

HOUSE BILL NO. 416

INTRODUCED BY R. FITZGERALD, E. BUTTREY, C. POPE, M. SWEENEY, M. LANG

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR REAL ESTATE BROKER AND SALESPERSON LICENSEES; PROVIDING FOR INSURANCE REQUIREMENTS; ALLOWING THE BOARD TO PROVIDE FOR A POLICY; REVISING THE DEFINITION OF "UNPROFESSIONAL CONDUCT"; AMENDING SECTION 37-51-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Professional liability insurance required -- errors and omissions insurance coverage -- policy requirements. (1) A real estate broker or salesperson licensed under this chapter must maintain continuous professional liability insurance coverage that meets the requirements of this section during the period of licensure. The insurance must cover the broker or salesperson for activities contemplated under Title 37, chapter 51, part 3, including errors and omissions by the real estate broker or salesperson.

(2) A real estate broker or salesperson licensed under this chapter must be covered by professional liability insurance through a policy:

(a) issued to real estate broker or salesperson licensees provided on a group policy basis that is approved by the board;

(b) obtained by real estate broker or salesperson licensees independently; or

(c) issued to the firm with which a real estate broker or salesperson license is affiliated.

(3) All policies issued under this chapter must:

(a) be issued by an insurer licensed under Title 33 to provide professional liability insurance;

(b) offer prior acts coverage to an insured who maintains continuous past insurance coverage;

(c) provide an automatic 60-day extended reporting period to report a claim if the policy is canceled or not renewed for any reason other than nonpayment of premium or a deductible; and

(d) offer an optional extended reporting of not less than 365 days to report a claim, as long as the insured requests the extended reporting period and pays any additional premium for the extended reporting period within 60 days after expiration or cancellation of the policy.

1 (4) (a) A professional liability insurance policy must be issued to the board and must cover a group of real
2 estate brokers and salespersons licensed under Title 37, chapter 51, part 3, as named insureds. The board may
3 request bids from insurers for the group policy and may use a limited solicitation under 18-4-305. The maximum
4 contract period between the insurer and the board is seven consecutive policy terms, although the board may
5 place the contract out for bid at the end of any policy period. A policy term is for a year. A real estate broker or
6 salesperson licensee may not be denied coverage or be canceled by the group policy.

7 (b) The group policy must:

8 (i) have a minimum per-claim limit of \$100,000;

9 (ii) have a minimum annual aggregate limit of \$300,000;

10 (iii) have a deductible maximum of \$2,500 a claim for damages; and

11 (iv) provide coverage that is specific to the real estate broker or salesperson licensee regardless of
12 changes in supervising broker.

13 (5) If the board is unable to obtain a professional liability insurance policy as described in [section 1(4)]
14 on terms and conditions the board determines are commercially reasonable, the requirements of [section 1] do
15 not apply to the licensing period for which the policy is sought.

16 (6) A professional liability insurance policy may be independently issued to a real estate broker or
17 salesperson licensee. The individual policy must:

18 (a) have a minimum per-claim limit of \$100,000;

19 (b) have a minimum annual aggregate limit of \$300,000; and

20 (c) have a deductible maximum of \$2,500 a claim for damages.

21 (7) A professional liability insurance policy issued to the firm with which a real estate broker or
22 salesperson licensee is affiliated must:

23 (a) have a minimum per-claim limit of \$100,000;

24 (b) have a minimum annual aggregate limit of \$1 million; and

25 (c) provide for a deductible not to exceed \$10,000 a claim to be paid by the firm with which a real estate
26 broker or salesperson licensee is affiliated.

27 (8) An applicant seeking to obtain or renew a real estate broker or salesperson license shall prove to
28 the board compliance with the insurance requirements of this section. A real estate broker or salesperson
29 licensee who fails to produce proof of coverage on request by the board or its designee is subject to
30 administrative suspension or disciplinary action as determined by the board.

1 (9) For purposes of this section, the following definitions apply:

2 (a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an
3 insurer for a series of losses in a given time period, such as a policy term.

4 (b) "Claims-made and reported policy" means an insurance policy written on a claims-made and reported
5 basis, which provides coverage for claims first made against the insured and first reported to the insurer during
6 the insured's policy period for acts, errors, or omissions that occur after the insured's retroactive date.

7 (c) "Extended reporting period" means a designated period of time after expiration or cancellation of a
8 claims-made and reported policy during which a claim may be made and reported as if the claim had been made
9 and reported during the policy period.

10 (d) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising from the same
11 or a related claim.

12 (e) "Prior acts coverage" means coverage under a policy for claims made against the insured and
13 reported to the insurer that arise from acts, errors, or omissions in services rendered by an insured prior to
14 inception of the current policy period.

15 (f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance, or a
16 binder of insurance.

17 (g) "Retroactive date" means a provision, found in many claims-made and reported policies, that the
18 policy may not cover claims for injuries or damages that occurred before the retroactive date even if the claim
19 is first made during the policy period.

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21 **Section 2.** Section 37-51-321, MCA, is amended to read:

22 **"37-51-321. Unprofessional conduct -- sanction of license.** (1) The following practices, in addition
23 to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an
24 applicant or a person licensed under this chapter:

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

- 1 in this subsection (1)(a).
- 2 (b) making any false promises of a character likely to influence, persuade, or induce;
- 3 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through
4 agents or salespersons or any medium of advertising or otherwise;
- 5 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia
6 of membership in a real estate organization of which the licensee is not a member;
- 7 (e) failing to account for or to remit money coming into the licensee's possession when the money
8 belongs to others;
- 9 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for
10 a principal;
- 11 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to
12 disclose in advertisements for real property the person's dual capacity as broker and principal;
- 13 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the
14 resale of real property;
- 15 (i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's
16 authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;
- 17 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a
18 new contract with another principal;
- 19 (k) accepting employment or compensation for appraising real property contingent on the reporting of
20 a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an
21 undisclosed interest;
- 22 (l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a
23 seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing
24 agreement or buyer broker agreement in connection with the property granting an exclusive agency to another
25 broker;
- 26 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
27 influencing a purchaser or prospective purchaser of real property;
- 28 (n) as a salesperson, representing or attempting to represent a real estate broker other than the
29 employer without the express knowledge or consent of the employer;
- 30 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its

1 execution;

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

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

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

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

11 (t) conviction of a felony;

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

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

16 (w) failing to maintain continuous professional liability insurance coverage that meets the requirements
17 of [section 1].

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

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

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

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28 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
29 integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [section 1].

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