

HOUSE BILL NO. 247

INTRODUCED BY S. VINTON, G. HERTZ, C. KNUDSEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO EXEMPTIONS CONCERNING THE BOARD OF REALTY REGULATION; PROVIDING THAT CERTAIN DIGITAL MEDIA PLATFORMS ARE EXEMPT; AMENDING ~~SECTION~~ SECTIONS 37-51-103 AND 37-51-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 37-51-103, MCA, is amended to read:

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

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

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

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

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

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real

1 estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer  
2 employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting  
3 a public sale held by the officer;

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

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

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

11 (i) apply to a person performing any act with respect to the following types of land transactions:

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

14 (ii) condemnations; or

15 (iii) governmental or tribal permits.

16 (2) The provisions of this chapter do not apply to:

17 (a) a newspaper or other publication of general circulation; ~~or to~~

18 (b) a radio or television station engaged in the normal course of business; or

19 (c) digital media platforms that host advertisements for the sale of real estate but otherwise do not

20 engage in any activities generally ACTIVITY WITH RESPECT TO THE ADVERTISEMENTS for which a license as a real

21 estate broker or a real estate salesperson is required. A BROKER OR SALESPERSON WHO OPERATES OR IS

22 AFFILIATED WITH A DIGITAL MEDIA PLATFORM THAT HOSTS ADVERTISEMENTS FOR THE SALE OF REAL PROPERTY ON THE

23 DIGITAL MEDIA PLATFORM BUT WHO OTHERWISE DOES NOT ENGAGE IN ACTIVITY WITH RESPECT TO THE

24 ADVERTISEMENTS FOR WHICH A LICENSE AS A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON IS REQUIRED MAY

25 NOT BE CONSIDERED TO BE REPRESENTING OR PROVIDING REAL ESTATE BROKER OR REAL ESTATE SALESPERSON

26 SERVICES TO ANY SELLER OR LANDLORD WHO POSTS PROPERTY TO THE DIGITAL MEDIA PLATFORM."

27

28 **SECTION 2. SECTION 37-51-321, MCA, IS AMENDED TO READ:**

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

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

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

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

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

16           (e) failing to account for or to remit money coming into the licensee's possession when the money  
17 belongs to others;

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

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

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

24           (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
25 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
26 agent;

27           (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
28 substituting a new contract with another principal;

1           (k)       accepting employment or compensation for appraising real property contingent on the reporting  
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has  
3 an undisclosed interest;

4           (l)       as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly  
5 with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding  
6 listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to  
7 another broker;

8           (m)       soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
9 influencing a purchaser or prospective purchaser of real property;

10          (n)       as a salesperson, representing or attempting to represent a real estate broker other than the  
11 employer without the express knowledge or consent of the employer;

12          (o)       failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of  
13 its execution;

14          (p)       unless exempted, paying a commission in connection with a real estate sale or transaction to a  
15 person who is not licensed as a real estate broker or real estate salesperson under this chapter;

16          (q)       intentionally violating a rule adopted by the board in the interests of the public and in conformity  
17 with this chapter;

18          (r)       failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
19 of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that  
20 capacity by a person, except if the money received by the salesperson is part of the salesperson's personal  
21 transaction;

22          (s)       demonstrating unworthiness or incompetency to act as a broker, a salesperson, or a property  
23 manager;

24          (t)       conviction of a felony;

25          (u)       failing to meet the requirements of part 6 of this chapter or the rules adopted by the board  
26 governing property management while managing properties for owners;

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

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

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

7 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from:

8 (i) including information on properties listed by other brokers or salespersons who will cooperate  
9 with the selling broker or salesperson in materials dispensed to prospective customers; or

10 (ii) hosting advertisements on a website under the control or apparent control of a broker or  
11 salesperson for which the advertisements are posted on the website by the owner or landlord of the property for  
12 sale or rent, as long as the broker or salesperson does not perform on behalf of the owner or landlord of the  
13 property any services for which a license as a broker or salesperson is required.

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

16

17 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

18

- END -