



PROPERTY MANAGEMENT
— EDUCATION —

Montana Property Management Pre-Licensing
Course

Presented by Sabrina Murphy

Approved by Montana State Department of
Labor and Industry / Board Of Realty Regulation

****2024 Edition***

About Sabrina Murphy

- ✓ Licensed Property Manager
- ✓ Licensed Managing Broker
- ✓ Licensed Real Estate Agent
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- ✓ Property Management Consultant
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Disclaimer

Our discussion regarding property management law and regulations, Landlord/Tenant Law, and residential property management includes personal views and opinions of the instructor based on experience, research, and conversations with other property managers. We cannot represent specific situations you may encounter, nor make assurances or warrant that what we say will apply to your situation.

When we talk about prices, fees, or commissions, we want to make it clear that we are not suggesting fees or commissions to be set or agreed upon. Any mention of fees or commissions is only to clarify our discussion by giving examples. Fees are determined by competition and the marketplace. Each market is different, and therefore, fees differ from company to company.

Information used in the case studies of problems and solutions is fictional. Any similarity to actual events or people is coincidental.

This course does not purport to provide an exhaustive discussion of any area of the law and should not be used as a substitute for legal counsel.

Legal issues discussed are solely for illustrative purposes. Forms, contracts, and agreements, as well as all other printed materials are provided as examples for guidance only and are not to be used without specific approval by your legal counsel. Since laws change periodically and vary from area to area, the instructor assumes no responsibility for the content of any printed material. Consult your legal advisor before implementing any policies or procedures or using any printed materials.

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Before We Begin

- Be sure you have the class materials in front of you.
- Read the "Disclaimer Statement"
- Breaks & Lunch
- Schedule: Monday - Tuesday - Wednesday - Thursday : 8-5
- When this class is over, you will receive a digital course completion certificate. **HOLD ONTO THIS CERTIFICATE** as it is required to apply for your license.
- There are no dumb questions!
- If you have a question, ask!
- If you are going to make mistakes, make them in this class.
- Respect everyone's position/opinion
- Everyone is responsible for the success of this class
- Everyone participates
- Keep an open mind

Speaker Attention Statistics

- First 15 seconds 100% attention
- Second 15 seconds 75% attention
- After 45 seconds half of you are not there
- After 1 minute only 25% are with me

What to Expect From Your Instructor and This Class

- Instructor Goals:
 - Pass the exam
 - Instruct you on how to practice as a property manager once you get your license
- I am not an attorney.
- We have lots of material to cover in a short period of time.
- This is like no other learning experience – exam & practice.
- For the purpose of this class, all assumptions will be black or white when it comes to any interpretation of the law.
- If you are currently in property management, I respectfully ask that you put that knowledge aside. If you don't, you will over analyze the materials and confuse yourself.
- The Process: Classroom participation in reading all theory covered.
- I will thoroughly review all material through the use of PowerPoint presentation and daily tests as preparation for the exam.
- When possible, real life business examples will be used.
- If a question is asked and the material will be covered later in the class, I will say "we will cover that topic later." Make a note of your question as a reminder to yourself.
- Please signal me if I'm going too fast!
- I encourage questions that are pertinent to the material being covered.
- If my answer to your question is not clear, it is your responsibility to let me know – I'm here to help you learn and understand the materials.
- I will make myself available during breaks and after class.
- I will give you my personal opinions on various topics – do not misinterpret the opinion for what you should do in your business

Course Objectives

- To achieve more than the minimum level of competency required by the State to pass the exam.
- Comprehend the duties of a professional property manager
- Have a working knowledge of the Landlord Tenant Act
- Have an understanding of the rules and regulations governing you as a property manager
- Give you a basic understanding of rental and management agreements and how they interact with you, your business, customers, and clients.
- To introduce you to some of the analysis and mathematics that are required as a property manager
- Last but not least, to instill in you a desire to learn more about property management.

Course Outline

DAY ONE

Introduction To Class

Montana Fair Housing – Pam Bean

License Law – Chapter 37

Rules & Regulations – Chapter 24

DAY TWO

Landlord/Tenant Law – Chapter 70

DAY THREE

Attorney - Katie Holliday

Contract, Leasing, & Agency Principles

Trust Accounting

DAY FOUR

Math

Class Review

Exam Information

The exam that is taken after the completion of this course is composed of approximately 70 multiple choice questions. The approximate breakdown of the test is as follows:

ADA	2	3%
Business	11	15%
Contracts	4	5%
Fair Housing	7	10%
Landlord Tenant Law	20	28%
Lead Based Paint	2	3%
Leasing Principles	4	6%
Calculations	8	12%
State Licensing Law	8	12%
Trust Accounts	4	6%

- **80%** pass rate is considered successful completion of the exam.
- You have 2 hours. You can use a calculator. Math is at an 8th grade level.
- Examination Fee \$106.00. Schedule an appointment by calling **1-800-733-9267** or schedule online at <https://candidate.psiexams.com/>

Exam Locations:

MISSOULA

Lommasson Center 154,
University of Montana

MISSOULA

4045 Corporate Way
Missoula MT 59808

KALISPELL

1880 Highway 93 South
Kalispell Airport
Kalispell MT 59901

BILLINGS

2821 Augusta Ln, Aviation Hall
Room 102
Billings MT 59102

BILLINGS

15 Avanta Way, Suite 1
Billings MT 59102

GREAT FALLS

1940 Airport Court
Great Falls MT 59404

Test Anxiety

Test anxiety is learned. The problem is that the test is perceived as a tangible barrier after all the time and preparation. Anxiety is the anticipation of disaster. No one can judge us more severely than ourselves. We are our own worst enemy.

The components of anxiety are Worry and Emotionality.
Emotionality is Headaches, Neck Tension, and/or Sweaty Palms.

Effects of Worrying:

- Impaired short-term memory
- Difficulty thinking, focusing
- Negative self-image
- Unrealistic concern about the ability to perform

Burning the midnight oil the night before is asking for increased anxiety.

Keys to Successful Test Taking:

- Reduce tension
- Relaxation exercises
- Study while relaxed
- Visualization of process
- Have confidence in your knowledge

Fair Housing Seminar

PRESENTED BY

PAM BEAN

Approved by Montana State Department
of Labor And Industry
Board of Realty Regulation

Fair Housing: What does that phrase mean?

Montana Fair Housing
501 East Front Street, Suite 533
Butte, MT 59701
(406) 782-2573 / MT Relay: 711
Website: montanafairhousing.org
E-Mail: pam@montanafairhousing.org

Montana Fair Housing

Our mission is to promote and ensure non-discrimination in Montana through outreach, education, dispute resolution, and enforcement.

- Private, Non-Profit
- Serving residents across the State of Montana
- Outreach and Education
- Dispute Resolution
- Investigation and Enforcement
- No Legal Counsel on Staff – we can not provide a legal opinion

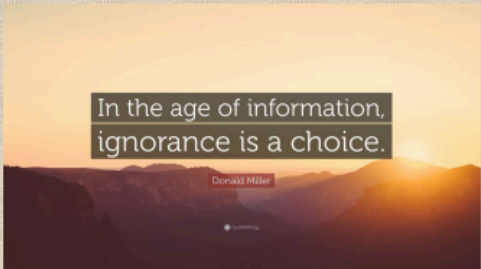
2 Montana Fair Housing January 2024

What's happening today?

1. What should attendees have?
2. Every hour we take a 10 minute break.
3. And then we do more slides.
4. We'll complete the quiz.

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Goal: For Us All to Learn Something New!



In the age of information, ignorance is a choice.

Donald Miller

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Fair Housing

“Fair housing” = making decisions about a household’s eligibility for services based on qualifications that **don’t include reference to protected characteristics.**

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Laws we will talk about today:

- 1866 Civil Rights Act
- Federal Fair Housing Act
- MT Human Rights Act
- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act

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1866 Civil Rights Act

- Be it enacted . . . , "all persons born in the United States" (except for Indigenous groups) were "hereby declared to be citizens of the United States" and that "such citizens of every race and color ... shall have the same right ... as is enjoyed by white citizens."
- **1924 – Indian Citizenship Act** – granted Indigenous persons citizenship

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Fair Housing Act as Amended in 1988 - Effective March 13, 1989

"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

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Protected Classes - 1968

- **Race** – Physical traits common among peoples with shared ancestry
- **Color** – Skin Pigmentation

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Research Confirms Discriminatory Bias in Appraisals
 Dr. Junia Howell and Dr. Elizabeth Korver-Glenn

- As reported by National Fair Housing Alliance / November 2, 2022
- Research was based on an analysis of over 32 million appraisals submitted to Fannie Mae or Freddie Mac between 2013 to 2021.

Findings:

- Homes in White neighborhoods are appraised at double the value of comparable homes in communities of color.
- Racial inequality in appraised values has increased 75 percent over the last decade.
- The pandemic and its associated monetary policy further exacerbated the racial inequality in appraised values.
- Racial inequality is growing fastest in the hottest housing markets.
- The difference between White neighborhoods and communities of color is particularly stark for American Indian, Alaska Native, Southeast Asian, and Pacific Islander communities.

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Selling Houses While Black
 New York Times - Colette Coleman, freelance writer focused on race and equity. Published Jan. 12, 2023; Updated Jan. 17, 2023

"Today about 6 percent of real estate agents and brokers in the United States are Black, though 14 percent of Americans are Black. White real estate agents make almost three times as much as their Black peers, according to the N.A.R. To make it in the industry, Black agents say they are taking precautions and making concessions, including changing their names or omitting their photos from promotional materials to hide their racial identities."

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Department of Justice - March 9, 2023
Mississippi Man Sentenced for Federal Hate Crime for Cross Burning

- Event: December 3, 2020
- Axel Cox, Age 24, Gulfport, Mississippi
- Sentenced to 42 months in prison + three years supervised release + restitution in the amount of \$7,810
- Violated the Fair Housing Act when he used threatening and racially derogatory language and burned a cross.
- Cox wedged two pieces of wood together to form a cross, placed it in clear view of the victims' residence, doused it in oil and set it on fire. During this incident, Cox yelled threats and racial slurs toward the occupants of the house.
- Cox admitted lighting the cross on fire because the victims were Black and that he intended to scare them into moving

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Protected Classes - 1968

- **Religion –**
Participating in or not participating in an organized religion

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What can this look like?

- Refusing to rent to persons wearing religious headscarves or turbans.
- Harassing tenants because of their religious practices or dress.
- Telling someone they aren't welcome because of their beliefs.
- Allowing some tenants to put up Christmas lights, but telling others they cannot put up decorations for their non-Christian holidays.
- Display items like a Christmas tree, the Easter Bunny, or Santa Claus vs. "religiously significant" seasonal decorations in public areas.
- Telling buyers or applicants that they won't like a neighborhood because there isn't a mosque, synagogue or church nearby.
- Prohibiting use of a community or meeting room for religious purposes, while allowing use for secular gatherings, such as parties.
- If residents are allowed to place secular items or decorations on their doors or in windows, residents should also be allowed to display religious items or decorations.
- If the name of a property references religion a preference may be inferred. Advertise these properties including a non-discrimination policy, and the FHED logo. Ensure the agent or owner doesn't make discriminatory decisions in reference to services and eligibility.

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Protected Classes - 1968

- **National Origin –**
The country of an individual's birth or where their ancestors originated

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National Origin

- <https://www.equalhousing.org/wp-content/uploads/2014/09/2012-Immigration-Status-FAQ.pdf>

Common Stumblers:

- Refusing to rent to households whose primary language is other than English
- Failure to develop an **LEP Plan**
- Requiring different documentation from or refusing alternative documentation from households because of National Origin
- Offering different rates based on National Origin
- Steering prospective buyers or renters to or away from certain neighborhoods because of their National Origin, and
- Failing to provide the same services or amenities because of a household's National Origin

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Protected Classes - 1974

- Sex –

Male or Female
Sexual Harassment
Domestic Violence Survivors
Sexual Orientation and Gender Identity

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Sexual Harassment

- Hostile Environment - occurs when a housing provider subjects a person to severe or pervasive unwelcome sexual conduct (like advances, innuendos, offensive language) that interferes with the sale, rental, availability, or terms, conditions, or privileges of housing or housing-related services, including financing.
- Quid Pro Quo – occurs when a housing provider requires submission to an unwelcome request to engage in sexual conduct as a condition of obtaining or maintaining housing or housing-related services.

"No."

Residue

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Domestic Violence

- **VAWA** – Federally Funded Programs & LIHTC
 - <https://www.hud.gov/VAWA>
 - <https://www.hud.gov/sites/documents/FINALNUISANCEOR DGNCC.PDF>
- **The Fair Housing Act (FHA)**. Domestic violence is not listed as a protected class under federal law, but case law supports its application to survivors of domestic violence.
- **MCA 45-5-206. Partner or family member assault** –
 - Family member** - mother, father, kids, siblings, past or present family members of a household.
 - Partners** - spouse, former spouse, persons having a child in common, persons who are or were dating or in a relationship.
- Housing providers are encouraged to have a domestic violence policy outlining procedures and practices.

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Sexual Orientation & Gender Identity

- FROM: Jeanine M. Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity
- February 11, 2021:
 - . . . “FHEO shall accept for filing and investigate all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that meet other jurisdictional requirements.” . . .
- Gender Identity – Who you are inside and how you express yourself
- Sexual Orientation – Who you are attracted to

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Protected Classes - 1988

- **Familial Status** – presence of children under the age of 18 in the household or pregnancy

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Familial Status

- Household Size: Keating Memo
https://www.hud.gov/sites/documents/DOC_7780.PDF
- Common Stumblers:
 - Bedroom size
 - People per bedroom
 - Bonus Rooms
 - Age of Children
 - Sex of Children
 - Alternative sleeping arrangements
 - Noise
 - Increasing costs per person
 - Not allowing households with children above the first floor
 - Not allowing households with children based on potential dangers

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Protected Classes - 1988

- Disability -
 - Denial of services because of having a mental or physical disability
 - Denial of Requests for Reasonable Modifications
 - Denial of Requests for Reasonable Accommodations
 - Design & Construction of Multi-family Housing

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Disability

- Section 504 of the Rehabilitation Act of 1973
Federally Funded Programs Only
- Federal Fair Housing Act and MT Human Rights Act
- The Americans with Disabilities Act

DEFINITION: A physical or mental impairment that substantially limits one or more major life activities

Substantially Limits: Limitation is "significant" or "to a large degree."

Major Life Activity: Activities of central importance to daily life.

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Disability, Cont.

Who is Covered?

- 1) individuals with a physical or mental impairment;
- 2) individuals with a record of such an impairment; and
- 3) individuals who are regarded as having an impairment.

Who is not Covered:

- 1) Does not protect juvenile or sex offenders, by virtue of that status.
- 2) Does not protect persons who are currently using illegal controlled substances.
- 3) Does not protect an individual with a disability whose tenancy would constitute a "direct threat" unless the threat can be eliminated or significantly reduced.

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Disability, Cont.

- **Request for Modification:** Physical alteration of a dwelling and/or public and common areas that will afford the person with the disability full use and enjoyment.

See: https://montanafairhousing.org/forms/HUD_D01_RM_joint_statement.pdf

- **Request for Accommodation:** Alterations to rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy the dwelling unit, including common use areas, by ameliorating the symptoms of the disability. See: https://montanafairhousing.org/forms/HUD_D01_RA_joint_statement.pdf

- ❖ **Requests can be made in any format, including verbal**
- ❖ **Use of specific language or forms can not be required**
- ❖ **Requests can be made on behalf of a person**
- ❖ **Visitors with disabilities may also submit requests – Residents responsible for compliance**

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The Housing Provider Has Right to Know:

1. What is specifically being requested (*be clear*);
2. Person has a disability unless already known or visible (*not diagnosis or treatment*);
3. "Nexus" between request and disability-related need (*unless obvious or known*):
 1. **Major life activities** limited by the disability that *specifically relate to the request and need*,
 2. **Symptoms** ameliorated to *minimize the impact* on major life activities;
 3. **Provides an equal opportunity to use and enjoy the premises**.

Information Received Must be Kept Confidential

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Requests for Modifications

Can require household to:

1. Pay for modifications;
2. Deposit monies in interest bearing account for restoration of modifications that would interfere with the use of the **unit** by someone without a disability (not exterior modifications);
3. Purchase permits;
4. Have work done professionally.

➤ Section 504 requirements for federally funded sites differ.

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Requests for Accommodations

- Parking spot on the nearest accessible route
- Ceasing efforts to evict someone engaged in hoarding behaviors
- Moving a household to a ground floor unit
- Allowing a live-in aide (does not financially need to qualify)
- Allowing a household to end their lease early without adverse action or fees
- Securing the services of a sign language interpreter
- Altering rent due dates without penalties
- Service and Assistance Animals
- Etc. . . .

Housing Provider can not assess fees, deposits, or additional rent monies for accommodations

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Service & Assistance Animals

A housing provider may refuse a reasonable accommodation for an animal if the **specific** animal poses a direct threat that cannot be eliminated or reduced.

Reasonable accommodations when the need involves unique circumstances ...

- The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
- Information from health care professional confirms that:
 1. Allergies prevent the person from using a dog; or
 2. Without the animal, the symptoms or effects of the person's disability will be significantly increased;
 3. The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

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Service & Assistance Animals, Cont.

A Unique Type of Support Animal: An individually trained capuchin monkey performs tasks for a person with paralysis caused by a spinal cord injury. The monkey has been trained to retrieve a bottle of water from the refrigerator, unscrew the cap, insert a straw, and place the bottle in a holder so the individual can get a drink of water. The monkey is also trained to switch lights on and off and retrieve requested items from inside cabinets. The individual has a disability-related need for this specific type of animal because the monkey can use its hands to perform manual tasks that a service dog cannot perform.

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Service & Assistance Animals, Cont.

- No national source for certification – certification submission is not verification of disability and need; housing providers are not required to accept certificate as verification
- Verification of disability and need from an on-line source does not meet criteria unless medical treatment is provided virtually
- Ongoing relationship between healthcare provider and person should exist
- Verification of disability-related need for each animal
- Secure approval from housing provider before bringing animal/s to site
- HUD Service and Assistance Animal Memo
<https://montanafairhousing.org/forms/2020HUDAsstAnimal.pdf>

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Service Animals

Dogs or Miniature Horses, and, in Montana, also Service Animals in Training



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Service Animals, Cont.

- individually trained to work or perform tasks for an individual with a disability
- task(s) performed must be directly related to the person's disability
- no professional trainer or training certificate is required
- emotional support, therapy, comfort, or companion animals are **NOT** service animals (no training involved)

To verify disability and need:

- (1) Is the dog or horse a service animal required because of a disability?
- (2) What work or task(s) is the animal trained to perform?

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Assistance Animals



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MCA 70.24.114 Emotional Support Animals

- Added to the Landlord & Tenant Act in 2023
- (9) *Nothing in this section may be construed to restrict existing federal law and state law . . .*
- 2(b) if a tenant's disability-related . . . is not readily apparent, request supporting information that reasonably supports the tenant's need . . . Supporting information may include:
 - (i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice . . . Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional . . . ; and
 - (ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and
- 2(c) require proof of compliance with state and local licensure and vaccination requirements . . .

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MCA 70.24.114 Emotional Support Animals, Cont.

- (3) . . . information for each emotional support animal must be provided pursuant to subsection (2).
- (4) A landlord:
 - (a) may not request information . . . that discloses a diagnosis or severity of a tenant's disability or any medical records . . .
 - (b) shall issue a written determination . . .
- (5) An emotional support animal registration of any kind, . . . is not, by itself, sufficient information . . .
- (6) A tenant . . . is liable for any damage done to the premises or to another person on the premises by the tenant's . . . animal.
- (7) **A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation . . .**
- (8) This section does not apply to a service animal as defined in **49-4-203**.

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Design & Construction

Four+ units built after March 13, 1991, designed and constructed in a manner that-

- public and common areas accessible to and usable;
- doors designed to allow passage into and within all premises; and
- all premises contain:
 - accessible route into and through the dwelling;
 - light switches, electrical outlets, thermostats, other environmental controls in accessible locations;
 - reinforcements in bathroom walls to allow installation of grab bars;
 - usable kitchens and bathrooms such that an individual in a wheelchair can maneuver.

- All ground floor units unless there is an elevator in the building, then all units reached by the elevator

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Section 504 of the Rehabilitation Act of 1973

All **federally funded** programs and sites must comply.

Provides protections only for persons with disabilities.

Covered Entities Must:

- Identify 504 Coordinator
- Cover costs for modifications and requires no retrofits
- Non-housing facilities must be accessible
- Requires program policies, rules, and forms be available in accessible formats
- 5% / 2% rule
- Deficiencies addressed in a 504 plan

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Americans With Disabilities Act - 1990

Title I - Employment

- Employers with 15 or more employees
- *MHRA does not require 15 or more*

Title II - Public Services

- Federal & State Provided Services

Title III - Public Accommodations

- No individual shall be discriminated against in the use and enjoyment of goods, services, facilities, privileges, etc.
- *Requires Website Accessibility*

Title IV - Telecommunications

- 711 Relay Service

Title V - Miscellaneous Provisions

- "A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act."

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MT Human Rights Act - 1974

- Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Disability
 - Familial Status
- AND**
- Marital Status, Age, and Creed

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MT Human Rights Act

- Marital status encompasses an individual's status as being married, unmarried, divorced, or widowed, as well as the identity of an individual's spouse (including name recognition).
- Protects individuals of any Age from illegal discrimination.
- Creed is a strongly held belief system.

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Prohibited Actions – The FHAA

Section 804 [42 USC 3604]:

Discrimination in sale or rental of housing

- a) Refuse to sell or rent after an offer, or to negotiate, or to otherwise make unavailable or deny
- b) Discriminate in the terms, conditions, or privileges of the sale or rental, or in the provision of services or facilities
- c) Make, print, or publish or cause to be made, printed or published a notice, statement or ad that indicates a preference, limitation or discrimination
- d) Represent that a dwelling is not available for inspection, sale or rental when it is available
- e) For profit, to induce or attempt to induce a person to sell or rent a dwelling by representations that a person/s are entering the neighborhood (BLOCKBUSTING)
- f) Discriminate in the sale or rental of a dwelling because of disability

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Advertising (CFR 109 and 110)

- Your business related brochures, business cards, social media, website, printed and radio materials, etc.
- Website accessibility compliance essential
- Include the 711 Relay for persons with disabilities
- Use the equal housing opportunity logo
- Post fair housing materials in your offices and common areas
- Avoid verbal statements inferring a limitation, preference or discrimination
- Your personal postings and statements
- Doesn't only cover application for services but following

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Prohibitions, Continued

Sec. 805 [42 USC 3605] - Discrimination in Residential Real Estate-Related Transactions

Unlawful to make unavailable a residential real-estate transaction or in the terms or conditions of a transaction

- Loans or Financial Assistance
- Appraisals
- Insurance
- Inspections

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Prohibitions, Continued

Sec. 806 [42 USC 3606] - Discrimination in Provision of Brokerage Services

Unlawful to deny any person access to, membership in or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate in the terms or conditions of such access, membership, or participation

Selling Houses While Black

"About 6 percent of real estate agents and brokers in the United States are Black. Their white peers make almost three times as much, according to data and surveys."

<https://www.nytimes.com/2023/01/12/realestate/black-real-estate-agents-discrimination.html>

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Prohibitions, Continued

Sec. 818 [42 USC 3618] – Interference, coercion, or intimidation

Unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected

This includes RETALIATION!

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Steering - 24 CFR 100.70 (c)

• Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful **steering** practices, include, but are not limited to:

1. Discouraging any person from inspecting, purchasing or renting a dwelling because of . . . of persons in a community, neighborhood or development.
2. Discouraging the purchase or rental of a dwelling because of . . . , by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.
3. Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of . . .
4. Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of . . .

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January 2024

Redlining - Creator: Home Owners' Loan Corporation
 Government-sponsored corporation created in 1933 as part of the New Deal

August 15, 1938.
 Redlining of neighborhoods in the City/County of Denver.
 Minorities were excluded from home loan funds.
 They were considered poor economic risks.

49 Montana Fair Housing January 2024

Why the concern today?

1. The practices continue.
2. Contributes to segregation.
3. Impacts wealth accumulation.
4. Influences:
 - a. Employment opportunities,
 - b. Quality of education,
 - c. Shopping choices,
 - d. Location of bank branches,
 - e. Availability of healthcare,
 - f. Ability to obtain services,
 - g. Etc.

50 Montana Fair Housing January 2024

Filing a Complaint

HUD	HRB	Court
305 Days	180 Days	Two Years
100 Days to Investigate	120 Days to Investigate	Discovery, Depositions, Hearings, Settlement Efforts
Conciliatory, Conciliation Efforts	Conciliatory, Conciliation Efforts	Compensatory & Punitive Damages
To ADJ or Election to Federal Court (DOJ)	Hearings Officer, Commission, District Court	Attorney Fees/Costs
		Civil Penalties 1 st - \$24,793 One Prior: \$61,962 Two or More Priors: \$123,925

51 Montana Fair Housing January 2024

Exemptions

Tribally Owned and Operated Housing – Can limit to tribal members.

Religious Organizations and Private Clubs - Can limit or give preference in the sale, rental or occupancy **for other than a commercial purpose:**

- ✓ To persons of same religion, unless membership is restricted based on race, color, or national origin.
- ✓ To club membership if club not open to the public, and as an incident to primary purpose/s provides lodgings

Multi-Family Units

- ✓ MHRA 49-2-305(11) – no more than two (age & familial status only)
- ✓ FHAA – 803(b)(2) – no more than four
- ✓ Owner must maintain and occupy one of living quarters as residence.
- ✓ Owner can not use an agent.

Sleeping Rooms - MHRA 49-2-305(2) Rental of sleeping rooms in single-family unit in which owner resides provided owner rents no more than three sleeping rooms.

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Montana Fair Housing

January 2024

Exemptions - Single Family Homes

MHRA 49-2-305(11): Prohibitions against discrimination because of age and familial status do not extend to living quarters for no more than two families living independently of each other, if the owner maintains and occupies one (single family or duplex); no use of agent

FHAA 803(b)(1): single-family house sold or rented by an owner:

- ✓ owner does not own more than three;
- ✓ one sale in 24-month period if not most recent resident;
- ✓ no right to proceeds from the sale or rental of more than three;
- ✓ no use of an agent;
- ✓ no publication, posting or mailing, advertising in violation of section 804(c)

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Montana Fair Housing

January 2024

Exemptions - HOPA

Exemption for **familial status only.**

62 & Older – 100% of residents in 100% of units

55 & Older – at least one person 55 or older in at least 80% of units

- Bi-annual survey verifying ages of residents
- Publishes and adheres to policies and procedures that demonstrate the intent

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Montana Fair Housing

January 2024

Final Questions / Comments

55 Montana Fair Housing January 2024

For More Information Contact:

Dept. of Housing and Urban Development
1-800-877-7353
Website: https://www.hud.gov/program_offices/fair_housing_equal_opp

MT Human Rights Bureau
1-800-542-0807
Website: <https://erd.dli.mt.gov/human-rights/>

Montana Fair Housing
(406) 782-2573 / (800) 929-2611 / MT Relay System: 711
Website: www.montanafairhousing.org

56 Montana Fair Housing January 2024

License Law

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37-1-130. Definitions. As used in this part, the following definitions apply:

- (1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.
- (2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.
- (3) "Board fee" means:
 - (a) a fee established by the board to cover program area costs as provided in 37-1-134; and
 - (b) any other legislatively prescribed fees specific to boards and department programs.
- (4) "Department" means the department of labor and industry established in 2-15-1701.
- (5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.
- (6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.
- (7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.
- (8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.
- (9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

STOP

37-1-130 Review

- **Expired license is a license that has not been renewed within 46 days of the renewal date**
 - **lapse license is a status of license within the 45 days of renewal. You may still use license during this time**
 - **Terminated license mean a license that you can no longer use without re-activating entirely.**
-

37-1-141. License renewal--lapse-- expiration -- termination.

(1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements as provided by **37-1-306** or **37-1-420**, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

- (a) submit the completed renewal form;
- (b) pay the late penalty fee provided for in subsection (7); and
- (c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

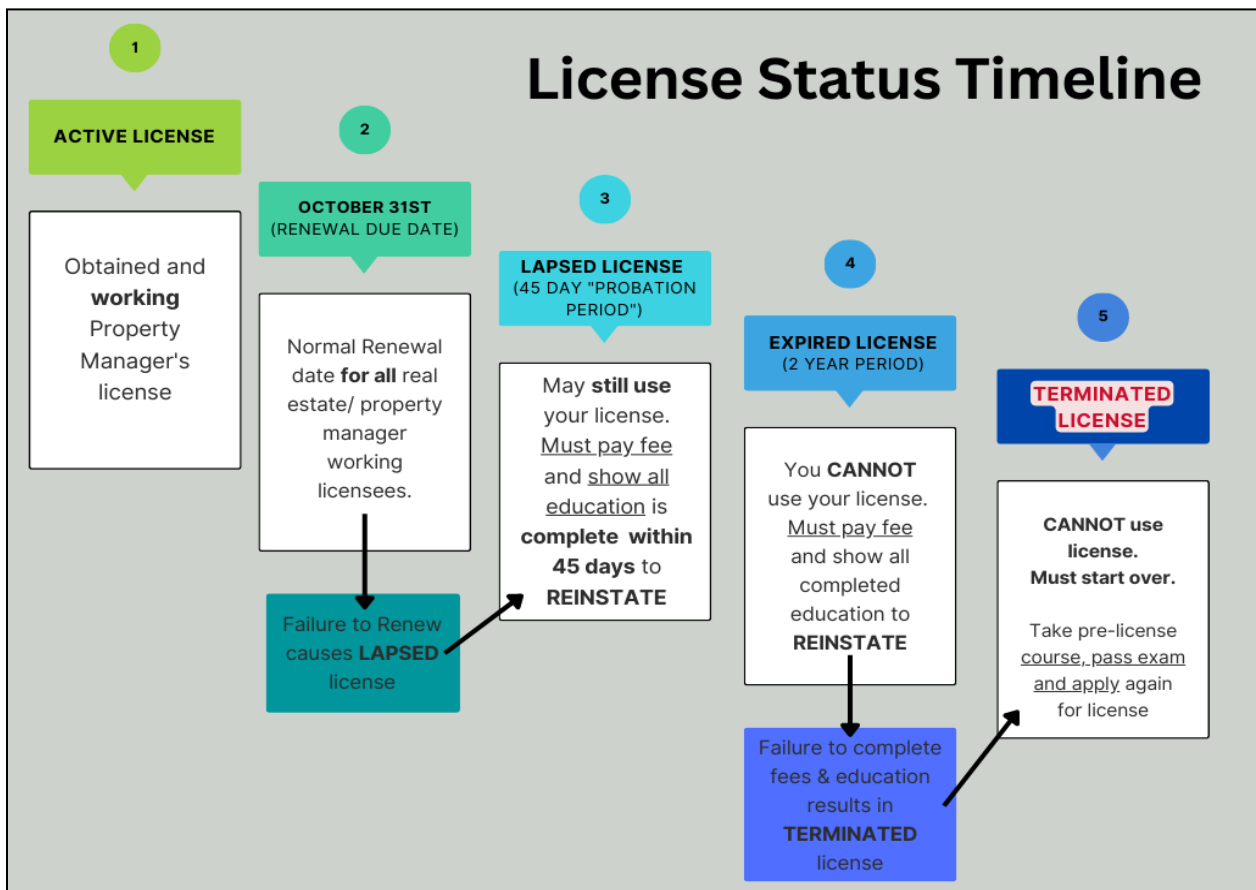
(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with **37-1-138**.

STOP

37-1-141 Review

- A licensee may reactivate a lapsed license within 45 days after the renewal date.
- A licensee may reactivate an expired license within 2 years after the renewal date.
- To reactivate, a licensee shall: Submit a completed renewal form, Pay the late fee, Pay the renewal fee.
- A licensee who practices with a lapsed license is not considered to be practicing without a license.
- A licensee who practices after a license has expired is considered to be practicing without a license.
- A license that is not renewed within 2 years automatically terminates. The terminated license may not be reactivated. A new license must be obtained.
- The department responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.



37-1-401. (Temporary) Uniform regulation for licensing programs without boards -- definitions.

- (1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.
- (2) "Department" means the department of labor and industry provided for in 2-15-1701.
- (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:
 - (a) whether a person has violated a provision of law justifying discipline against the person;
 - (b) the status of compliance with a stipulation or order of the department;
 - (c) whether a license should be granted, denied, or conditionally issued; or
 - (d) whether the department should seek an injunction.
- (4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:
 - (a) Title 37, chapter 2, part 6;
 - (b) Title 37, chapter 16, 40, 56, 60, 72, or 73; or
 - (c) Title 50, chapter 39, 74, or 76.
- (5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:
 - (a) Title 37, chapter 2, part 6;
 - (b) Title 37, chapter 16, 40, 49, 56, 60, 72, or 73; or
 - (c) Title 50, chapter 39, 74, or 76. (Terminates June 30, 2031--sec. 10, Ch. 628, L. 2023.)

STOP

37-1-401 Review

- **"License" is permission to practice a profession occupation governed by the state**
 - **"Complaint" means a written allegation filed with the department**
-

37-1-402. Unprofessional conduct -- complaint -- investigation -- immunity.

(1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. However, if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately and the complaint must be dismissed.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

37-1-403. Notice -- request for hearing.

(1) If the department determines that reasonable cause exists supporting the allegation made in a complaint and the provisions of 37-1-321 do not apply, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

37-1-404. Hearing -- adjudicative procedures.

The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

STOP

37-1-402, 403, & 404 Review

- **If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate**
 - **Notify the department of any change of address within 30 days**
 - **A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice.**
-

37-1-405. Findings of fact -- order -- report.

(1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

37-1-406. Sanctions -- stay -- costs -- stipulations.

(1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining

authority;

- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation;
- (i) denial of a license application;
- (j) refund of costs and fees billed to and collected from a consumer.

(2) Any fine collected by the department as a result of disciplinary actions must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

STOP

37-1-405 & 406 Review

- **The department shall within a reasonable amount of time report to the public the issuance of a summary suspension**
 - **Upon a decision applicant has violated this part the department may issue an order:**
 - **revocation**
 - **suspension**
 - **restrict**
 - **monitor**
 - **censure**
 - **payment of a fine**
 - **denial of a license application**
-

37-1-407. Appeal.

(1) A person who is disciplined by the department under 37-1-402 through 37-1-406 or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

(2) A person who disputes the department's deficiency determination made pursuant to 37-1-321 may appeal the decision to the commissioner of labor and industry.

Consideration of the dispute is not an adversarial or a contested case hearing. The commissioner's decision may be appealed as provided in subsection (1).

37-1-408. Reinstatement.

A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

37-1-409. Enforcement of fine.

(1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

STOP

37-1-407, 408, 409 Review

- **A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement**
 - **If payment of a fine is included in an order and timely payment is not made the department may enforce the order for payment**
-

37-1-410. Unprofessional conduct.

(1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this part:

(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(c) committing fraud, misrepresentation, deception, or concealment of a

material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(g) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied;

(h) failing to comply with a term, condition, or limitation of a license by final order of the department;

(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(k) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(m) using alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; or

(n) exhibiting conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(2) Notwithstanding the provisions of this section or any other provision of this title

governing unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a licensee or a license applicant under this title to engage in the exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution.

STOP

37-1-410 Review

- **Unprofessional conduct for a licensee or applicant:**
 - **committing fraud, misrepresentation, deception**
 - **signing a document that contains a false or misleading statement**
 - **making a misleading, deceptive, false, or fraudulent advertisement**
 - **offering to a federal, state, or local government employee**
 - **failing to comply with a term of the department**
 - **interfering with an investigation**
 - **assisting in the unlicensed practice**
 - **using alcohol in the performance of licensed professional duties**
 - **exhibiting conduct that does not meet generally accepted standards of practice**
-

37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties.

(1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

37-1-412. Violation of injunction -- penalty.

(1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it

is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

37-1-413. Department authority.

For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

STOP

37-1-411, 412, 413 Review

- **department may investigate a complaint or other information received concerning practice by an unlicensed person**
 - **A person subject to an injunction for practicing without a license may also be subject to criminal prosecution**
 - **Person is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both**
-

37-1-420. Continuing education -- certification -- other qualifications for continued licensure -- audit.

(1) The department on behalf of a program without a board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education

(2) As a precondition of license renewal the department may not audit or require proof of continuing education or certification of a program that requires continuing education or state, regional, or national certification. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory continuing education audit.

(3) After the lapsed date provided for in 37-1-141, the department may conduct a random audit of up to 50% of all licensees who have renewed their licenses to determine compliance with a program's continuing education requirements.

(4) The department may audit licensees for compliance with state, regional, or national certification or other department requirements.

(5) The department shall provide a licensee not in compliance with continuing education or certification requirements with an opportunity to cure the noncompliance as provided in 37-1-321.

STOP

37-1-420 Review

- **The department may conduct a random audit of up to 50% of all licensees who have renewed their licenses**
 - **Proof of CE is required when renewing license**
-

37-56-101. Definitions.

As used in this part, 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;

(c) assists in creating or completing real estate lease contracts;

(d) procures tenants;

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

(f) makes the advertising of real property for lease available by public display to potential tenants;

(g) shows rental or lease properties to potential tenants;

(h) acts as a liaison between the owners of real estate and a tenant or potential tenant;

(i) generally oversees the inspection, maintenance, and upkeep of leased real estate;

(j) collects rents or attempts to collect rents;

(k) pays or receives a fee, commission, or other compensation for referral of the name of a prospective lessor or lessee; or

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

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

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

STOP

37-56-101 Review

- **"Department" means the department of labor and industry**
 - **"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**
 - **Promotes, assists, procures, aids, advertises, shows, and oversees properties**
 - **"Trust account" means an account for real estate trust funds maintained at a depository institution from which withdrawals or transfers can be made**
-

37-56-102. Department powers and duties -- rulemaking.

(1) The department shall:

(a) license and renew the licenses of qualified applicants; and

(b) adopt rules related to:

(i) eligibility requirements and competency standards;

(ii) license fees; and

(iii) defining unprofessional conduct that is not included in **37-1-410**.

(2) The department may:

(a) adopt rules necessary to implement the provisions of this part; and

(b) establish licensure requirements and procedures as appropriate.

37-56-103. License required to manage property.

A person may not practice as a property manager unless actively licensed under Title 37, chapter 1, and this part.

37-56-104. Exemptions from requirement of property manager license.

(1) The property manager licensing provisions of this part do not apply to:

(a) an owner of a business entity that owns the property;

(b) an owner of a business entity that manages the property for an owner that is exempt under subsection (1)(a). However, all owners of the business entity that owns the property and all owners of the business entity that manages the property must be relatives as provided in subsection (1)(c) or (1)(d).

(c) the spouse of the property owner;

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

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

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

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

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

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

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

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

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

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

(3) For the purposes of subsections (1)(a) and (1)(b), "owner" means a person who is a:

(a) sole proprietor;

(b) managing member of a limited liability company;

(c) shareholder of a corporation; or

(d) partner in a partnership.

STOP

37-56-102 - 104 Review

- **The Board of Realty Regulation has the following options regarding complaints of unlicensed practice Revoke the license**
 - **Dismiss the complaint with or without prejudice**
 - **Request the matter be investigated.**
 - **Request a Cease and Desist or an Injunction**
 - **Refer the unlicensed practice case to a county attorney for criminal prosecution**
-

37-56-105. Qualification of property manager applicants -- examination -- issuance of license.

- (1) An applicant for a property manager license must:
 - (a) be at least 18 years of age;
 - (b) have graduated from an accredited high school or completed an equivalent education as determined by the department;
 - (c) apply for licensure to the department;
 - (d) have successfully completed a course of education approved by the department; and
 - (e) have passed an examination prescribed by the department
- (2) The course of education must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

37-56-106. Penalty for failure to comply with trust account requirements.

- (1) An employee of the department may issue a citation to a property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).
- (2) The citation must include:
 - (a) the time and date on which the citation is issued;
 - (b) the name, title, mailing address, and signature of the person issuing the citation
 - (c) reference to the statute or rule violated;
 - (d) the name, title, and mailing address of the person to whom the citation is being

sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

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

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

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

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

STOP

37-56-105 & 106 Review

- **An applicant for a property manager license must:**
 - **Be 18 years of age**
 - **Graduated from high school or equivalent**
 - **Apply for license to the department**
 - **Completed Pre-Licensing course**
 - **Passed State Exam**
 - **A person who acts without a license...not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days**
-

37-56-107. 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.

37-56-108. Transactions with non licensed 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 this part.

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

STOP

37-56-107 & 108 Review

- **A property manager shall maintain a fixed office.**
 - **If the property manager changes the location of the office, he must notify the department in writing of the new address, within 10 days after the change of address.**
 - **The designated address of the property manager must be indicated on the property manager's license.**
 - **It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager.**
 - **A person seeking to collect compensation for the lease of real estate shall demonstrate licensure or exemption from licensure**
-

Administrative Rules & Regulations

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24.101.402 Definitions

As used in conjunction with Title 37, MCA, the following definitions apply:

(1) "Active status" means a license status that affords a licensee the rights and privileges to practice while complying with requirements as set by the licensing board or program.

(2) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134, MCA.

(3) "Department" means the Department of Labor and Industry.

(4) "Disciplinary action" means the procedure by which unprofessional conduct is addressed by the board or program pursuant to the contested case hearing provisions of the Montana Administrative Procedure Act (MAPA).

(5) "Division" means the Business Standards Division of the Department of Labor and Industry.

(6) "Expired license" means a license not renewed within 45 days to two years after the renewal date. An expired license may be reactivated within these two years.

(7) "Inactive status" means a license status that does not authorize the licensee to practice, nor engage in activities requiring a license at any time during the period of inactive status. An inactive status license must be renewed as prescribed by the licensing board or program.

(8) "Lapsed license" means a license not renewed by the license renewal date. A lapsed license may be reactivated within 45 days following the license renewal date.

(9) "Late penalty fee" means the fee that a licensee must pay when renewing a license after the renewal date.

(a) The department may assess late penalty fees for each renewal period in which a license is not renewed.

(b) Late penalty fees need not be commensurate with costs.

(10) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or license history information.

(11) "New original license" means a license issued to an individual whose previous original license terminated and was not reinstated. To receive a new original license, all current requirements for obtaining an original license must be met.

(12) "Nonroutine application" means an application that staff has determined requires board review, because it involves:

(a) evidence of unprofessional conduct as defined by law or rule;

(b) materials that require evaluation by the professional members of the board to determine compliance with qualifications for licensure;

(c) missing documentation due to natural disaster, national emergency, or other good cause supported by reliable information;

(d) a matter specifically defined by board or program rule or law as nonroutine; or

(e) an issue staff deems necessary for the board to review.

(13) "Original license" means the initial license issued to a licensee by the department after successfully fulfilling all licensure requirements for the first time.

(14) "Probationary license" means a license that affords a licensee the rights and privileges to practice while complying with terms and conditions of a final order in a disciplinary action.

(15) "Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date by meeting all renewal requirements.

(16) "Reactivation" means activating a lapsed or expired license.

(17) "Renewal date" means the date by which an existing license must be renewed per ARM 24.101.413. Renewal information must be submitted on or before the renewal date to renew a license without assessment of a late penalty fee.

(18) "Routine application" means an application that staff has determined does not require board review because:

(a) the application does not meet the definition of nonroutine; or

(b) all issues qualifying the application as nonroutine have already been decided by the board, e.g. in a prior application, and no additional relevant information is presented that suggests the need to reconsider that decision.

(19) "Suspended license" means a license following a final disciplinary action against the licensee that no longer affords a licensee the rights and privileges to practice for a period of time specified in a final order. This term does not include an administratively suspended license per 37-1-321, MCA.

(20) "Terminated license" means a license not renewed or reactivated within two years of the renewal date. A terminated license may not be reactivated.

STOP

24.101.402 Review

- **Active status" means a license status that affords a licensee the rights and privileges to practice**
- **"Department" means the Department of Labor and Industry.**
- **"Disciplinary action" means the procedure by which unprofessional conduct is addressed by the board or program**
- **"Expired license" means a license not renewed within 45 days to two years after the renewal date**
- **"Inactive status" means a license status that does not authorize the licensee to practice**
- **"Lapsed license" means a license not renewed by the license renewal date**
- **"Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date by meeting all renewal requirements**
- **"Reactivation" means activating a lapsed or expired license.**
- **"Renewal date" means the date by which an existing license must be renewed - Oct. 31st**
- **"Suspended license" means a license following a final disciplinary action against the licensee that no longer affords a licensee the rights and privileges to practice for a period of time specified**
- **"Terminated license" means a license not renewed or reactivated within two years of the renewal date. A terminated license may not be reactivated**

24.101.403 Fees

(1) Administrative fees, in addition to fees charged by a board or program, are as follows:

- (a) duplicate license \$5
- (b) licensee lists or rosters 20
- (c) photocopies per page (in excess of 20 pages) .25
- (d) certified copies per page (in excess of ten pages) .50

- (e) reinstate administratively suspended license 120
 - (f) returned check fee, including but not limited to, checks issued with nonsufficient funds, stop payment requests, or missing signatures 30
 - (g) license verification 20
 - (i) The license verification fee is waived for any board or program having a signed reciprocal agreement with another licensing entity continuing a provision that no fees are to be charged.
 - (h) inactive to active status change fee during the licensure period is the difference between the cost of an inactive license and an active license renewal fee;
 - (i) renewal fee for a license suspended through a final disciplinary action is 50 percent of the regular renewal fee; and
 - (j) renewal fee for a probationary license is the same as the renewal fee.
- (2) The late penalty fee is 100 percent of the license renewal fee, is in addition to the renewal fee, and must be paid for each renewal period in which the license was not renewed on or before the renewal date in ARM 24.101.413.
- (a) When a renewal fee is abated, the late penalty fee that must be paid is 100 percent of the renewal fee that would have been charged had the renewal fee not been abated.
- (3) There is no late fee for licensed guides under the jurisdiction of the Board of Outfitters.
- (4) To convert a license from inactive to active status, the licensee must pay the difference between the inactive status fee and the active status fee for the remainder of the current renewal period.
- (5) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. Pursuant to 37-1-138, MCA, the department will not assess or charge any past fees accrued when the reservist was on active duty.
- (6) All fees are nonrefundable.

STOP

24.101.403 Review

- **duplicate license \$5**
- **reinstate suspended license \$120**
- **license verification \$20**
- **renewal fee for a license suspended through a final disciplinary action is 50% of the regular renewal fee; and renewal fee**
- **late penalty fee is 100%**
- **When a renewal fee is abated, the late penalty fee that must be paid is 100% of the renewal fee**

- **To convert a license from inactive to active status, the licensee must pay the difference between the inactive status fee and the active status fee**
-

24.101.404 Posting Disciplinary Orders on Licensee Lookup

(1) Unless the exceptions in (2) and (3) are applicable, any final order imposing a sanction against a professional or occupational license holder that is based on competence to practice issues or based on an allegation that generally or specifically is a violation of law or regulation, is a "disciplinary action" that must be published and noted on the licensee lookup.

(2) If a final order is based only upon a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law, the order affecting the licensee is not a "disciplinary action" for the purposes of publication and notice on the licensee lookup.

(3) A final order of license denial based solely upon an applicant's failure to meet minimum licensure qualifications and not based on competence to practice issues or involving the applicant's past disciplinary or legal actions is not a "disciplinary action" for the purposes of publication and notice on the licensee lookup.

STOP

24.101.404 Review

- **Any final order imposing a sanction against a professional or occupational license holder is a "disciplinary action" that must be published**
 - **Upon a failure to file or complete a minor administrative requirement the licensee does not get a "disciplinary action" for the purposes of publication**
 - **Failure to meet minimum licensure qualifications is not a "disciplinary action" for the purposes of publication**
-

24.101.406 Applicants with Criminal Convictions

(1) The following criteria shall apply to determine whether an applicant's criminal conviction is related to the public health, welfare, and safety as it applies to the occupation:

- (a) whether the occupation would offer the opportunity for the commission of

the offense or similar offense;

(b) the vulnerability of the population served by the occupation to become victims of the offense or similar offense;

(c) the facts and circumstances of the conduct surrounding the offense; or

(d) other reasonable demonstration of relatedness.

(2) The following criteria shall apply to determine if the applicant, even while serving supervised release, is insufficiently rehabilitated to warrant the public trust:

(a) commission of multiple offenses;

(b) revocation or correctional intervention of the applicant's probation, parole, or conditional release;

(c) unsatisfied court-ordered conditions;

(d) lack of candor, misrepresentation, or omission in disclosing the offense or circumstances of the offense;

(e) statements that demonstrate lack of remorse or accountability for the conduct;

(f) unless good cause exists, failure to maintain education, training, or employment on at least a part-time basis; or

(g) other credible evidence of insufficient rehabilitation.

(3) The board shall, unless the conviction is exempt from board review as provided by this rule, determine whether enough time has passed since the applicant's conviction, release from incarceration, or discharge of sentence to evaluate rehabilitation given the nature and circumstances of the offense.

(4) An applicant will not be required to report:

(a) arrests that did not result in the above outcomes;

(b) convictions (juvenile adjudications) received when under 18, unless convicted as an adult; or

© misdemeanor driving violations, including driving under the influence, if sentenced more than five years before the application date.

(5) Unless board rule provides otherwise, authorized staff may determine there is no evidence of lack of rehabilitation and issue a license to an otherwise qualified applicant who meets the following criteria:

(a) Nonviolent misdemeanor convictions if the conviction date is more than two years before the application date, unless the applicant is still in custody due to the conviction.

(b) Nonviolent felony convictions if the conviction date is more than five years before the application date, unless the applicant is still in custody due to the conviction.

(6) Unless board rule provides otherwise, all violent misdemeanor or felony convictions and any nonviolent misdemeanor and nonviolent felony convictions not included in (5) must be reviewed by the board as nonroutine applications.

(7) Notwithstanding the screening criteria in (5)(a) and (b), staff may require board review of applicants who engaged in egregious conduct implicating risks to public safety.

STOP

24.101.406 Review

- **An applicant will not be required to report:**
 - **arrests**
 - **convictions (juvenile adjudications) received when under 18, unless convicted as an adult; or**
 - **misdemeanor driving violations, including driving under the influence, if sentenced more than five years before the application date.**
-

24.101.408 Renewed, Lapsed, Expired, Or Terminated Licenses

(1) All licenses must be renewed on or before the renewal date as listed in, and in accordance with ARM 24.101.413. Late renewals must be accompanied by the fees as specified in ARM 24.101.403 and any other information required as if the renewal were submitted prior to the renewal date.

(a) A suspended license must be renewed in accordance with ARM 24.101.413 or the license will proceed to expire or terminate.

(2) If the license has not been renewed, the license shall be considered a lapsed, expired, or terminated license.

(a) A lapsed license may be reactivated within 45 days of the renewal date by submitting the required, completed renewal information and paying the required fees.

(b) Licenses not renewed within 45 days from the renewal date automatically expire. An expired license may be reactivated within two years of the renewal date by submitting the required, completed renewal information and paying the required fees.

(c) Licenses not renewed within two years from the renewal date automatically terminate. A terminated license may not be reactivated. A new original license must be obtained by completing the current requirements for a new application, including successfully passing the licensing examination if applicable.

(3) A licensee whose license has lapsed or expired, may not apply for a new license. A licensee must renew the license if it has lapsed or expired. All renewal requirements must be met and fees paid in order for a lapsed or expired license to be renewed. A new original license will be issued to a licensee whose license has terminated, provided all licensing requirements are met.

(4) A licensee who practices while a license is lapsed is not considered to be practicing without a license.

(5) A licensee who practices after a license has expired is considered to be practicing

without a license and is subject to discipline provided by statute or rule.

(6) A former licensee who practices after a license is terminated is considered to be practicing without a license and is subject to cease and desist or a district court restraining order.

STOP

24.101.408 Review

- **Late renewals must be accompanied by the fee.**
 - **A suspended license must be renewed in accordance or the license will expire or terminate**
 - **A lapsed license may be reactivated within 45 days**
 - **Licenses not renewed within 45 days from the renewal date automatically expire**
 - **expired license may be reactivated within two years of the renewal**
 - **Licenses not renewed within two years from the renewal date automatically terminate**
 - **Using a lapse license is not considered practicing without a license**
 - **Expire and terminated licenses are considered practicing without a license**
-

24.101.413 Renewal Dates And Requirements

(1) Specific procedures and grace periods for renewal are set by department or board rule, or statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates in this rule. An existing license ends on the renewal date specified for each profession and occupation listed and must be renewed on or before this date.

(2) If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient it must be:

- (a) completed with truthful information;
- (b) accompanied by other required information or documentation as applicable;
- (c) accompanied by the appropriate fee; and
- (d) submitted so that it bears a U.S. Postal Service post mark prior to or on the renewal date for the applicable profession; or
- (e) submitted by using the online renewal service available on the department's website. Although the department strives to keep its website accessible at all times, licensees should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing the online renewal service do not

excuse late renewals;

(i) online renewal transactions must be fully completed prior to midnight Mountain time on the renewal date.

(3) If the requirements of this rule are not met, a late penalty fee as specified in ARM 24.101.403 will be required in order to renew.

(4) The provisions of ARM 24.101.408 and 24.101.414 are applicable to all license renewals.

(5) Renewals for medical practitioners, as defined in 37-2-101, MCA, who also have a dispenser registration through the Board of Pharmacy, pursuant to 37-2-104, MCA, and ARM 24.174.1801, will renew their dispenser registration at the time of renewing their medical practitioner's license.

(6) The following are renewal dates for the professions and occupations listed:

Property Manager	Annually	October 31
-------------------------	-----------------	-------------------

(7) The following are nonrenewable licenses:

(a) temporary licenses issued by a licensing entity unless that licensing entity's rules provide otherwise;

(b) fireworks wholesalers;

(c) real estate appraiser mentors;

(d) pharmacist intern;

(e) limited speech-language pathologists.

(8) The specific date by which each individual licensee is required to renew by can be obtained by contacting the licensing entity's office or by using the licensee lookup system available on the department's website.

STOP

24.101.413 Review

- **An existing license ends on the renewal date specified**
 - **A submitted renewal on or prior to such date, the applicant's continued practice is governed**
 - **If the requirements of this rule are not met, a late penalty fee will be required**
 - **Renewal date: October 31st**
-

24.209.401 Fee Schedule

- (1) Original application \$50
- (2) Renewal \$50
- (3) Prelicensing course application \$150
- (4) All fees are nonrefundable.
- (5) Examination fees are paid directly to the testing service.

24.209.501 Application Timeline

- (1) Applicants must:
 - (a) complete a 30-hour approved property management prelicensing course within 24 months preceding application;
 - (b) pass the licensure examination; and
 - (c) apply for licensure within 12 months of the examination date. Failure to do so will invalidate exam results.

STOP

24.209.401 through 24.209.501 Review

- **Applications : \$50**
 - **Renewals : \$50**
 - **Exam Fee paid directly to PSI Exams**
 - **Must complete 30 hours of an Approved course before Exam**
 - **You have 2 years after the course to get you license**
 - **You have 1 year after passing the Exam to apply for license**
-

24.209.601 Trust Accounts

- (1) Property managers who receive any deposits, rent payments, or other monies on behalf of other persons must deposit such funds in a trust account per 37-56-101, MCA, and maintain the account according to this rule.
- (2) Trust accounts must be:
 - (a) liquid;
 - (b) readily accessible;
 - (c) insured in Montana financial institutions;

- (d) identified as trust accounts; and
 - (e) reconciled each month having activity.
- (3) Trust funds cannot be:
- (a) maintained in sweep accounts; or
 - (b) invested in certificates of deposit, repurchase agreements, or any other method that places funds at risk.
- (4) Property managers:
- (a) may separately maintain multiple trust accounts;
 - (b) are responsible for all funds in and maintenance of their trust accounts;
 - (c) may delegate authority for trust account maintenance to another licensed property manager. Both property managers are responsible for failure to comply with trust account requirements; and
 - (d) must deposit monies belonging to others into a trust account within three business days, unless otherwise provided in the lease or rental agreement.
- (5) Trust funds may be maintained in interest-bearing accounts with interest payable to the property manager or any other person. Interest payable to a property manager must be identified as consideration for services performed and are personal funds unless otherwise designated.
- (6) Property managers may deposit and hold in a trust account up to \$1000 of personal funds that include interest accrued to the property manager.
- (a) Personal funds may be distributed for trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager.
 - (b) Money due the property manager must be withdrawn within ten business days once due and payable.
- (7) When managing one's own real estate, property managers must deposit security deposits in a trust account. Rents and disbursements are managed as follows:
- (a) Property managers owning 100 percent of the real estate are not required to place rents in a trust account but may do so.
 - (b) Property managers owning less than 100 percent of the real estate must place all rents in a trust account.
 - (c) If rents are included in a trust account, all disbursements must be described in the property management agreement.
 - (d) Disbursements may not be considered personal indebtedness if used for the maintenance of the property itself.
- (8) Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds per (6). Each record must include a running balance and clearly identify for all transactions:
- (a) dates;

- (b) parties, payees, and sources of funds; and
- (c) amounts received, disbursed, and deposited.

(9) When a property management agreement is terminated, a rental agreement is still in effect, and the property manager is holding tenant funds, the property manager must:

- (a) notify the tenant, in writing and within five business days of termination that:
 - (i) the agreement is terminated; and
 - (ii) funds and current tenant files will be transferred to the property owner or designee within 30 days of the termination;
- (b) provide the name and contact information of the person receiving the transfer; and
- (c) within 30 days of termination, transfer all funds and current tenant files to the property owner or designee.

(10) Property managers must maintain the following documents for at least eight years from the property management agreement termination even if the property manager sells or ceases to operate the business:

- (a) trust account records;
- (b) complete files of properties managed; and
- (c) all related documents.

(11) Trust account records must be maintained to facilitate auditing.

STOP

24.209.601 Review

- **Any monies received as deposits, rent or other person's monies must be deposited into the trust account**
- **Your trust account must be insured in Montana, identified as "Trust Account," and cannot be a sweep account**
- **The trust account must be liquid, accessible, reconciled monthly and can be investment account**
- **You can have multiple accounts, but individual ledgers for each owner/property**
- **Must deposit funds within 3 business days**
- **No more than \$1,000 of personal funds may be in the account**
- **Money due, must be withdrawn within 10 business days**
- **If the property is 100% personally owned by the PM, no account is required**
- **Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds**
- **Each record must include a running balance and clearly identify for all**

transactions

- **Records must be kept for 8 years minimum**
 - **Termination must be notified to the tenants within 5 business days and everything must be transferred within 30 days**
-

24.209.2201 Prelicensing Course Requirements

- (1) Course approval is valid for three years and may be revoked for cause.
- (2) To receive approval, courses must include the following topics:
 - (a) trust accounts;
 - (b) accounting procedures;
 - (c) landlord tenant law (Title 70, chapters 24 and 25, MCA);
 - (d) federal and state fair housing laws;
 - (e) Americans with Disabilities Act;
 - (f) state licensing law and rules;
 - (g) contract law;
 - (h) leasing principles;
 - (i) agency; and
 - (j) definitions and terms commonly used in the industry
- (3) Additionally, online courses must have current Association of Real Estate License Law Officials (ARELLO) certification. Approval is invalidated if ARELLO certification is discontinued for any reason.

24.209.2205 Continuing Education

- (1) Renewing licensees must complete a minimum of 12 hours of property management CE (continuing education) annually. Licensees must select quality programs that:
 - (a) contribute to professional knowledge and competence;
 - (b) contain significant intellectual or practical content; and
 - (c) are germane to the property management profession.
- (2) New licensees are only required to complete four hours of property management trust account CE by their first renewal date. If no course occurs by the first renewal date, the licensee must complete the course when it is next offered.
- (3) Licensees must maintain adequate CE documentation and make the documentation available upon request.
- (4) Licensees found noncompliant with CE requirements may be subject to administrative suspension.

STOP

24.209.2201 through 2205 Review

- **Courses must be re-approved every 3 years**
 - **Courses must cover all topics in relation to Property Management Business and Laws**
 - **Instructors must also be approved & have ARELLO certification**
 - **New licensees must take 4 hours of CE before 1st renewal date, unless none are offered**
 - **You must take 12 hours of CE each year after that**
 - **You must keep records of all CE credits, and noncompliance is subject to suspension**
-

24.209.2301 Unprofessional Conduct

(1) In addition to the provisions of 37-1-410, MCA, it is unprofessional conduct for property managers to:

- (a) violate a federal, state, or local law or rule relating to the conduct of the profession;
- (b) engage the services of any person or entity on behalf of a principal, third-party, or other person, without:
 - (i) informing and obtaining consent from the person obligated to pay for the services; and
 - (ii) 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;
- (c) manage property owned by another person or entity without a written property management agreement in place, signed by the owner;
- (d) accept, give, or charge an undisclosed commission, rebate, or profit on expenditures made for a principal;
- (e) fail to adequately supervise employees;
- (f) fail to cooperate with or respond to a department request;
- (g) 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
- (h) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

STOP

24.209.2301 Review

- **Unprofessional conduct is:**
 - **violating laws or rules**
 - **engaging in business without informing consent**
 - **disclosing confidential information**
 - **accepting or charging undisclosed commission**
 - **failing to supervise employees**
 - **failing to cooperate with the Department**
 - **using license when expired or terminated**
 - **committing any sexual misconduct, business related or not**
-

Residential Landlord Tenant Act of 1977. Chapter 24

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70-24-101. Short title.

This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

70-24-102. Purposes -- liberal construction to promote.

(1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(b) encourage landlords and tenants to maintain and improve the quality of housing; and

(c) create an exclusive regulatory standard throughout the state and its political subdivisions regarding landlord and tenant law.

STOP

70-24-101 & 102 Review

- **This chapter shall be liberally construed and applied to promote its underlying purposes and policies**
-

70-24-103. General definitions.

Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Abandon" means to give up possession of the premises unless the landlord does not accept abandonment or surrender as provided in **70-24-426 (*Remedies for absence or abandonment*)** or unless the rental agreement has been terminated as provided by law.

(2) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(3) "Actual and reasonable cost" means the actual amount of expenses and labor incurred or expended and the reasonable amount of expenses and labor estimated to be incurred or expended.

(4) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity,

gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(5) "Court" means the appropriate district court, small claims court, justice's court, or city court.

(6) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park and rents the mobile home, means the mobile home itself.

(7) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(8) "Guest" means a person staying with a tenant for a temporary period of time as defined in the rental agreement or, if not defined in the rental agreement, for a period of time no more than 7 days unless the tenant has received the landlord's written consent to a longer period of time.

(9) "Landlord" means:

(a) the owner of the dwelling unit or the building of which it is a part;

(b) a person who has written authorization from the owner to act as the owner's agent or assignee for purposes related to the premises or the rental agreement;

(c) a person who has written authorization from the owner to act as a manager of the premises for the purposes of the tenancy or the rental agreement; or

(d) a lessor who has written authorization from the owner of the premises to sublease the premises.

(10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(11) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(12) "Person" includes an individual or organization.

(13) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held

out for the use of tenants generally or promised for the use of a tenant.

(14) "Rent" means all payments to be made to the landlord, including rent, late fees, or other charges as agreed on in the rental agreement, except money paid as a security deposit.

(15) "Rental agreement" means all agreements, written or oral, and valid rules adopted under **70-24-311** (***Landlord authorized to adopt rules***) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(16) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(17) "Single-family residence" means a structure maintained and used as a single dwelling unit. A dwelling unit that shares one or more walls with another dwelling unit is a single-family residence if it has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or service with another dwelling unit.

(18) "Tenant" means:

(a) a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; or

(b) a person who, with the written approval of the landlord and pursuant to the rental agreement, has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental agreement.

(19) "Unauthorized person or trespasser" means a person who:

(a) enters or remains after being asked to leave by the landlord and does not receive written permission by the landlord to remain on the premises;

(b) is in violation of **45-6-201**;

(c) is in violation of **45-6-203**; or

(d) is in violation of **70-27-102**.

STOP

70-24-103 Review

- **"Abandon" means to give up possession of the premises**
- **"Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined**
- **"Actual and reasonable cost" means the actual amount of expenses**

- **"Case of emergency"** means an extraordinary occurrence beyond the tenant's control requiring immediate action
 - **"Dwelling unit"** means a structure or the part of a structure that is used as a home,
 - **"Guest"** means a person staying with a tenant for a temporary period of time
 - **"Landlord"** means:
 - the owner of the dwelling unit or the building of which it is a part
 - a person who has written authorization from the owner to act as the owner's agent or assignee for purposes related to the premises or the rental agreement
 - a person who has written authorization from the owner to act as a manager of the premises for the purposes of the tenancy or the rental agreement; or
 - a lessor who has written authorization from the owner of the premises to sublease the premises.
 - **"Owner"** means one or more persons, jointly or severally, in whom is vested all or part of:
 - (a) the legal title to property
 - **"Premises"** means a dwelling unit and the structure of which it is a part
 - **"Rent"** means all payments to be made
 - **"Tenant"** means:
 - (a) a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; or
 - (b) a person who, with the written approval of the landlord
 - **"Unauthorized person or trespasser"** means
 - enters or remains after being asked to leave
 - is in violation of 45-6-201(*Definition of enter or remain unlawfully*);
 - (c) is in violation of 45-6-203(*Criminal trespass to property*); or
 - (d) is in violation of 70-27-102(*Forcible entry*).
-

70-24-104. Exclusions from application of chapter.

Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana university system and other postsecondary institutions;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it

is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit.

70-24-105. Supplementary principles of law applicable.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

STOP

70-24-104 & 105 Review

- **Exclusions of this Chapter:**
 - **residence at a public or private institution**
 - **occupancy under a contract of sale**
 - **occupancy by a member of a fraternal or social organization**
 - **transient occupancy in a hotel or motel**
 - **occupancy by an owner of a condominium**
 - **occupancy under a rental agreement primarily for commercial or agricultural purposes**
 - **occupancy by an employee of a landlord**
 - **occupancy outside a municipality for hunting, fishing, or agricultural privileges**
 - **Unless displaced by the provisions of this chapter, the principles of law and equity supplement its provisions.**
-

70-24-108. What constitutes notice.

(1) A person has notice of a fact if any of the following is true:

(a) the person has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made;

(c) in the case of a tenant or a landlord, it is transmitted to an electronic mail address provided by the tenant or the landlord in the rental agreement. Notice by electronic mail is complete on receipt of a read receipt generated by an electronic mail system or an electronic mail reply other than an automatically generated electronic mail reply.

(d) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place indicated by the person as the place for receipt of the communication or, in the absence of a designation, to the person's last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made on the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

STOP

70-24-108 Review

- **Notice is:**
 - **actual knowledge**
 - **delivered at the place of business**
 - **it is transmitted to an electronic mail address**
 - **complete on read receipt**
 - **delivered in hand or mailed with a certificate of mailing or by certified mail**
 - **notice is considered 3 days after the date of mailing**
-

70-24-109. Obligation of good faith.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

70-24-110. Landlords and tenants -- no firearm prohibition allowed.

A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

STOP

70-24-109 & 110 Review

- **An obligation of good faith in its performance**
 - **A landlord may not prevent a tenant or a guest of a tenant from possessing on the premises**
 - **The Firearm must be legal for the tenant to possess.**
 - **A landlord may prohibit the discharge of a firearm on the premises except in self-defense**
-

70-24-113. Removal of unauthorized person or trespasser.

(1) An unauthorized person or trespasser has no legal right to occupy, enter, or trespass on a premises. A person who cannot produce authorization allowing the person to occupy a premises is an unauthorized person or trespasser for the purpose of this section and may be removed from the premises immediately by law enforcement.

(2) For the purposes of this section, authorization includes:

- (a) a written rental agreement entitling the person to occupy the premises;
- (b) written or verbal authorization from the landlord; or

© written or verbal authorization from a tenant if the person is a guest of the tenant.

(3) For the purposes of this section, verbal authorization is valid only if it is verified by the individual or entity entitled to give it under subsection (2)(b) or (2)(c).

70-24-114. Emotional support animals -- documentation

(1) A tenant with a disability or a disability-related need for an emotional support animal may request and be approved by a landlord to keep an emotional support animal as a reasonable accommodation in housing.

(2) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) deny a reasonable accommodation request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property that cannot be reduced or eliminated by another

reasonable accommodation;

(b) if a tenant's disability-related need for an emotional support animal is not readily apparent, request supporting information that reasonably supports the tenant's need for the particular emotional support animal being requested. Supporting information may include:

(i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice that identifies the particular assistance or therapeutic emotional support provided by the specific animal. Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional license held by the health care practitioner; and

(ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and

(c) require proof of compliance with state and local licensure and vaccination requirements for each emotional support animal.

(3) If a tenant requests to keep more than one emotional support animal, information for each emotional support animal must be provided pursuant to subsection (2).

(4) A landlord:

(a) may not request information under this section that discloses a diagnosis or severity of a tenant's disability or any medical records relating to the disability, but a tenant may voluntarily disclose such information or medical records to the landlord at the tenant's discretion; and

(b) shall issue a written determination after receiving supplemental information required in subsection (2) and notice the determination pursuant to 70-24-108.

(5) An emotional support animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not, by itself, sufficient information to reliably establish that a tenant has a disability-related need for an emotional support animal.

(6) A tenant with a disability-related need for an emotional support animal is liable for any damage done to the premises or to another person on the premises by the tenant's emotional support animal.

(7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation of this section.

(8) This section does not apply to a service animal as defined in 49-4-203.

(9) Nothing in this section may be construed to restrict existing federal law and state law related to a person's right to a reasonable accommodation and equal access to housing, including but not limited to the federal Fair Housing Act, the federal Americans with Disabilities Act of 1990, or Title 49, chapter 2.

(10) As used in this section, the following definitions apply:

(a) "Emotional support animal" means an animal that provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be

trained or certified. The term does not include service animals as defined in 49-4-203.

(b) "Health care practitioner" means a mental health professional as defined in 53-21-102 who:

(i) has established a client-provider relationship with a tenant at least 30 days prior to providing supporting information requested from a landlord regarding the tenant's need for an emotional support animal;

(ii) completes a clinical evaluation of a tenant regarding the need for an emotional support animal; and

(iii) is acting within the scope of practice of the person's license or certificate.

STOP

70-24-113 & 114 Review

- **An unauthorized person has no legal right to enter or occupy**
 - **Authorization means signing into a lease agreement or verbal authorization from the landlord.**
 - **Prohibited under 70-24-114 (2):**
 - **deny reasonable accommodation request for support animal**
 - **may not request info that discloses diagnosis or medical records of disability**
 - **Allowed:**
 - **request documentation stated the need for the animal**
 - **info from a source that is reliable and in accordance with FFHA**
 - **require proof of vaccination records**
 - **An emotional support animal registration of any kind**
 - **card, patch, certificate, or similar registration to reliable establish tenant has a disability need for an ESA**
 - **Tenant is still liable for any damages caused by animal**
 - **"Emotional support animal" means an animal that provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be trained or certified**
-

70-24-201. Rental agreement -- terms and conditions

(1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address or using electronic funds transfer to an account designated for the payment of rent by the landlord;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day;

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month; and

(f) if either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent. Landlords shall follow **70-24-426 (3) (*Remedies for absence*)** and are entitled to rent from defaulting tenants up to the date a new tenancy starts or the date the rental agreement term expires.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2).

STOP

70-24-201 Review

- **Rent shall be paid as determined by the landlord**
 - **Rent is payable at the landlord's address or to where specified by them**
 - **Rent is apportionable from day to day**
 - **If either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent**
-

70-24-202. Prohibited provisions in rental agreements

A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney fees connected with that liability; or

(4) must provide an electronic mail address as a condition of entering into the agreement. However, a party may voluntarily provide an electronic mail address if the agreement contains a provision allowing a party to elect to receive notice by electronic mail.

70-24-203. Agreement not to permit receipt of rent free of obligation

A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with **70-24-303**. (*Landlord to maintain premises*)

70-24-204. Effect of unsigned or undelivered rental agreement.

(1) If the landlord does not sign and deliver a written rental agreement that has already been signed by the tenant and delivered to the landlord, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord to the tenant.

(2) If the tenant does not sign and deliver to the landlord a written rental agreement that has already been signed by the landlord and delivered to the tenant, acceptance of possession of the premises and payment of rent without reservation by the tenant gives the rental agreement the same effect as if it had been signed and delivered by the tenant to the landlord.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

STOP

70-24-202, 203 & 204 Review

- **You CANNOT agree to waive or forego rights**
 - **Unsigned rental agreements are only effective for 1 year**
-

70-24-205. Extension of written rental agreements

If the landlord and tenant fail to establish a default extension period for the lease in the rental agreement and neither party gives a 30-day written notice to the other to terminate the tenancy before the rental agreement's original termination date, the tenancy continues on a month-to-month basis.

70-24-301. Duty to disclose name of person responsible.

(1) A landlord or a person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

70-24-302. Landlord to deliver possession of dwelling unit.

(1) At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

70-24-303. (Temporary) Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.

(1) Subject to **27-1-1603**, (*Premises owner's duty of care*) a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except when it is the tenant's responsibility to maintain the dwelling unit pursuant to **70-24-321**(*Tenant to maintain dwelling unit*);

(c) shall keep all common areas of the premises in a clean and safe condition;

(d) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(g) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(g), an approved carbon monoxide detector, as defined in **70-20-113(Notice of presence of smoke and carbon monoxide detectors)**, and an approved smoke detector, as defined in **70-20-113**, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(g), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(g).

(Terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.):

*(1) Subject to **27-1-1603***

STOP

70-24-205, 301, 302 & 303 Review

- **If neither party gives a 30-day written notice to the other to terminate the tenancy continues on a month-to-month basis**
 - **Landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address**
 - **At commencement of the rental agreement, landlord shall deliver possession of the premises.**
 - **accepting rent or deposit is considered to give consent to possession**
 - **Landlord make repairs and do whatever is necessary to have fit and habitable conditions**
 - **Shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord**
 - **Provide appropriate receptacles for garbage**
 - **Shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1**
 - **Shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector**
 - **A landlord and tenant may agree that the tenant is to perform specified repairs & maintenance tasks**
 - **The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector**
-

70-24-304. Transfer of premises or termination of management -- relief from liability

(1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is

relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the manager's management.

70-24-305. Transfer of premises by tenant

A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing

70-24-311. Landlord authorized to adopt rules

(1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after written notice to the tenant in the case of a week to week tenancy or 30 days' written notice in the case of tenancies from month to month.

STOP

70-24-304, 305 & 311 Review

- **A manager is relieved of liability after written notice to the tenant of the termination of management.**
 - **A landlord may adopt a rule if:**
 - **it is reasonable**
 - **it applies to all occupants in a fair manner**
 - **it is sufficiently explicit**
 - **it is not for the purpose of evading obligations**
 - **the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted**
 - **must be in writing**
 - **not valid until 30 days' written notice**
-

70-24-312. Access to premises by landlord

(1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in the case of an emergency.

(3) (a) A landlord may not abuse the right of access or use it to harass the tenant. Except in the case of an emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(b) For the purposes of this subsection (3), in addition to the provisions of **70-24-108** (***What constitutes notice***), a tenant has notice of the intent to enter if the landlord conspicuously posts the landlord's intent to enter on the main entry door of the dwelling unit.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by **70-24-425** (***Failure of tenant to maintain***) and **70-24-426**(2) (***Remedies for absence, 7 days notice***); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the

landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

STOP

70-24-312 Review

- **A tenant may not unreasonably withhold consent to the landlord to enter**
 - **Landlord may enter the dwelling unit without consent of the tenant in the case of an emergency**
 - **A landlord may not abuse the right of access**
 - **The landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times**
 - **tenant has notice if the landlord conspicuously posts to enter**
 - **Landlord may enter when the tenant has abandoned or surrendered**
 - **A tenant may not remove a lock or replace or add a lock not supplied**
 - **If removed or replaced, the landlord must be provided with a way to enter**
-

70-24-321 Tenant to maintain dwelling unit

(1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to any of the following activities:

(a) criminal production or manufacture of dangerous drugs as prohibited by **45-9-110**;

(b) operation of an unlawful clandestine(drug) laboratory as prohibited by **45-9-132**;

(c) gang-related activities as prohibited by Title 45, chapter 8, part 4;

(d) unlawful possession of a firearm, explosive, or hazardous or toxic substance; or

(e) any activity that is otherwise prohibited by law.

45-6-106. Criminal mischief damage to rental property

(1) A tenant commits the offense of criminal mischief damage to rental property if the tenant purposely or knowingly destroys, defaces, damages, impairs, or removes any part of the premises with a value of at least \$1,000 or permits any person to do so in violation of **70-24-321(2)**(*Tenant to maintain*) or **70-33-321(3)**(*Tenant to maintain lot*).

(2) A person convicted of the offense of criminal mischief damage to rental property shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of criminal mischief damage to rental property must be ordered to make restitution in an amount and manner to be set by the court pursuant to **46-18-201(5)** and **46-18-241** through **46-18-249**.

(4) A prosecution under this section is independent of and does not constitute a waiver of any of the rights, duties, obligations, and remedies otherwise provided for under Title 70, chapter 24 or 33.

(5) A person convicted of criminal mischief damage to rental property under this section is not subject to the provisions of **45-6-101**.

STOP

70-24-321 & 45-6-106 Review

- **A tenant shall comply with all obligations**
 - **keep that part of the premises reasonably clean and safe**
 - **dispose from the dwelling unit all garbage**
 - **keep all plumbing fixtures clean**
 - **Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances**
 - **Use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner**
 - **A tenant may not destroy, deface, damage, impair, or remove any part**
 - **Tenant may not engage or knowingly allow reasonable potential damage or destroying or reasonable potential that neighboring tenants may be injured**
 - **A tenant commits criminal damage to rental property if the tenant purposely or knowingly destroys, defaces, damages, impairs, or removes any part of the premises with a value of at least \$1,000**
 - **Shall be fined not to exceed \$1,000 or be imprisoned not to exceed 6 months**
 - **Property must be ordered to make restitution in an amount**
-

70-24-322. Tenant to occupy as dwelling unit only -- extended absence.

(1) Unless otherwise agreed, a tenant shall occupy the tenant's dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

STOP

70-24-322 Review

- **Tenants must notify landlord in writing of absence of 7 days or more.**
 - **Landlord may enter the premises after the 7 days**
-

70-24-401. Administration of remedies -- enforcement

(1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages. The aggrieved party may include a reasonable charge for the party's labor.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. Nothing in this chapter prohibits the assignment of a right or the claim of a right by either landlord or tenant. The landlord's or tenant's defenses and obligations may not be affected by an assignment.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

70-24-402. Settlement of disputed claim or right

A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

STOP

70-24-401 & 402 Review

- **aggrieved party may recover appropriate damages**
 - **aggrieved party has a duty to mitigate damages**
 - **if disputed in good faith, may be settled by agreement**
-

70-24-403. Prohibited provision in rental agreement -- unenforceability -- damages

1) A provision prohibited by 70-24-202 that is included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by the party to be prohibited, the other party may recover, in addition to the other party's actual damages, an amount up to 3 months' periodic rent.

70-24-404. Unconscionability -- court discretion to refuse enforcement

- (1) Except as provided in subsection (2), if the court, as a matter of law, finds that:
- (a) a rental agreement or any provision of the rental agreement is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or
 - (b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
- (2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:
- (a) a tenant maintain a dwelling unit in accordance with 70-24-321; or
 - (b) a landlord maintain the premises in accordance with 70-24-303.
- (3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

STOP

70-24-403 & 404 Review

- **If purposefully does within prohibited provisions, the other party may recover, in addition to the other party's actual damages, an amount up to 3 months' periodic rent**
 - **the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result**
 - **If unconscionability is put into issue by a party or by the court, shall be afforded a reasonable opportunity to aid the court in making the determination**
-

70-24-405. Failure of landlord to deliver possession -- tenant's remedies

- (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:
- (a) terminate the rental agreement upon at least 5 days' written notice to the landlord, and upon termination, the landlord shall return all prepaid rent and security; or
 - (b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a

person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

70-24-406. Failure of landlord to maintain premises -- tenant's remedies

(1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

STOP

70-24-405 & 406 Review

- **If the landlord fails to deliver possession rent abates until possession is delivered. Tenant may:**
 - **terminate the rental agreement upon at least 5 days' written notice**
 - **maintain an action for possession of the dwelling unit against the landlord**
 - **aggrieved party may recover from that person an amount not more than 3 months' periodic rent if not done in good faith**
 - **If a noncompliance with 70-24-303, the tenant may:**
 - **deliver a written notice to the landlord specifying the acts and omissions**
 - **terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days**
 - **Exceptions:**
 - **landlord adequately remedies**
 - **Notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice**
 - **Tenant may not terminate for a condition caused by the tenant**
 - **Make repairs that do not cost more than 1 month's rent and deduct the cost from the rent**
 - **The tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement**
-

70-24-407. Damages for minor violations by landlord

If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2)

70-24-408. Purposeful or negligent failure to provide essential services -- tenant's remedies

(1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and

deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, the tenant may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent

70-24-409. Fire or casualty damage -- rights of tenant

(1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant or the tenant's family or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty.

STOP

70-24-407, 408 & 409 Review

- **If the landlord fails to comply with the rental agreement, the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages**
- **If the Landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice and tenant may:**
 - **procure reasonable amounts of essential supplies**
 - **recover damages based upon the diminution**
 - **procure reasonable substitute housing**

- **Conditions caused by the act or omission of the tenant, these rights do not arise**
 - **If the dwelling unit or premises are damaged or destroyed by fire, the tenant may:**
 - **immediately vacate the premises and notify the landlord in writing within 14 days of the tenant's intention to terminate the rental agreement**
 - **if continued occupancy is lawful, the tenant's liability for rent is reduced in proportion to the diminution**
 - **Does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant**
-

70-24-410. Unlawful or unreasonable entry by landlord -- tenant's remedies

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

70-24-411. Unlawful ouster, exclusion, or diminution of service -- tenant's remedies

If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

70-24-421. Action for nonpayment of rent -- tenant's counterclaim

(1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and

thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed must be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment must be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but is not required to pay any rent into court.

STOP

70-24-410 & 411 Review

- **If the landlord makes an unlawful entry, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate**
 - **If a landlord unlawfully removes or excludes the tenant or purposefully diminishes services, the tenant may recover possession or terminate the rental agreement**
 - **recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater**
-

70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction

(1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance, that the rental agreement will terminate, and that the tenant shall vacate the premises on a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates and the tenant shall vacate the premises as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or written approval of the landlord and the tenant remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b), (1)(c), or (1)(f), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental

agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) If the noncompliance is from verbal abuse of the landlord by a tenant, the landlord may terminate the rental agreement on giving 3 days' written notice. If the tenant adequately remedies the noncompliance, the rental agreement does not terminate.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement, and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2), and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured in violation of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3), and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

STOP

70-24-422 Review

- **If the noncompliance is remediable by repairs, the rental agreement does not terminate**
- **Unauthorized pet, or person the notice period is 3 days**
- **The same act that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement**
- **Verbal abuse - 3 days' written notice**
- **If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice, the landlord may terminate**

- If the tenant destroys, defaces, damages, impairs, or removes, notice is 3 days' written notice and tenant shall vacate
- If the tenant creates a reasonable potential that the premises may be damaged or destroyed, 3 days' written notice to terminate
- If the tenant's noncompliance is purposeful, the landlord may recover treble damages.
- Treble damages may not be recovered for the tenant's early termination of the tenancy.
- The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy

Schedule Review

• Unauthorized Pet	3 days to Correct or Quit
• Unauthorized Person	3 days to Correct or Quit
Verbal Abuse	3 days to Correct or Quit
• Non-Payment of Rent	3 days to Pay or Quit
• Damage to Property	3 days to Quit
• Violations Affecting Health and Safety	3 days to Quit
• Gangs, Drugs, Lab	3 days to Quit

70-24-423. Waiver of landlord's right to terminate for breach

Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent due

70-24-424. Refusal of access -- landlord's remedies

(1) If the tenant refuses to allow lawful access, the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief to compel access. In either case, the landlord may recover actual damages. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

70-24-425. Failure of tenant to maintain dwelling -- landlord's right to enter and repair

If there is noncompliance by the tenant with 70-24-321 (*Tenant to maintain*) affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

STOP

70-24-423, 424, & 425 Review

- **The acceptance of partial payment of rent due does not constitute a waiver of any right**
- **If the tenant refuses to allow lawful access, the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief**
 - **If the 24-hour notice to correct is not remedied, a 3-day notice to terminate the rental agreement is issued.**
 - **Same with keys, if not provided, the landlord may obtain relief**
- **If there is noncompliance by the tenant, affecting health and safety and they fail to comply and a 14 day notice is given, the landlord may enter the unit for the work to be done and all costs may be submitted to add to rent**

70-24-426. Remedies for absence or abandonment

(1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322(***Tenant to occupy***), and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

70-24-427. Landlord's remedies after termination -- action for possession

(1) If the rental agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), an action filed pursuant to subsection (1) in a court must be heard within 10 business days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 10 business days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the case is transmitted to the district court.

(b) A hearing for damages for any breach of the rental agreement must be held within 45 days after the claim of possession and rent has been adjudicated.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ of possession and a writ of assistance

immediately. The writ of assistance must be executed by the sheriff:

- (a) within 5 business days of the sheriff receiving the writ of assistance, excluding of the date of receipt by the sheriff; or
- (b) at a time no more than 5 business days after the sheriff receives the writ of assistance or as otherwise agreed to by the landlord and the sheriff.

STOP

70-24-426 & 427 Review

- **Require the tenant to give notice of absence in excess of 7 days**
 - **If Tenant fails to do so, the landlord may recover actual damages**
 - **If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental**
 - **If the rental agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of the rental agreement.**
 - **Court must be heard within 10 business days after the tenant's appearance or the answer**
 - **action must be heard within 5 business days after**
 - **hearing must be held within 10 business days**
 - **court shall rule on the action within 5 days after the hearing**
 - **agreement is terminated because of noncompliance - action must be heard within 5 business days**
 - **Hearing for damages for any breach of the rental agreement must be held within 45 days**
 - **within 5 business days of the sheriff receiving the writ of assistance**
-

70-24-428. Landlord's recovery of possession limited.

Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services

70-24-429. Holdover remedies -- consent to continued occupancy -- tenant's response to service in action for possession.

(1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession.

(2) If the term is longer than month-to-month and the landlord terminates the rental

agreement with cause and the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(3) If the term of the rental is month-to-month and the landlord terminates the rental agreement without cause and issues a lawful 30-day notice and the tenant remains in the rental unit after the termination date, then the holdover is purposeful and the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(4) In an action for possession or unlawful holdover, the provisions of the Montana Justice and City Court Rules of Civil Procedure, Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 5 business days after service of summons and complaint, exclusive of the date of service.

(5) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

STOP

70-24-428 & 429 Review

- **Except in the case of abandonment, a landlord may not recover or take possession of the dwelling unit or diminish services**
 - **If the tenant remains in possession without the landlord's consent after expiration, the landlord may bring an action for possession**
 - **Landlord may recover an amount not more than 3 months' periodic rent or treble damages**
-

70-24-430. Disposition of personal property abandoned by tenant after termination.

(1) (a) If a tenancy terminates by court order, the personal property is considered abandoned and the landlord may immediately dispose of the personal property as allowed by law.

(b) If a tenancy terminates in any manner other than by court order and the landlord has clear and convincing evidence that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove the abandoned property from the premises and immediately dispose of any trash or personal property that is hazardous, perishable, or valueless.

(c) An item that is clearly labeled "rent to own" or "leased" or likewise identified may be discarded only with confirmation from the lessor that the item does not have a lien, provided that the lessor can be easily identified from the label and the landlord makes a reasonable effort to contact the lessor.

(d) For the purposes of this subsection (1), the following definitions apply:

(i) "Hazardous" means an item that is potentially or actually flammable or a biohazard or an item otherwise capable of inflicting personal harm or injury.

(ii) "Perishable" means any item requiring refrigeration or any food item with a marked expiration date.

(iii) "Valueless" means any item that has an insubstantial resale value but does not include personal photos, jewelry, or other small items that are irreplaceable.

(2) The landlord shall inventory and store all abandoned personal property of the tenant that the landlord reasonably believes is valuable in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsection (2), the landlord shall make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping by sending a notice with a certificate of mailing or by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 10 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property whether of value or not is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed by a landlord who stores the property, and actual storage costs are allowed by a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the

premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.

(9) The landlord shall ensure that the terms of this section are included in plain and understandable language as a notification upon termination of the lease or rental agreement.

STOP

70-24-430 Review

- **If a tenancy terminates by court order, the personal property is considered abandoned.**
- **If a tenancy terminates in any manner other than by court order and the landlord has clear and convincing evidence that the tenant has abandoned all personal property and 48 hours has elapsed, the landlord may dispose of the property.**
- **If labeled "rent to own" or "leased" or likewise identified may be discarded only with confirmation from the lessor**
- **"Hazardous" means an item that is potentially or actually flammable, capable of harm**
- **"Perishable" means any item requiring refrigeration**
- **"Valueless" means any item that has an insubstantial resale value**
 - **personal pictures, jewelry or other irreplaceable are not included**
- **The landlord shall inventory and store all abandoned personal property and shall exercise reasonable care**
- **Make a reasonable attempt to notify the tenant in writing**
- **Not less than 10 days after mailing the notice, the property will be disposed of**
 - **selling all or part of the property at a public or private sale or destroying the property are legal to happen**
- **If tenant responds within 10 days notice, they then have 7 days to remove the property**
- **Landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale**

70-24-431. Retaliatory conduct by landlord prohibited.

(1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

- (a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303;
or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

STOP

70-24-431 Review

- **Landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession if the tenant has:**
 - **complained of a violation affecting health and safety**
 - **complained to the landlord in writing of violations of their duties**
 - **as organized a tenant's union**
 - **Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:**
 - **violation of the applicable building or housing code was caused by the tenant**
 - **tenant is in default in rent**
-

70-24-441. Termination by landlord or tenant.

(1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

70-24-442. Attorney fees -- costs.

(1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

STOP

70-24-441 & 442 Review

- **Week - Week tenancy. Notice is 7 days**
 - **Month- month tenancy. Notice is 30 days**
 - **Rent is apportioned day- day**
 - **Attorney fees are not paid by the winning party**
-

Residential Tenants' Security

Deposit Act. Chapter 25

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70-25-101. Definitions.

As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or the owner's selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying the leasehold premises or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident to a leasehold agreement requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit must be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a

security deposit.

70-25-102. Application of chapter.

This chapter applies to all rentals of dwellings subject to Title 70, chapter 24, or Title 70, chapter 33.

70-25-103. Waivers and contrary provisions invalid.

Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid

STOP

70-25-101, 102 & 103 Review

- **"Cleaning expenses" means the actual and necessary cost of cleaning**
 - **"Damage" means any and all tangible loss**
 - **"Leasehold premises" means the premises occupied by the tenant**
 - **"Security deposit" means value given, in money or its equivalent, to secure the payment**
 - **Oral or written agreement that is contrary to Ch. 25, this chapter is invalid**
-

70-25-201. Security deposit -- deductions authorized therefrom.

(1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3) (***Termination by landlord or tenant***), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning, unless the rental agreement is already terminated pursuant to

70-24-427 or 70-33-427 (***Landlord's remedies after termination***) and the landlord has a pending claim for actual damages filed in court. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit, or the landlord may leave a copy of the notice in a conspicuous location in the rental unit and notify the tenant by email, phone, or text, and notice is considered delivered.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

STOP

70-25-201 Review

- **Landlord may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant**
 - **The premises may be inspected within 1 week prior to termination.**
 - **Cleaning charges may not be imposed for normal wear and tear.**
 - **The tenant has 24 hours to complete the required cleaning after notice is given**
 - **Landlord may not deduct or withhold from the security deposit any amount for purposes other than set forth in this section.**
-

70-25-202. List of damages and refund -- delivery to departing tenant.

(1) Except as provided in subsection (2):

(a) Each landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, with regard to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201 (***Landlord's remedies after termination***). Delivery must be accomplished by mailing the list and refund to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(b) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days by mailing it to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(c) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant.

(2) This section does not apply if a rental agreement is terminated pursuant to 70-24-427 or 70-33-427 (**Landlord's remedies after termination**) and the landlord has a pending claim for actual damages filed in court.

STOP

70-25-202 Review

- **Each landlord, within 30 days of termination, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges**
 - **If after inspection there are no damages, the landlord shall return the security deposit within 10 days**
 - **It is not a wrongful withholding of security deposit if the landlord mails the funds to the last-known address**
-

70-25-203. Failure to provide list -- forfeiture of deduction rights.

Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 (**List of damages**) shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

70-25-204. Wrongful withholding of security deposit -- action.

(1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or deducted. The attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

- (a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;
- (b) the expiration of a 30-day period after the termination of a tenancy;
- (c) the expiration of a 30-day period after surrender and acceptance of the

leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

70-25-205. Failure of departing tenant to furnish new address.

Failure by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, does not bar the tenant from recovering the amount owing to the tenant by the landlord.

STOP

70-25-203, 204 & 205 Review

- **landlord who fails to provide a written list of damage, forfeit all rights to withhold any portion of the security deposit**
 - **Failure by the departing tenant to provide the landlord with a new address in writing, does not bar the tenant from recovering the amount owing**
-

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

(1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to

furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement is barred from recovering any sum for damage to or cleaning of the leasehold premises unless the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

STOP

70-25-206 Review

- **Any person who requires a security deposit shall furnish to each tenant a written statement as to the present condition of the premises and includes:**
 - **clear and concise statement of the present condition**
 - **statement indicating the fact of prior renting**
 - **signature of the landlord**
-

Landlord & Tenant Residential and

Commercial. Chapter 26

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70-26-101. Letting of parts of rooms prohibited.

A person who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom the landlord first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to the landlord while the double letting of any room continues.

70-26-103. Attornment (Subletting) of tenant to stranger void.

The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

70-26-104. Notice of action by third person served on tenant -- duty to inform landlord.

A tenant who receives notice of a proceeding to recover the real property occupied by the tenant or the possession of the real property shall immediately inform the landlord of the notice and shall also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages that the landlord may sustain by reason of any omission to inform the landlord of the notice or to deliver it to the landlord if in writing.

70-26-105. Assignee of lessee -- remedies of lessor against.

Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of any agreement in the lease or for recovery of the possession, the lessor has against the assignees of the lessee for any cause of action accruing while they are assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

70-26-106. Rights of lessee and assignees against lessor and assignees.

Whatever remedies the lessee of any real property may have against the lessee's immediate lessor for the breach of any agreement in the lease, the lessee may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and the lessor's assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

70-26-107. Remedy for rent on lease for life.

Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

70-26-108. Rent dependent on life -- recovery.

Rent dependent on the life of a person may be recovered after as well as before the person's death.

70-26-109. Change of lease terms by notice.

In all leases of lands or tenements or of any interest therein from month to month, the landlord may, upon giving notice in writing at least 15 days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice if the tenant shall continue to hold the premises after the expiration of the month.

70-26-110. Lease of city lot for over 75 years void.

No lease or grant of any town or city lot for a period longer than 75 years, in which shall be reserved any rent or service of any kind, shall be valid.

STOP

70-26 Review

- **If you rent part of a room, you get the whole room, even if others are renting it**
 - **If a tenant gets a notice about a landlord trying to take back the property, they must tell the landlord right away and give them the notice if it's written. The tenant is responsible for any damages if they don't inform the landlord or give them the written notice**
 - **Rent dependent on the life of a person may be recovered after as well as before the person's death**
 - **notice in writing at least 15 days before the expiration In all leases of lands or tenements**
-

Montana Residential Mobile Home

Lot Rental Act. Chapter 33

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70-33-101. Short title.

This chapter may be cited as "The Montana Residential Mobile Home Lot Rental Act".

70-33-102. Purpose -- liberal construction.

(1) This chapter must be liberally construed and applied to promote the underlying purposes and policies of this chapter.

(2) The underlying purposes and policies of this chapter are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals;

(b) encourage landlords and tenants to maintain and improve the quality of housing; and

(c) create an exclusive regulatory standard throughout the state and its political

subdivisions regarding the rental of land to owners of mobile homes and manufactured homes.

70-33-103. Definitions.

Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

(1) "Abandon" means to give up possession of the premises unless the landlord does not accept abandonment or surrender as provided in 70-33-426 or unless the rental agreement has been terminated as provided by law.

(3) "Actual and reasonable cost" means the actual amount of expenses and labor incurred or expended and the reasonable amount of expenses and labor estimated to be incurred or expended.

(7) "Landlord" means:

(a) the owner of:

(i) space or land, including a lot, that is rented to a tenant for a mobile home; or

(ii) a mobile home park;

(b) a person who has written authorization from the owner to act as the owner's agent or assignee for purposes related to the premises or the rental agreement;

(c) a manager of the premises who fails to disclose the managerial position; or

(d) a lessor who has written authorization from the owner of the premises to sublease the premises.

(8) "Lot" means the space or land rented and not a mobile home itself.

(9) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.

(10) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.

(14) "Premises" means a lot and the grounds, areas, and facilities held out for the

(16) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-33-311 (***Landlord authorized to adopt rules***) embodying the terms and conditions concerning the use and occupancy of the premises.

STOP

70-33-101, 102 & 103 Review

- **underlying purposes and policies of this chapter are to:**
 - **simplify and clarify the law governing mobile homes**
 - **encourage landlords and tenants to maintain and improve the quality of housing**
 - **create an exclusive regulatory standard throughout the state**
- **"Abandon" means to give up possession**

- **"Actual and reasonable cost" means the actual amount of expenses and labor incurred**
 - **"Landlord" means:**
 - **owner of space/ land, mobile home park**
 - **has written authority to manage lots**
 - **"Lot" means the space or land rented and not a mobile home itself**
 - **"Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy**
 - **"Premises" means a lot and the grounds**
 - **"Rental agreement" means all agreements, written or oral**
-

70-33-104. Applicability.

(1) This chapter applies to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. This chapter applies to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

70-33-201. Rental agreements.

(f) if either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent. Landlords shall follow 70-33-426(2) and are entitled to rent from defaulting tenants up to the date a new tenancy starts or the date the rental agreement term expires.

70-33-303. Landlord to maintain premises -- agreement that tenant perform duties.

(1) A landlord shall:

(a) comply with the requirements of applicable building, housing, and health department codes materially affecting health and safety at the time of original construction;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition except when it is the tenant's responsibility to maintain the dwelling unit pursuant to 70-33-321;

(c) keep all common areas of the premises in a clean and safe condition;

70-33-305. Transfer of premises by tenant.

(1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

STOP

70-33-104, 201, 203 & 305 Review

- **chapter applies to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home**
 - **rent is uniformly apportionable from day to day**
 - **If either party terminates the rental agreement without cause, he aggrieved party is entitled to monetary damages up to 1 month's rent**
 - **If the landlord does not sign and deliver, acceptance of rent gives the rental agreement the same effect as if it had been signed**
 - **If the tenant does not sign, acceptance of possession of the premises and payment of rent gives the rental agreement the same effect as if it had been signed**
 - **Possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing**
 - **Mobile home owners who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord**
 - **The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot**
-

70-33-312. Access to premises by landlord.

(1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) (a) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(b) For the purposes of this subsection (3), in addition to the provisions of 70-33-106, a tenant has notice of the intent to enter if the landlord conspicuously posts the landlord's intent to enter on the main entry door of the dwelling unit.

70-33-315. Road maintenance obligations.

In addition to the obligations imposed by 70-33-303, the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

STOP

70-33-312 & 315 Review

- **A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot**
 - **Mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing is is reasonable to keep the roads passable**
-

70-33-321. Tenant to maintain lot.

(1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose of all ashes, garbage, rubbish, and other waste from the lot in a clean and safe manner;

(d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(e) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132;

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

(d) unlawful possession of a firearm, explosive, or hazardous or toxic substance; or

(e) any activity that is otherwise prohibited by law.

STOP

70-33-321 Review

- **Tenant shall:**

- **comply with all obligations**
 - **keep that part of the premises that the tenant occupies and uses as reasonably clean and safe**
 - **conduct oneself and require other persons on the premises in a manner that will not disturb the tenant's neighbors' peaceful enjoyment**
 - **A tenant may not destroy, deface, damage, impair, or remove any part of the premises**
-

70-33-401. Administration of remedies -- enforcement -- agreement.

(1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages. The aggrieved party may include a reasonable charge for the party's labor.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. Nothing in this chapter prohibits the assignment of a right or the claim of a right by either landlord or tenant. The landlord's or tenant's defenses and obligations may not be affected by an assignment.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

70-33-403. Unconscionability -- court discretion.

(1) Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a lot in accordance with 70-33-321; or

(b) a landlord maintain the premises in accordance with 70-33-303.

(3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

STOP

70-33-401 & 403 Review

- **Aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages**
 - **A finding in which a party waives or agrees to forego a claim or right may not be made based on a responsibility outlined in a rental agreement.**
 - **a tenant maintain a lot in accordance with 70-33-321**
 - **a landlord maintains the premises in accordance with 70-33-303.**
-

70-33-407. Fire or casualty damage -- rights and obligations of tenant.

(1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and 70-33-430 does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

70-33-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction.

(1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-33-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-33-321(3). If the landlord terminates the rental agreement, the tenant shall vacate the premises on termination of the agreement.

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of 70-33-321(4), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-33-321(4). If the landlord terminates the rental agreement, the tenant shall vacate the premises on termination of the agreement.

(3) Except as otherwise provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-33-321. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy.

STOP

70-33-407 & 422 Review

- **If the lot or premises are damaged or destroyed by fire, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.**
 - **If the tenant complies, the rental agreement terminate the date the tenant vacates the lot**
 - **If the rental agreement is terminated pursuant to subsection (1) landlord shall return any prepaid rent and all security recoverable**
 - **If the tenant's mobile home is damaged or destroyed by fire, it is the the mobile homeowners to remove the mobile home from the lot within 30 days**
 - **Terms and conditions of the rental agreement remain in effect until the mobile home is removed**
-

70-33-427. Landlord's remedies after termination -- action for possession.

(1) If the rental agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of the rental agreement.

(2) (a) Except as provided in subsection (2)(c), an action filed pursuant to subsection (1) in a court must be heard within 10 business days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 10 business days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the hearing must be held within 5 business days after the case is transmitted to district court.

(c) A hearing for damages for any breach of the rental agreement must be held within 45 days after the claim of possessions and rent has been adjudicated.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ of possession immediately.

70-33-432. Disposition of abandoned mobile home.

(1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days have elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

STOP

70-33-427 & 432 Review

- **a court must be heard within 10 business days after the tenant's appearance**
 - **action must be heard within 5 business days**
 - **action is appealed to the district court, the hearing must be held within 10 business days after the case is transmitted**
 - **hearing must be held within 5 business days after the case is transmitted**
 - **any breach of the rental agreement must be held within 45 days after the claim**
 - **court shall rule on the action within 5 days after the hearing**
-

70-33-433. Grounds for termination of rental agreement.

(1) If there is a noncompliance by the tenant with the rental agreement or with a provision of 70-33-321, the landlord may deliver a written notice to the tenant pursuant to 70-33-106 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 6-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or

(1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of 70-33-321(1) within a 6-month period, for which the notice period for the final violation is 14 days;

(h) any violation of 70-33-321(3), for which the notice period is as provided in 70-33-422(1);

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 7 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and any tenant of the mobile home owner whose identity and address have been provided to the landlord written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the

noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

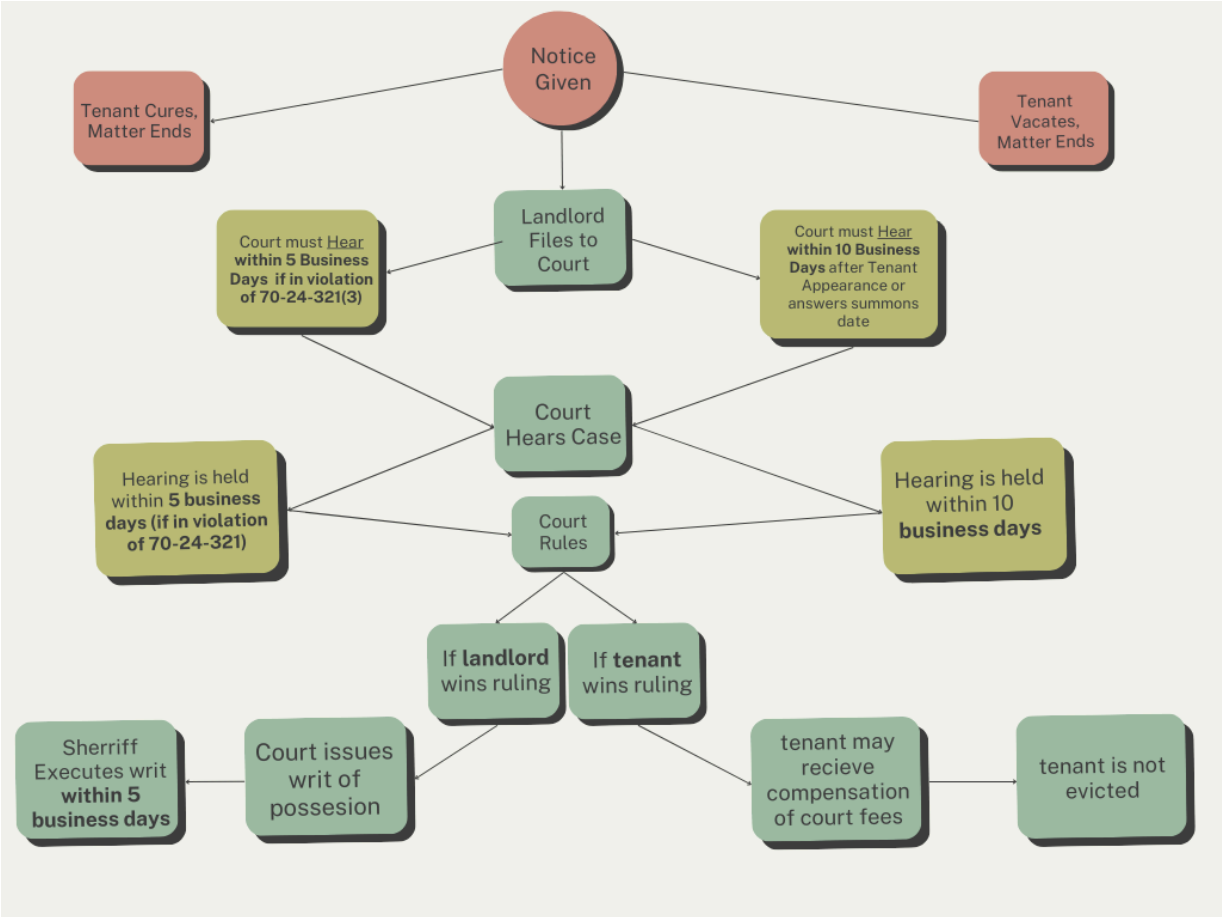
(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

STOP

70-33-433 Review

- **noncompliance by the tenant, the landlord may deliver a written notice, specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice**
 - **nonpayment of rent**
 - **violation of a rule to the health and safety. the notice period is 14 days**
 - **violation of a rule that creates an immediate threat to the health and safety, notice period is 24 hours**
 - **two or more violations within a 6-month period of the same rule, notice period for the final violation is 30 days**
 - **two or more violations of tenant to maintain the lot within a 6-month period, for which the notice period for the final violation is 14 days**
 - **disorderly conduct that results in disruption, the notice period is 7 days**
 - **changes in the use of the land, the notice period is 180 days**
 - **minimum of 90 days' written notice of the termination**
 - **6 months' written notice of termination of tenancy to the change of use**
 - **For purposes of calculating the total number of notices given within a 12-month period, one notice for each violation per month may be in calculations**
-

Eviction Timeline:



Trust Accounting Laws

24.209.601 TRUST ACCOUNTS

- (1) Property managers who receive any deposits, rent payments, or other monies on behalf of other persons must deposit such funds in a trust account per 37-56-101, MCA, and maintain the account according to this rule.
- (2) Trust accounts must be:
 - (a) liquid;
 - (b) readily accessible;
 - (c) insured in Montana financial institutions;
 - (d) identified as trust accounts; and
 - (e) reconciled each month having activity.
- (3) Trust funds cannot be:
 - (a) maintained in sweep accounts; or
 - (b) invested in certificates of deposit, repurchase agreements, or any other method that places funds at risk.
- (4) Property managers:
 - (a) may separately maintain multiple trust accounts;
 - (b) are responsible for all funds in and maintenance of their trust accounts;
 - (c) may delegate authority for trust account maintenance to another licensed property manager. Both property managers are responsible for failure to comply with trust account requirements; and
 - (d) must deposit monies belonging to others into a trust account within three business days, unless otherwise provided in the lease or rental agreement.
- (5) Trust funds may be maintained in interest-bearing accounts with interest payable to the property manager or any other person. Interest payable to a property manager must be identified as consideration for services performed and are personal funds unless otherwise designated.
- (6) Property managers may deposit and hold in a trust account up to \$1000 of personal funds that include interest accrued to the property manager.
 - (a) Personal funds may be distributed for trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager.
 - (b) Money due the property manager must be withdrawn within ten business days once due and payable.
- (7) When managing one's own real estate, property managers must deposit security deposits in a trust account. Rents and disbursements are managed as follows:
 - (a) Property managers owning 100 percent of the real estate are not required to place rents in a trust account but may do so.
 - (b) Property managers owning less than 100 percent of the real estate must place all rents in a trust account.
 - (c) If rents are included in a trust account, all disbursements must be described in the property management agreement.
 - (d) Disbursements may not be considered personal indebtedness if used for the

maintenance of the property itself.

(8) Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds per (6). Each record must include a running balance and clearly identify for all transactions:

- (a) dates;
- (b) parties, payees, and sources of funds; and
- © amounts received, disbursed, and deposited.

(9) When a property management agreement is terminated, a rental agreement is still in effect, and the property manager is holding tenant funds, the property manager must:

- (a) notify the tenant, in writing and within five business days of termination that:
 - (i) the agreement is terminated; and
 - (ii) funds and current tenant files will be transferred to the property owner or designee within 30 days of the termination;
- (b) provide the name and contact information of the person receiving the transfer; and
- © within 30 days of termination, transfer all funds and current tenant files to the property owner or designee.

(10) Property managers must maintain the following documents for at least eight years from the property management agreement termination even if the property manager sells or ceases to operate the business:

- (a) trust account records;
- (b) complete files of properties managed; and
- © all related documents.

(11) Trust account records must be maintained to facilitate auditing.

STOP

24.209.601 Review

- **Any monies received as deposits, rent or other person's monies must be deposited into the trust account**
- **Your trust account must be insured in Montana, identified as "Trust Account," and cannot be a sweep account**
- **The trust account must be liquid, accessible, reconciled monthly and can be investment account**
- **You can have multiple accounts, but individual ledgers for each owner/property**
- **Must deposit funds within 3 business days**
- **No more than \$1,000 of personal funds may be in the account**
- **Money due, must be withdrawn within 10 business days**
- **If the property is 100% personally owned by the PM, no account is required**
- **Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal**

funds

- **Each record must include a running balance and clearly identify for all transactions**
 - **Records must be kept for 8 years minimum**
 - **Termination must be notified to the tenants within 5 business days and everything must be transferred within 30 days**
-

Property Management Math

CASH FLOW EQUATION:

Gross Possible Income (GPI)
 - Vacancy/ Collections Issues
 + Misc. Income

 = Effective Gross Income (EGI)
 - Operating Expenses

 = Net Operating Income (NOI)
 - Debt Service
 - Income Tax

 = CASH FLOW

PROPERTY VALUATION:

$$V = I \div R$$

Value =
 Net Operating Income

 Rate % (Capitalization Rate)

Gross Possible Income – The amount of income a property can generate at 100% occupancy

Effective Gross Income – All the income generated by a property, including rent, tenant reimbursements, and income

Net Operating Income – The property's generated revenue minus the operating expenses, excluding taxes and debt service

Operating Expenses:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> ● Management Fee ● Administrative Costs ● Personal Expenses ● Energy (Gas, Oil, Electricity) | <ul style="list-style-type: none"> ● Maintenance/Repair ● Supplies ● Security ● Legal Expenses ● Recreational Amenities ● Building Services | <ul style="list-style-type: none"> ● Grounds/ Lawn ● Water/ Sewer ● Trash ● Property Tax ● Advertising ● Insurance |
|---|---|--|

1. What is the annual rent paid on a unit with a rental agreement that calls for 3% of gross sales or \$600/ mo, whichever greater? Gross Annual Income was \$200,000.

$$\frac{\text{gross income}}{\text{gross annual sales}} \times \frac{\%}{\%} = \frac{\text{gross annual sales}}{\text{gross annual sales}}$$

$$\frac{\text{\# of mo/ yr}}{\text{\# of mo/ yr}} \times \frac{\text{rent/mo}}{\text{rent/mo}} = \frac{\text{annual rent}}{\text{annual rent}}$$

2. What is the monthly management fee on a space 100' × 30' at \$5/ sqf., if the commission is 10%?

$$\frac{\text{length}}{\text{length}} \times \frac{\text{width}}{\text{width}} = \frac{\text{square footage}}{\text{square footage}}$$

$$\frac{\text{square footage}}{\text{square footage}} \times \frac{\$}{\$} = \frac{\text{space expense}}{\text{space expense}}$$

$$\frac{\text{space expense}}{\text{space expense}} \times \frac{\%}{\%} = \frac{\text{annual commision}}{\text{annual commision}}$$

$$\frac{\text{annual commision}}{\text{annual commision}} \div \frac{12}{12} = \frac{\text{monthly mgmt fee}}{\text{monthly mgmt fee}}$$

3. The rent in a 6-plex is \$800 per unit. What is the Effective Gross Income (EGI) if you have 2 vacancies?

$$\frac{\text{\$/ mo}}{\text{\# of units}} \times \text{_} = \frac{\text{EGI}}{\text{_}}$$

$$\frac{\text{EGI}}{\text{_}} - \frac{\text{(vacancies x rent)}}{\text{_}} = \frac{\text{EGI}}{\text{_}}$$

4. What is the EGI on a building with 100 units at \$600/mo per unit? At present there are 25 units vacant.

$$\frac{\text{_____}}{\text{\# of units}} \times \frac{\text{_____}}{\text{mo/ rent}} = \frac{\text{_____}}{\text{max EGI}}$$

$$\frac{\text{_____}}{\text{mo/ rent}} \times \frac{\text{_____}}{\text{vacant units}} = \frac{\text{_____}}{\text{vacancy cost}}$$

$$\frac{\text{_____}}{\text{Max EGI}} - \frac{\text{_____}}{\text{vacancy cost}} = \frac{\text{_____}}{\text{current EGI}}$$

5. Find the NOI, EGI, GPI and Cash Flow. Figures are Monthly:

50 Units @ \$600/ mo	
10% Vacancy	5 Units
Maintenance Costs	\$1500
Utilities	\$500
Management Fee	6%
Debt Service	\$8860
Property Tax	\$1320

CASH FLOW CHART:

Gross Possible Income (GPI)
 - Vacancy/ Collections Issues
 + Misc. Income

 = Effective Gross Income (EGI)
 - Operating Expenses

 = Net Operating Income (NOI)
 - Debt Service
 - Income Tax

 = CASH FLOW

GPI: _____
 - _____
 + _____

 = EGI: _____
 - _____

 = NOI: _____
 - _____
 - _____

 = CASH FLOW

6. You have 100 units at 100% occupancy. Rent is \$900/ mo per unit. The owner decides to raise the rent 10% the next month and 5 tenants decide to move out. There is now a 95% occupancy. What is the Effective Gross Income with the rent raise?

$$\frac{\text{_____}}{\# \text{ of units}} \times \frac{\text{_____}}{\text{mo/ rent}} = \frac{\text{_____}}{\text{monthly GPI}}$$

$$\frac{\text{_____}}{\%} \times \frac{\text{_____}}{\text{mo/ rent}} = \frac{\text{_____}}{\text{rent increase}} \rightarrow \frac{\text{_____}}{\text{rent increase}} + \frac{\text{_____}}{\text{current rent}} = \frac{\text{_____}}{\text{new rent \$}}$$

$$\frac{\text{_____}}{\# \text{ of units}} \times \frac{\text{_____}}{\text{new mo/ rent}} = \frac{\text{_____}}{\text{new monthly GPI \$}}$$

$$\frac{\text{_____}}{\text{new GPI \$}} - \frac{\text{_____}}{\text{old GPI \$}} = \frac{\text{_____}}{\text{increase amount \$}}$$

$$\frac{\text{_____}}{\text{vacant units}} \times \frac{\text{_____}}{\text{new rent}} = \frac{\text{_____}}{\text{vacancy loss}}$$

$$\frac{\text{_____}}{\text{new GPI}} - \frac{\text{_____}}{\text{vacancy loss}} = \frac{\text{_____}}{\text{new EGI}}$$

7. What is the **annual** rent on a commercial building where the **monthly** rent is \$0.25 per sq. ft. The rentable space is 4,500 square feet.

$$\frac{\quad}{\text{Sqft.}} \times \frac{\quad}{\text{rent \$}} = \frac{\quad}{\text{rent per MONTH}}$$

$$\frac{\quad}{\text{monthly rent}} \times \frac{\quad}{12} = \frac{\quad}{\text{ANNUAL rent}}$$

8. You are managing a 100 unit apartment complex and your cost to manage these units is \$20,000. What would your fee per unit have to be to maintain a **10%** profit?

For 10% Profit:

1. Change 10% to its decimal form of 0.1
2. Subtract 0.1 from 1, equalling 0.9
3. Divide the original cost by 0.9

For 20% Profit:

4. Change 20% to its decimal form of 0.2
 5. Subtract 0.2 from 1, equalling 0.8
 6. Divide the original cost by 0.8
-

COST per unit:

$$\frac{\text{managing cost}}{\# \text{ of units}} = \text{cost per unit}$$

FEE per unit:

$$\frac{\text{cost/ unit}}{\text{profit margin}} = \text{Fee/ unit}$$

9. In the previous problem, what commission should you charge to maintain this per unit cost if the Gross Possible Income (GPI) is \$200,000 with a 10% vacancy rate?

$$\frac{\text{GPI}}{\text{GPI}} \times \frac{\%}{\%} = \frac{\text{vacancy rate (\%)}}{\text{vacancy rate (\%)}}$$

$$\frac{\text{GPI}}{\text{GPI}} - \frac{\text{vacancy (\%)}}{\text{vacancy (\%)}} = \frac{\text{EGI}}{\text{EGI}}$$

$$\frac{\text{\# of units}}{\text{\# of units}} \times \frac{\text{fee/ unit}}{\text{fee/ unit}} = \frac{\text{management fee (\%)}}{\text{management fee (\%)}}$$

$$\frac{\text{mgmt fee (\%)}}{\text{mgmt fee (\%)}} \div \frac{\text{EGI}}{\text{EGI}} = \frac{\text{mgmt. fee (\%)}}{\text{mgmt. fee (\%)}}$$

Components of a Management Plan

- Regional & Neighborhood Analysis
- Owner's Goals
- Property Analysis
- Info about the general characteristics of the area
- Data/ Market Trends

Neighborhood Analysis

- Immediate surroundings
- Physical Inspection
- Natural & Constructed Barriers/
Boundaries
- Location
- Growth & Income Level
- Economic & Social Environment
 - Education
 - Employment
 - Safety
 - Political

Market Analysis

- Specific comparable properties and a comparison of their features
- Competing buildings within the neighborhood and region.
- Current condition of the property.
- Considerations:
 - # & Type of Unit
 - Age
 - Features
 - Average Current Rent
 - Occupancy levels

Marketing the Property

- Understand your current market & factors that play into it
- Lease Incentives
 - Free rent
 - Waived fees
 - Discounted Utilities
 - Flexible Terms
 - Free amenities

Benefits:

- Helps fill vacancy faster
- Attracts more potential tenants
- Gives flexibility for lifestyles

- Gives priority over other leases

Consequences:

- Lowers your GPI/ EGI
- Lowers Owner's Income
- Market shifts
- Financial relief

10. The rent on an apartment is \$600 per month with a 12 month lease. However, if there's an incentive of 1 month free rent, what will the monthly effective rent be?

$$\frac{\text{GPI}}{\text{mo/ rent}} = \frac{\text{EGI}}{\text{effective rent/ mo}}$$

Stigmatized Properties

Drugs:

- The biggest concern for property managers today
- Meth Lab manufacturing and distribution is very common
- Uses very dangerous chemicals used that are corrosive or flammable. Skin, eye and respiratory reactions.

How to Identify:

- Major Alterations - Barred windows/ doors
- Lots of short term traffic
- Unusual person ("a lookout") outside for hours
- Bypassed electric meter
- Lots of coffee filters, batteries, smokers, strong chemical smells, large quantities of fuel, paint thinner, acetone, drain cleaners

Mold:

- Molds can be found almost everywhere
- Mold can grow on virtually any substance
- Potential health effects and symptoms include allergies, & asthma
- No practical way to eliminate ALL mold spores
- The best way to control indoor mold growth is to control moisture
- Fix the source of the water problem or leak
- Reduce mold growth by venting

How to Identify:

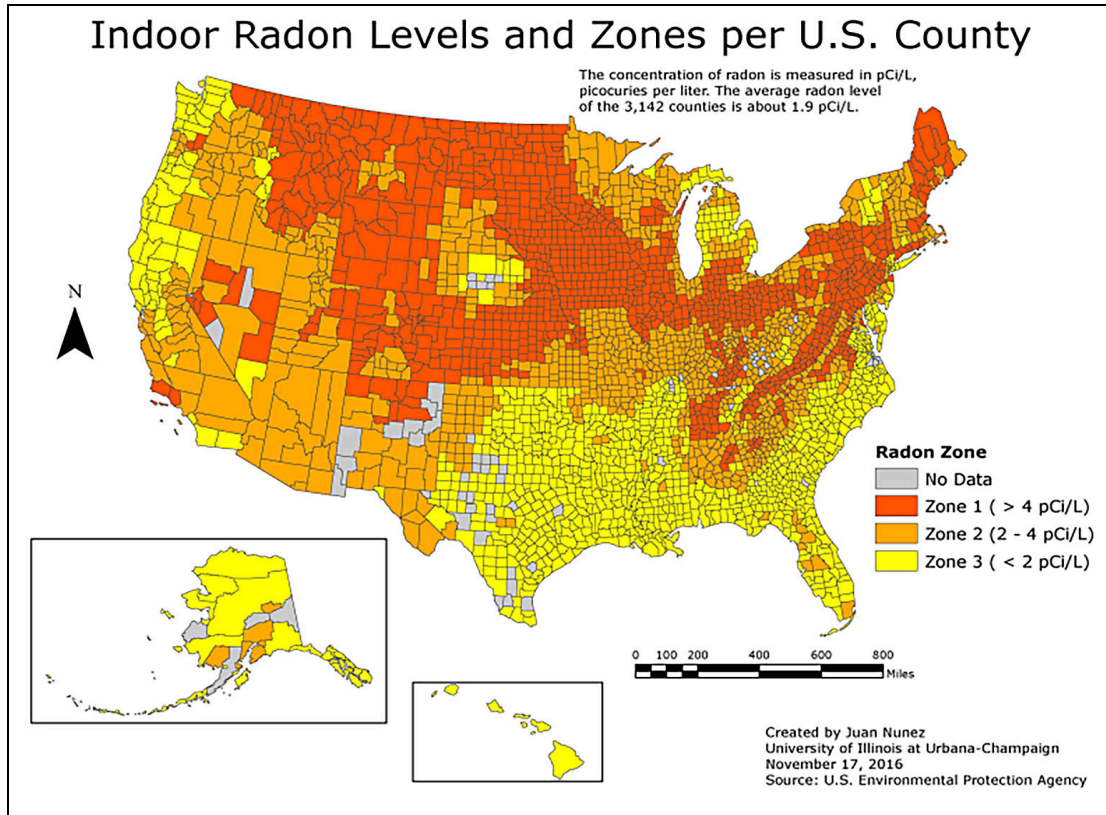
- Musky or damp smell
- Visually see dark stains or velvety patches growing on surfaces
- Can be dark green, brown, or black
- Found in poor ventilated areas

Radon:

- Radon is a cancer causing, radioactive gas.
- Radon comes from the natural decay of uranium that is found in all soils.
- Property Managers/Landlords are not required to test for radon.
- A tenant may test for radon on their own and results of any testing must be disclosed to future tenants

How to Identify:

- Test for it



Lead Based Paint

- Owner shall meet all disclosure, certification, and acknowledgement of lead based paint
- Property Managers should provide each new tenant occupying a rental unit built prior to January 1, 1978
- Property Managers shall not be liable for the failure to disclose if not owner does not present the acknowledgement of its presence

How to Identify:

- "Alligating," which happens when the paint starts to crack and wrinkle, creating a pattern that resembles reptilian scales
- Produces a chalky residue when it rubs off
- Know when your home was built
- Recognize the symptoms of lead.
- developmental delays, abdominal pain, neurologic changes, and irritability

UNLICENSED ASSISTANT GUIDE

As a licensee, you are responsible for the actions of your employees who aid or assist you in the course of performing your licensed activities. For your convenience, the Board has created this set of guidelines for unlicensed assistants. This list is not exhaustive. Remember, unlicensed persons cannot complete any task for which a license is required, and it would be considered unprofessional conduct for you to assist in unlicensed practice.

Unlicensed Assistants may:

- Communicate with licensees, property owners, prospects, inspectors, etc. to coordinate or confirm appointments.
- Schedule showings, closings, or inspections for listed properties.
- Extend an open house invitation.
- Respond to questions by quoting directly from published information.
- Compile listing packages.
- Submit listings and changes to multiple listing services, but only if the data is compiled by a licensee.
- Secure copies of public records from public repositories.
- Place "for sale" or "for rent" signs on property at the direction of a licensee.
- Act as a courier to deliver or pick up documents, pick up keys, etc.
- Assemble documents for a closing.
- Prepare and design advertising for approval by a licensee.
- Place advertising.
- Complete contract forms with business and factual information with the approval of a licensee.
- Sit at a property for a broker tour that is not open to the public. Open property for appraisers, contractors, home inspectors. Stage a home for showing and take photos.
- Record and deposit earnest money deposits, tenant security deposits, and other trust monies.
- Compute commission checks for affiliated licensees and act as bookkeeper for the firm's bank operating accounts.
- Place routine telephone calls on late rent payments.
- Order and supervise routine and minor repairs to listed property at the direction of a licensee.

Unlicensed Assistants may not:

- Contact a prospective seller/buyer/landlord/tenant for the purpose of soliciting a listing agreement, buyer broker agreement, property management agreement, or rental/lease agreement.
 - Show properties, either rentals or sales.
 - Access a property in the presence of a potential buyer/tenant unless accompanied by licensee. Host open houses.
 - Explain or interpret a contract, listing, lease agreement, or other document with anyone outside the company.
 - Negotiate any contracts, listing agreements, rental agreements, commissions, etc.
 - Attend settlements or closing unless in the presence of a licensee.
 - Disclose any confidential information.

Property Management Glossary

Abandonment – The act of voluntarily surrendering or relinquishing possession of real property without vesting this interest in any other person

Absentee Owner – A property owner who does not reside on the property and who often relies on a property manager to manage the investment

ADA – The Americans with Disability Act

Agent – An individual who is legally empowered to act on behalf of another.

Assessment – A monthly fee paid by cooperative and condominium owners to cover maintenance costs for the property. A special real estate tax levied by the government to finance improvements in the area

Assignment – Transfer of a tenant's remaining rental right in a property to a third party

Automatic Extension Clause – A lease covenant providing that a lease will be renewed indefinitely until one of the parties gives notice of the intent to terminate at the end of the lease term

Blockbusting – The practice of persuading homeowners to sell quickly and usually at a loss by appealing to the fear that minority groups will move into the neighborhood, resulting in a decline in property values

Break-Even Point – Occupancy level at which gross income for a property equals the total fixed and variable operating costs

Business Cycle – A wavelike movement of increasing and decreasing economic prosperity consisting of four phases: expansion, recession, contraction, and revival

Cancellation Option – A lease clause granting the tenant the option to cancel at the end of a predetermined term

Default – Nonperformance of a duty or failure to meet an obligation when due

Deferred Maintenance – Physical depreciation or loss in value of a building resulting from postponed maintenance to the building

Depreciation – Loss of value due to physical deterioration, functional obsolescence or economic obsolescence

Direct Management Costs – Expenses that can be attributed directly to the operation of a management firm or department

Economic Oversupply – A market condition in which available rental space is priced beyond the financial capabilities of potential tenants

Equity – An owner's interest in a property over and above any liens or financial encumbrances against it

Escalation Clause – A lease clause providing that the rental rate will increase or decrease according to a selected index of economic conditions, such as the consumer price index

Eviction Notice – A landlord's legal notice to a tenant explaining the tenant's default under the terms of the lease and informing him or her of a pending eviction suit

FFHA - Federal Fair Housing Act

Fidelity Bond – A type of surety bond designed to protect a business owner or hiring party from damage or mismanagement by an employee

Fixed Expense – An expense item in a property's operating budget that does not fluctuate with rental income

Flat Fee – A property management fee expressed as a dollar amount per year or per month

Gross Effective Income – Gross income from a property minus vacancy and other types of rent loss, also called gross adjusted income

Gross Lease – A common residential lease under which the tenant pays a fixed rental and the landlord pays all operating expenses for the property

Income and Expense Report – A monthly financial report showing the income from the property, operating expenses, and the amount remitted to the owner

Lease Assumption – A transaction whereby a property owner agrees to take over the balance of payments on a prospective tenant's current lease if he or she rents space in the owner's property

Leasehold Estate – A tenant's right to occupy real estate for a specified period of time in exchange for some form of compensation

Lessee – A person who rents or leases property, known as the tenant

Lessor – One who owns leased or rented property, known as the landlord

Management Agreement – A contract between the owner of income-producing property and the individual or firm who will manage that property

Management Plan – The financial and operational strategy for the ongoing management of a property, it is based on market analyses, a property analysis, and the owner's goals, consisting of an operating budget, a five year forecast, and sometimes a comparative analysis

Net Lease – A common industrial lease form requiring the tenant to pay rent plus certain costs incurred in the operation of the property. Generally, straight net leases require the tenant to pay rent, utilities, real estate taxes and assessments. Net-net leases require the tenant to pay rent, utilities, real estate taxes, assessments and insurance premiums. Net-net-net or triple net leases may require the tenants to pay all of the above expenses plus agreed-on items of maintenance and repair

Operating Budget – A projection of income and expense for the operation of a

property over a one year period

Partial Evictions – A situation in which the landlord’s negligence renders all or part of the premises unusable to the tenant for the purposes intended in the lease

Percentage Fee – A property management fee expressed as a percentage of the gross collectible income from a property

Percentage Lease – A common retail lease requiring the tenant to pay a percentage of its gross income as rental consideration

Periodic Tenancy - A tenancy that continues for successive periods until the tenant gives the landlord notification that he wants to end the tenancy.

Principal – An individual who designates another as his or her agent

Profit and Loss Statement – An annual financial report of a property’s actual net profit before taxes

Property Management – A branch of the real estate profession that seeks to preserve or increase the value of an investment property while generating income for its owners

Real Estate Cycle – A specific cycle that occurs in the real estate segment of the general business economy, phases of the cycle are influenced by but are not identical to those of the business cycle

Real Property – The earth’s surface extending downward to the center and upward into space, including all things permanently attached thereto, by nature or by human hands

Redlining – To refuse home mortgages or insurance to areas or neighborhoods deemed poor financial risk

Steering – The illegal practice of channeling home seekers interested in equivalent properties to particular areas, either to maintain the homogeneity of an area or to change the character of an area in order to create a speculative situation

Steering - The illegal practice of channeling home seekers interested in equivalent properties to particular areas, either to maintain the homogeneity of an area or to change the character of an area in order to create a speculative situation.

Step-Up Clause – A lease clause providing for rental rate increases of a definite amount at specific times over the term of the lease

Subletting – Partial transfer of a tenant’s right in a rental property to a third party

Surety Bond – Legal document created between a principal and obligee guaranteeing the completion of a contract

Tenancy – An estate that gives the tenant the right of possession for an indefinite period, until the state is terminated by either party

Tenancy at Will - The tenant is occupying the property with permission from the owner but without a lease. Often used to describe a tenant who continues to occupy a property after the lease has expired and the owner continues to accept the rent payments.

The Four Main Types of Leasehold Estate:

1: Estate for Years

2: Estate by Sufferance

3: Estate at Will

4: Estate from Period to Period

Estate/ Tenancy for Years – a lease for a fixed period of time. The lease includes a specific ending date and can be for an extended period of time.

Estate/ Tenancy) by Sufferance – a type of leasehold estate in which a tenant stays in possession of a property after the lease has expired or been legally terminated without the consent of the owner/landlord.

Estate/ Tenancy at Will – a property tenure, without a lease or written agreement, that can be terminated at any time by either the tenant or the owner (landlord). It exists without any contract or lease and usually does not specify length of a tenant's duration or the exchange of payment.

Estate/ Tenancy from Period to Period (See: Periodic Tenancy) – a tenancy which continues for periods of time, typically year-to-year, month-to-month, or week-to-week, as designated by landlord and tenant in their agreement. The most common periodic tenancy is the month-to-month tenancy