**License Required to Manage Property**

It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

**Exemptions to the Requirement of being Licensed**

The following scenarios a property management license would not be required.

* Managing property owned by yourself or family members. Family includes:
  + Son, Daughter, Stepson, Stepdaughter, Brother, Sister, Stepbrother, Step Sister, Father, Mother, Step Father, Step Mother, Aunt, Uncle, Niece, Nephew, Son-in-law, Daughter-in-law, Father-in-law, Mother-in-law, Brother-in-law, Sister-in-law or Spouse.
* Managing no more than residential 4 units
* A person acting as attorney in fact
* Attorney at law
* Receiver / Trustee in bankruptcy, trust agreement, deed of trust, or will
* Officer of the state
* Manager of low-income housing complex
* Employee being compensated with reduced rent (and no signature authority)
* Incidental duties by the employee of the property owner.
* Salaried employee working for only one person.
* Salesperson working under a broker
* Broker

**Property Management Pre-License Course**

* A property management applicant must provide evidence of successfully completing a minimum of 30 hours of prelicensure education approved by the board.
* The prelicensure curriculum must consist of the following topics:
  + landlord tenant law (Title 70, chapter 24, MCA);
  + federal and state fair housing laws;
  + Americans with Disabilities Act;
  + state licensing law and rules;
  + trust accounts;
  + accounting procedures;
  + definitions;
  + contract law;
  + agency; and
  + leasing principles.
* The property management pre-license course is good for 24 months.

**Property Management State Exam**

* Must get at least an 80% on the exam to pass
* The exam results are good for 12 months.

**Application for Property Management License**

To be issued a license, applicants must:

* Complete a Board-approved 30 hour pre-licenseing course
* Take and pass the State Exam
* Apply for a license with the State of Montana Board of Realty Regulation

**Continuing Education**

* The annual license renewal date of October 31st is also the date that continuing education must be completed by.
* No licensee may repeat a course for credit in the same reporting period.
* New property managers and existing property managers had different continuing education requirements.

**New Property Manager Continuing Education**

All new property management licensees are required to complete 12 hours of property management continuing education by the second renewal date.

* Four of the hours must consist of courses in property management trust accounts and must be taken before the first renewal date.
* The remaining 8 hours are due by the 2nd renewal date (but could be taken anytime between the date of being licensed and the 2nd renewal date).

*Existing Property Manager Continuing Education*

* Each active licensee is required to complete a minimum of 12 hours of continuing property management education every licensing year.

**License Renewal**

* Renewal annual license renewal date is Oct. 31st
* If renewal criteria (CE, fee, etc.) is not met by renewal date license will “lapse”
* Lapse status will last for 45 days
  + OK to use license while lapsed
  + Must met renewal criteria and pay late fees to reactivate
* “Lapse” will become “Expired” after 45 days
  + NOT ok to use license while expired
  + Must met renewal criteria and pay late fees to reactivate
* “Expired” will become “Terminated” after 2 years
  + NOT ok to use license while terminated
  + Must met all initial (pre-license) criteria to get license reissued
  + Starting over as if you never had a license

**Office Address**

A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

**Unprofessional Conduct for Licensees**

In addition to all other provisions contained in the statutes and rules administered by the Board, the following are considered unprofessional conduct:

* violate a federal, state, or local law or rule relating to the conduct of the profession;
* engage the services of any 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; and
* disclosing any family relationship, financial relationship, and/or financial interest that the licensee or the licensee's business may have in the person or entity being engaged;
* manage property owned by another person or entity without a written property management agreement in place, signed by the owner;
* accept, give, or charge an undisclosed commission, rebate, or profit on expenditures made for a principal;
* fail to adequately supervise employees;
* fail to cooperate with or respond to a department request;
* practice while one's license has expired or terminated. Receiving payments for the sale of the licensee's property management business without a valid license is not considered practicing as a property manager; and
* commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

**Transactions with Nonlicensed Persons Unlawful**

* 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 this part.
* A licensed property manager is responsible for the actions of their employees who aid or assist the property manager in the performance of property management functions.
* At no time may an unlicensed employee perform an activity for which a license is required.

**Sanctions and Fees**

The Department of Labor and Industry purpose is to safeguard the public, issue real estate licenses, and regulate licensees. Upon a decision that a licensee has violated a rule or statute, or failed to practice with skill and safety, the Department of Labor and Industry may:

* **Revoke** a license
* **Suspend** a license
* **Restrict or limit** what a licensee can do
* Require **remedial education** of a licensee
* **Monitor** a licensee
* **Censure or reprimand** a licensee
* Require **compliance with conditions** of a probationary license
* Require the payment of a**fine up to $1000** for each violation.
* **Deny** the issuance of a license
* **Refund costs**or fees billed to licensees and collected from a consumer.

**Revocation / Suspension in Another State or Occupation**

The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or similar occupation or profession, shall be grounds for license discipline in this state.

**Inactive Licenses**

Purpose of placing license on “Inactive”:

* To alleviate the continuing education requirements for licensees not intending to use their license for prolonged period of time, but may, after such time, desire to use their license again
* To avoid having license terminated.

To reactivate an inactive license:

* Update your address with the Board
* Show proof of completing 24 hours of continuing education within the proceeding 24 months
* Pay the required fee

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**Math**

**Math Terms**

* **Gross Potential/Possible Income:** total possible income when property is 100% full
* **Vacancy Loss:** loss due to vacant units
* **Effective Gross Income (“Gross Income”):**Gross Potential Income – Vacancy Loss (what you effectively gross)
* **Operating Expenses:** costs associated with operation of property (maintenance, advertising, supplies, insurance, property taxes, property management fees, etc.) *Not including Debt Service.*
* **Net Operating Income (NOI):** Effective Gross Income – Operating Expenses
* **Debt Service:** mortgage payment (principal and interest)
* **Cash Flow:** Net Operating Income – Debt Service

*Remember*

* Gross Potential Income – Vacancy Loss = **Effective Gross Income**
* Effective Gross Income – Operating Expenses =**Net Operating Income**
* Net Operating Income – Debt Service = **Cash Flow**

**How to Prorate Rent**

* Get daily rate
* Amount of rent / amount of days in month
* Multiply daily rate by number of days
* **Think of how many days they were NOT there and subtract that from the total days in the month.**

Example:

A lease starts on the 18th of June at a monthly rate of $840.

* Daily rate = $840/30 days in the month. **Daily rate is $28.**
* **They were not there:**
  + 1-17th. **17 days.**
* **They were there:**
  + 30 days - 17 days = **13 days**
* 13 days multiplied by $28/day = **$364 in prorated rent** for June.

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**Trust Account Regulations**

**Trust Account Basics**

* All property managers shall have a trust account
* **You can have more than 1 account.**

**Monies That Must be Kept in a Trust Account**

* Rent
* Security Deposits
* Other money held by PM on behalf of another (e.g. Owner Reserves)

**Trust Account Interest**

* The monies held in a trust account **can accrue interest**
* If property managers **will be keeping the interest it must designated** in an agreement as consideration for services performed

**Trust Account Location**

* Account must be in a **insured financial institution located in Montana**

**Trust Account Identification**

* The account itself must **identified by the words “trust account”**

**Trust Account Ledgers**

**Keep a separate ledger for:**

* Each Tenant
* Each Owner
* Personal Funds
* Each Bank Account

**Trust Account Checks**

* Checks (if used) must be numbered and**all voided checks recorded.**
* The checks must denote the property manager's business name, address, and **must be designated as "trust account"**
* Checks (if used) must be numbered and**all voided checks recorded.**
* The checks must denote the property manager's business name, address, and **must be designated as "trust account"**

**Offices with Multiple Property Managers**

* Offices with more than one property manager may have all their property manager’s use the same Trust Account

**Trust Account Personal Funds**

* Funds deposited in a property manager trust account in connection with a property management transaction **shall not be commingled** with the property manager's personal funds.
* However, a property manager may have **up to $1000 of personal funds** in the trust account (for bank fees, NSF, statement fees, etc.)

**Depositing Trust Account Funds**

* All monies paid on behalf of others (rent, sec. dep., etc) must be **deposited to trust account within 3 business days for residential transactions.**
* All monies paid on behalf of others (rent, sec. dep., etc) must be **deposited to trust account within 3 business days or as otherwise agreed, for non-residential transactions.**

**Terminating or Transfering Management**

* When transferring management, property managers shall **notify tenants within 5 days of termination or transfer.**
* When a property management agreement is terminated all monies and documents need to **transfer to owner / designee within 30 days.**

**Withdrawing Management Fees from Trust Account**

* Money in the trust account that is due to the property manager must be **withdrawn within 10 days from when due or when the ledger is reconciled.**

**Trust Accounts Reconciliation and Document Retention**

* **Reconcile trust account ledgers monthly**
* Keep Copies of:
  + Deposit Slips
  + Bank Statements
  + Checks in numbered order and all voided checks
  + Property Management Agreements
  + Rental Agreements
* **Keep document records for at least 8 years**

**Electronic Records of Trust Account**

* Information **may be maintained electronically**, but you must be able to show proof of compliance in an audit

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**Fair Housing Review**

**Federal Fair Housing Act of 1968**

Defines, with the amendments, these protected classes:

* Race / Color
* National Origin
* Religion
* Sex (added in 1974)
* Handicap (added in 1988)
* Familial Status (added in 1988)

Note that it was 1988 when Handicap and Familial status was added to the federal Fair Housing Act.

**Montana Human Rights Act**

Defines, with the amendments, these protected classes:

* Race / Color
* National Origin
* Religion
* Sex
* Handicap
* Familial Status
* Creed
* Marital Status
* Age

Note that Montana has 3 additional protected classes, beyond what is federally protected.

* **Creed**
* **Marital Status**
* **Age**

**Definitions**

*Race*

Ancestry, physical, or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.

*Color*

The color of human skin.

*National Origin*

The country in which a person was born, or from which the person's ancestors came.

*Religion*

Includes all aspects of religious observance and practice as well as belief and absence of religion. Concerns ultimate ideas about life, purpose and death. Does not concern personal, social, political or economic philosophies.

*Sex*

Either the male or female division of humans. Protects sexual orientation and gender identity.

*Handicap*

* A **physical or mental impairment**that substantially **limits** one or more of a **person’s major life activities**,
* A record of such an impairment, or
* A condition regarded as such an impairment.

“Major Life Activities” Include, but not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. As well as the operation of several specified "major bodily functions."

*Familial Status*

Having a child or children who live or will live with a person. Anyone who is pregnant.

*Creed*

Deeply held or fundamental beliefs.

\*Broader than religious beliefs.

*Marital Status*

The condition of being married or unmarried.

*Age*

Number of years since birth.

\*It does not mean level of maturity or ability to handle responsibility.

**What is Protected**

When based on a protected class, you may not:

* Refuse to rent or sell housing
* Refuse to negotiate for housing
* Make housing unavailable
* Deny a dwelling
* Set different terms, conditions or privileges for sale or rental of a dwelling
* Provide different housing services or facilities
* Falsely deny that housing is available for inspection, sale, or rental
* For profit, persuade owners to sell or rent (blockbusting) or
* Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.
* Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
* Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

**Prohibited Discriminatory Practices**

*Blockbusting*

To induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood by 1 or more members of a protected class

*Steering*

The practice in which property managers guide prospective tenants towards or away from certain properties on the basis of a protected class

*Redlining*

A discriminatory practice in which you refuse to offer services in a certain geographic location which predominantly consists of a protected class

**Accommodations and Modifications for Persons with a Disability**

*Reasonable Accommodations*

An accommodation is a change to a rule, policy or practice.

A housing provider cannot refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

Examples of reasonable accommodations would include:

* Allowing a tenant to have a emotional support animal
* Changing your guest policy to allow an overnight caretaker to stay beyond the typical guest nightly limits.
* Accommodating a request for a tenant to have a reserved parking space who has demonstrated a need based on their limited mobility.

*Reasonable Modifications*

A modification is a physical change at a property.

A housing provider cannot refuse to let the disabled person make reasonable modifications to their dwelling or common use areas, at their expense, if necessary for them to use the housing. Where reasonable, the landlord may permit changes only if they agree to restore the property to its original condition when they move.

Examples of reasonable modifications:

* Installing a portable ramp outside of their apartment to allow a wheelchair to go up 1 step.
* Installing a grab bar in a bathroom shower area.

**Exemptions**

*Housing For Older Persons*

Housing for older persons is exempt from the prohibition against age and familial status discrimination if:

* The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
* It is occupied solely by persons who are 62 or older or
* It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

*Religious and Social Clubs*

The federal fair housing act exempts non-commercial housing operated by private clubs or religious organizations, which may give preference to their members

*Owner-Occupied Exemptions*

* Mrs. Murphy Exemption - The law exempts owner-occupied sleeping rooms in a private residence provided the owner rents no more than 3 rooms within the residence.
* The provision in the law against discrimination because of age and familial status do not extend to owner-occupied duplexes.

In either case the owner cannot advertise their discriminatory preferences.

**Penalties**

*Federal Fair Housing Act Civil Penalties*

The maximum federal Fair Housing Act civil penalties are as follows:

* No prior violations: **$21,663 for first violation**
* One prior violation in the past 5 years: **$54,157 for 2nd violation**
* 2 or more violations in the past 7 years: **$108,315 for 3rd and subsequent violations**

*State of Montana Penalties*

A person who violates State of Montana human rights laws:

* shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both;
* if bodily injury results, shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both; or
* if death results, shall be subject to imprisonment for any term of years or for life.

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**Lead-Based Paint Review**

**Overview**

Lead is particularly dangerous for children under age 6 and pregnant women. Prior to 1978 paint manufacturers could have included lead in paint used for residential properties. Beginning January 1st 1978 this was outlawed.

**Disclosure**

Because many properties still might have lead-based paint, the federal Environmental Protection Agency (EPA) requires housing providers of housing built prior to 1978 to do the following:

* Disclose the potential presence of lead-based paint and hazards
* Provide EPA pamphlet on how to “Protect Your Family from Lead in Your Home”
* Provide copies of any records or reports relating to lead-based paint

**Remember:** This applies to properties built in or before 1977.  (Prior to 1978).

**Exemptions**

The following scenarios would not require a lead based paint disclosure.

* Commercial units
* 0-bedroom dwellings
* Housing for elderly (62 plus) or persons with disabilities unless children under 6 will be residing there
* Certified Lead-free properties
* Leases less than 100 days in length (with no option to renew)
* Sales at foreclosure
* Renewal of lease with prior disclosure

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**Agency and Managers**

**Agency Terms To Know**

* Agents and Principals
* An agent is one who represents another, called the principal, in dealings with third persons.
* Agency - definition:
* the relationship established when two parties agree that one will work on behalf of the other
* Fiduciary - definition:
* An agent who has a legal and ethical duty to act in the best interest of a principal. (As opposed to themselves or 3rd parties)
* In the case of property management - the property manager “Agent” acting in the best interests of the owner “Principal”

**Types of Managers**

* Property manager (generic) – an agent acting on behalf of an owner
* Site Managers – a property manager who lives at the property being managed
* Asset Managers – a property manager who manages multiple properties in a supervisory position
* Leasing Agent – a property manager who specializes in showing and signing up prospective tenants

**Marketing, Screening & Maintenance**

**Market Analysis**

Staying knowledgeable on trends, rent prices and market demand will assist in correctly marketing and filling vacancies. Consider the following factors when performing a market analysis.

* Comparable Unit Rents
* Quality
* Fixtures, updates, etc
* Size
* Location
* Age
* Economy
* Trends

Vacancy rates are not included in a market analysis.

**Tenant Screening**

*Factors to consider:*

* Landlord References
* Personal / Professional References
* Credit Check
* Financial History / Collections
* Bankruptcies
* Employment / Income Verification
* Criminal Background Check
* Local law enforcement
* 3rd party / private companies
* Sexual offender
* Online search
* ID Verification

*Factors that should not be considered would include:*

* Personal preferences of the renter not related to their ability to pay or that are otherwise protected.
* Religious affiliation or other protected classes

*Areas of concern regarding application:*

* Dishonesty
* Evictions
* Poor Credit Scores
* Collections
* Criminal History (especially violent or sexual offenses)
* Missing information

**Maintenance and Repairs**

* Preventative maintenance
* Have routine cleaning, grounds, preventative, program to identify and prevent larger maintenance issues before they arise.
* Corrective Maintenance
* Correcting active maintenance issues, like a plumbing leak, a broker heater, etc.
* Adhere to state laws
* Be reasonable
* Be timely
* Fix it right = less hassles in the future
* Use professionals
* Keep track – make a system to stay on top of maintenance and repairs

**Leases and Leaseholds**

**Types of Leases**

* Gross Lease
* Most residential leases
* Net Leases - A type of lease where the tenant pays, in addition to base rent, various expenses regarding the operation of the property.
* Single Net – Property Taxes
* Double Net – Taxes and Insurance
* Triple Net – Taxes, Insurance and Maintenance
* Percentage Lease
* Airports, McDonalds
* Land Lease
* Costco
* Mineral Lease / Mineral Rights

**Types of Leaseholds**

**Tenancy at will**

* Can be terminated at any time
* Requires only reasonable notice

*Periodic Tenancy /Periodic Lease*

* Year-to-year, Month-to-month, Week-to-week, etc.
* No specified end date

*Lease for years / tenancy for years/ fixed-term lease*

* Specified period of time / Specified end date
* Eg. April 15th 2022 – November 30th 2023
* Note: Does not actually have to be for more than 1 “year”
* No notice is needed for termination, the lessee knows the termination date from the outset of the lease.

*Holdover tenancy / tenancy at sufferance*

* When a tenant wrongfully remains in possession of property after end of lease

**Insurance and Contracts**

**Types of Insurance**

* Liability - Insurance for which your business is legally liable (accidents)
* Fidelity - Covers loss of money or inventory for a crime, including employee dishonesty
* Errors and Omissions - “Malpractice” insurance for real estate professionals
* Unemployment - Coverage for employees who become unemployed
* Disability - Non-work-related injury or sickness
* Worker’s Compensation - Work-related injury or sickness

**Contracts**

* A mutual agreement (like a lease signed by both parties) is a bilateral agreement.
* Another term for a bilateral agreement is a “meeting of the minds”

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