direct actions taken to maintain or
7 transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by
8 the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the
9 value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to
10 a foreclosure sale.

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

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

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

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

18 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
19 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
20 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for
21 referral of information concerning real estate to brokers;

22 (d) makes the advertising, sale, lease, or other real estate information available by public display to
23 potential buyers;

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

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

28 (g) performs asset management services for real property in conjunction with the marketing or

1 transfer of the property; or

2 (h) advertises or represents to the public that the individual is engaged in any of the activities
3 referred to in this subsection (4).

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

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

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

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

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

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

20 (11) "Franchise agreement" means a contract or agreement by which:

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

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

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

27 (12) "In-house buyer agent designate" means a broker or salesperson employed by or associated
28 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for

1 a designated transaction and who may not be considered to be acting for other than the buyer with respect to
2 the designated transaction.

3 (13) "In-house seller 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 seller for
5 a designated transaction and who may not be considered to be acting for other than the seller with respect to
6 the designated transaction.

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

9 (15) "Negotiations" includes:

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

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

16 ~~(17) "Property manager" means an individual who for a salary, commission, or compensation of any
17 kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing,
18 renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others
19 without transfer of the title to the property. The term includes but is not limited to an individual who:~~

20 ~~(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or
21 conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to
22 the property;~~

23 ~~(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the
24 improvements on any real estate located in this state;~~

25 ~~(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real
26 estate located in this state without transfer of the title to the property through the listing of the real estate in a
27 publication issued primarily for this purpose;~~

28 ~~(d) assists in creating or completing real estate lease contracts;~~

- 1 ~~(e) procures tenants for owners of real estate located in this state;~~
- 2 ~~(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this~~
- 3 ~~state;~~
- 4 ~~(g) makes the advertising of real property for lease available by public display to potential tenants;~~
- 5 ~~(h) shows rental or lease properties to potential tenants;~~
- 6 ~~(i) in conjunction with property management responsibilities, acts as a liaison between the owners of~~
- 7 ~~real estate and a tenant or potential tenant;~~
- 8 ~~(j) in conjunction with property management responsibilities, generally oversees the inspection,~~
- 9 ~~maintenance, and upkeep of leased real estate belonging to others;~~
- 10 ~~(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents~~
- 11 ~~for any real estate located in this state;~~
- 12 ~~(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property~~
- 13 ~~manager for referral of the name of a prospective lessor or lessee of real property;~~
- 14 ~~(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or~~
- 15 ~~property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or~~
- 16 ~~(n) advertises or represents to the public that the individual is engaged in any of the activities referred~~
- 17 ~~to in this subsection (17).~~

18 ~~(18)~~(17) "Real estate" includes leaseholds as well as any other interest or estate in land, whether

19 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or

20 elsewhere.

21 ~~(19)~~(18) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the

22 sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,

23 negotiation, and contract development and closing.

24 ~~(20)~~(19) "Salesperson" includes an individual who for a salary, commission, or compensation of any

25 kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell,

26 purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

27 ~~(21)~~(20) "Seller" means a person who has entered into a listing agreement to sell real estate and

28 includes landlords who have an interest in or are a party to a lease or rental agreement.

1 ~~(22)~~(21) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement,
2 acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

3 ~~(23)~~(22) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
4 acts as the agent of a seller.

5 ~~(24)~~(23) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
6 estate transaction without acting as an agent or representative of any party to the real estate transaction.

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

10 ~~(25)~~(24) "Supervising broker" means a licensed broker with whom a licensed salesperson is
11 associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase,
12 exchange, or renting of real estate.

13 ~~(26)~~(25) "Supervising broker endorsement" means an endorsement to a broker's license that is
14 required of any licensed broker who supervises licensed salespersons performing real estate activity."
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16 **Section 12.** Section 37-51-103, MCA, is amended to read:

17 **"37-51-103. Exemptions.** (1) An act performed for compensation of any kind in the buying, selling,
18 exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as
19 specified in this section, must identify the person performing any of the acts as a real estate broker, or a real
20 estate salesperson, ~~or a property manager~~. The licensing provisions of this chapter do not:

21 (a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with
22 reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid
23 and assist in conducting a public sale held by the owner or lessor;

24 (b) apply to any person acting as attorney-in-fact under a special or general power of attorney from
25 the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate,
26 unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with
27 the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business
28 or for the purpose of avoiding license requirements;

1 (c) include in any way the services rendered by any attorney at law in the performance of the
2 attorney's duties;

3 (d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate
4 in a probate matter;

5 (e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real
6 estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer
7 employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting
8 a public sale held by the officer;

9 (f) apply to public officials in the conduct of their official duties;

10 (g) apply to any person, partnership, association, or corporation, foreign or domestic, performing
11 any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or
12 disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

13 ~~(h) apply to persons acting as managers of housing complexes for low-income persons, which are~~
14 ~~subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of~~
15 ~~the United States or an agency of the United States; or~~

16 ~~(h)~~ apply to a person performing any act with respect to the following types of land transactions:

17 (i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation
18 easements or easements for recreational purposes;

19 (ii) condemnations; or

20 (iii) governmental or tribal permits; or

21 (i) apply to property managers licensed under [section 5].

22 (2) The provisions of this chapter do not apply to a newspaper or other publication of general
23 circulation or to a radio or television station engaged in the normal course of business."

24

25 **Section 13.** Section 37-51-204, MCA, is amended to read:

26 **"37-51-204. Educational programs.** (1) The board may, subject to 37-1-101, conduct, hold, or assist
27 in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in
28 this connection.

1 (2) Except as provided in 37-51-302, 37-51-303, ~~37-51-603~~, and subsection (3) of this section, the
2 board may not require examinations of licensees.

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

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

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10 **Section 14.** Section 37-51-313, MCA, is amended to read:

11 **"37-51-313. Duties, duration, and termination of relationship between broker or salesperson**

12 **and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the
13 relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of
14 agents as provided elsewhere in state law and replace the common law as applied to these relationships. The
15 terms "buyer agent", "dual agent", and "seller agent", as used in this chapter, are defined in 37-51-102 and are
16 not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary
17 depending upon the relationship with a party to a real estate transaction and are as provided in this section.

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

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

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

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

27 (d) safeguard the seller's confidences;

28 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in

- 1 complying with the terms established in the listing agreement;
- 2 (f) fully account to the seller for any funds or property of the seller that comes into the seller
- 3 agent's possession; and
- 4 (g) comply with all applicable federal and state laws, rules, and regulations.
- 5 (3) A seller agent is obligated to the buyer to:
- 6 (a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and
- 7 that are known to the seller agent, except that the seller agent is not required to inspect the property or verify
- 8 any statements made by the seller;
- 9 (b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the
- 10 veracity of information regarding adverse material facts that concern the property;
- 11 (c) act in good faith with a buyer and a buyer agent; and
- 12 (d) comply with all applicable federal and state laws, rules, and regulations.
- 13 (4) A buyer agent is obligated to the buyer to:
- 14 (a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to
- 15 the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same
- 16 property or properties similar to the property in which the buyer is interested or show properties in which the
- 17 buyer is interested to other prospective buyers without breaching any obligation to the buyer;
- 18 (b) obey promptly and efficiently all lawful instructions of the buyer;
- 19 (c) disclose all relevant and material information that concerns the real estate transaction and that
- 20 is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to
- 21 confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another
- 22 buyer or a seller;
- 23 (d) safeguard the buyer's confidences;
- 24 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in
- 25 complying with the terms established in the buyer broker agreement;
- 26 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer
- 27 agent's possession; and
- 28 (g) comply with all applicable federal and state laws, rules, and regulations.

1 (5) A buyer agent is obligated to the seller to:

2 (a) disclose any adverse material facts that are known to the buyer agent and that concern the
3 ability of the buyer to perform on any purchase offer;

4 (b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of
5 the veracity of information regarding adverse material facts that concern the ability of the buyer to perform on
6 any purchase offer;

7 (c) act in good faith with a seller and a seller agent; and

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

9 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them
10 to:

11 (a) disclose to:

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

15 (ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and
16 that concern the ability of the buyer to perform on any purchase offer;

17 (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

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

19 (7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a
20 buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose
21 to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality
22 considerations.

23 (8) A dual agent may not disclose the following information without the written consent of the
24 person to whom the information is confidential:

25 (a) the fact that the buyer is willing to pay more than the offered purchase price;

26 (b) the fact that the seller is willing to accept less than the purchase price that the seller is asking
27 for the property;

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

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

2 (9) While managing properties for owners, a licensed real estate broker or licensed real estate
3 salesperson is only required to meet the requirements of ~~part 6 of this chapter~~ [sections 5 through 7], other than
4 those requirements for the licensing of property managers, and the rules adopted by the ~~board~~ department to
5 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
9 written 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
11 earliest 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
15 agreement.

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

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

- 20 (a) to account for all money and property of the principal;
- 21 (b) to keep confidential all information received during the course of the agency relationship that
22 was made confidential at the principal's direction, except for:
 - 23 (i) subsequent conduct by the principal that authorizes disclosure;
 - 24 (ii) disclosure of any adverse material facts that concern the principal's property or the ability of the
25 principal to perform on any purchase offer;
 - 26 (iii) disclosure required by law or to prevent the commission of a crime;
 - 27 (iv) the information being disclosed by someone other than the broker or salesperson; and
 - 28 (v) the disclosure of the information being reasonably necessary to defend the conduct of the

1 broker or salesperson, including employees, independent contractors, and subagents.

2 (13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a
3 statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any
4 transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration,
5 misrepresentation, or concealment of pertinent facts."
6

7 **Section 15.** Section 37-51-321, MCA, is amended to read:

8 **"37-51-321. Unprofessional conduct -- sanction of license.** (1) The following practices, in addition
9 to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an
10 applicant or a person licensed under this chapter:

11 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,
12 display, or other nature, if the advertising in any material particular or in any material way misrepresents any
13 property, terms, values, policies, or services of the business conducted. A broker who operates under a
14 franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name,
15 the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in
16 the franchise name or logotype. The board may not adopt advertising standards more stringent than those set
17 forth in this subsection (1)(a).

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
20 through 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
22 insignia 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 licensee's possession when the money
24 belongs to others;

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

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

1 (s) demonstrating unworthiness or incompetency to act as a ~~broker, broker or a salesperson, or a~~
2 ~~property manager;~~

3 (t) conviction of a felony;

4 (u) failing to meet the requirements of ~~part 6 of this chapter~~ [sections 5 through 7] or the rules
5 adopted by the board governing property management while managing properties for owners;

6 (v) failing to disclose to all customers and clients, including owners and tenants, the licensee's
7 contractual relationship while managing properties for owners; or

8 (w) failing to maintain continuous professional liability insurance coverage that meets the
9 requirements of 37-51-325.

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

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

17 (3) The license of a ~~broker, or salesperson, or property manager~~ who violates this section may be
18 sanctioned as provided in 37-1-312."

19

20 **Section 16.** Section 37-51-324, MCA, is amended to read:

21 **"37-51-324. Penalty for failure to comply with trust account requirements.** (1) An employee of
22 the department may issue a citation to a ~~broker or property manager~~ responsible for maintenance of a trust
23 account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-
24 319(4).

25 (2) The citation must include:

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

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

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

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

4 (e) the amount of the applicable fine.

5 (3) The applicable civil fine for failure to comply with trust account maintenance requirements is
 6 \$50 for each cited violation.

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

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

11 (6) A person who refuses to sign and accept a citation but who does not file a written dispute of the
 12 violation is demonstrating unprofessional conduct."
 13

14 NEW SECTION. Section 17. Repealer. The following sections of the Montana Code Annotated are
 15 repealed:

16 37-51-601. License required to manage property.

17 37-51-602. Exemptions from requirement of property manager license.

18 37-51-603. Qualification of property manager applicants -- examination -- issuance of license.

19 37-51-605. Property manager's office -- notice of change of address.

20 37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees.

21 37-51-608. Penalties -- criminal -- civil.

22 37-53-101. Short title.

23 37-53-102. Definitions.

24 37-53-104. Rulemaking authority.

25 37-53-201. Registration of timeshare offering required.

26 37-53-202. Application for registration.

27 37-53-203. Notice of changes in timeshare offering.

28 37-53-204. Alternative filing documents.

- 1 37-53-205. Exemption from registration.
- 2 37-53-213. Waiver of liability.
- 3 37-53-301. Licensure of timeshare salespersons -- licensee duties.
- 4 37-53-302. Denial, suspension, or revocation of license or application.
- 5 37-53-303. Public offering statement.
- 6 37-53-304. Disclosure to purchaser -- cancellation of agreement.
- 7 37-53-305. Transfer of developer's interest.
- 8 37-53-306. Good faith requirement -- prohibited provisions.
- 9 37-53-307. Illegal practices.
- 10 37-53-308. Civil liability.
- 11 37-53-506. Criminal proceedings.

12

13 NEW SECTION. Section 18. Codification instruction. [Sections 1 through 8] are intended to be
14 codified as a new chapter in Title 37, and the provisions of Title 37 apply to [sections 1 through 8].

15 - END -