

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.59.1716 pertaining to recovery)	AMENDMENT
of the costs in bringing an)	
administrative action; ARM 2.59.1741)	
pertaining to treatment of initial license)	NO PUBLIC HEARING
applications submitted near year-end;)	CONTEMPLATED
and ARM 2.59.1753 pertaining to)	
abandonment of initial license)	
applications, all related to mortgage)	
licensees)	

TO: All Concerned Persons

1. On June 15, 2015, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on June 4, 2015, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.1716 COSTS IN BRINGING THE ADMINISTRATIVE ACTION

(1) Costs in bringing the administrative action as used in 32-9-133, MCA, shall include:

~~(a) examiner time charges;~~

~~(b) department legal counsel time charges;~~

(c) remains the same, but is renumbered (a).

~~(b)(d) court reporter costs~~ fees;

~~(c)(e) transcription fees~~ cost as provided under 2-4-614, MCA;

~~(d)(f) document exhibit preparation fees~~ cost if the exhibit was admitted into evidence at the hearing;

~~(e)(g) other hearing costs~~ deposition cost if the deposition was used at the hearing;

~~(f)(h) costs of subpoenaing documents~~ fees, if any, for service of subpoenas;

~~(g)(i) any other cost incurred by the department in bringing the action~~ witness fees and mileage for the department's lay/fact witnesses; and

~~(j) travel costs.~~

(h) mileage for the department's expert witness if the expert appears personally and testifies at the hearing.

(2) Nothing in this rule limits the department's authority under 32-9-130, MCA, to charge for a special examination performed before a department decision to initiate a contested case under the Montana Administrative Procedure Act and upon which the decision is based in whole or in part. The manner of calculating the charge for a special examination is the same as for a regularly scheduled compliance examination under 32-9-130(7), MCA.

AUTH: 32-9-130, MCA

IMP: 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: One of the remedies available to the department under 32-9-133(2)(b), MCA, in a contested case under the Montana Administrative Procedure Act, is issuance of an order requiring reimbursement of the department's costs in bringing the administrative action. Section 2-4-104, MCA, states that rules regarding witness fees and mileage are the same in administrative contested cases as in civil actions in district court. Witness fees and mileage allowed in civil actions in district court are governed by 26-2-501 and 2-18-503, MCA, respectively. The costs that may be recovered by the prevailing party in a civil action in district court are listed in 25-10-201, MCA. Certain cost recoveries have been limited by court decisions. See, *Thayer v. Hicks*, 243 Mont. 138, 793 P.2d 784 (1990). The costs included in this rule are adapted from 25-10-201, MCA, as limited by case law, and to the extent that certain costs in 25-10-201, MCA, are ever incurred in an administrative contested case.

Section (1)(a) "examiner time charges" for a department examiner acting in the capacity of a lay/fact witness in a contested case proceeding is deleted to make the rule consistent with 25-10-201 and 26-2-501, MCA. The amendment to (1)(b) deletes "department legal counsel time charges" as a cost of bringing an administrative action to make the rule consistent with the American Rule "which provides that, absent statutory or contractual authority, attorney fees will not be awarded to the prevailing party in a lawsuit." *City of Helena v. Svee*, 2014 MT 311, ¶ 18, 377 Mont. 158, 339 P.3d 32. The cost of a hearing transcript, in (1)(c) revised, was retained in the rule but clarified by reference to 2-4-614(2), MCA. These amendments are also appropriate so as not to discourage persons from exercising their right to an administrative hearing. The addition of (2) is necessary to clarify the relationship between 32-9-133(2)(b) and 32-9-130(7)(b), MCA.

2.59.1741 PROCEDURES FOR DETERMINING FINANCIAL RESPONSIBILITY (1) through (4) remain the same.

~~(5) Applications must be deemed withdrawn or abandoned if the applicant fails to provide the information requested by the department within 60 days of notification to the applicant by the department of deficiencies in the application or December 31, whichever comes first.~~

AUTH: 32-9-130, MCA

IMP: 32-9-113, 32-9-117, 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: Section (5) is being deleted because it unnecessarily covers the same subject matter as does ARM 2.59.1753. The deletion of (5) and the amendment of ARM 2.59.1753 in this proposal notice are intended to clarify the abandonment issue included in 32-9-120(2), MCA, and ARM 2.59.1741 and 2.59.1753.

2.59.1753 APPLICATION DEEMED ABANDONED APPLICATIONS FOR INITIAL LICENSE NEAR YEAR-END; WHEN APPLICATION FOR INITIAL LICENSE MAY BE DEEMED ABANDONED (1) An application for initial license submitted to the department through NMLS during the period of November 1 through December 31 is deemed an application for licensure for the next calendar year unless the following conditions are met:

(a) the applicant requests expedited processing of the application and issuance of a license for the remainder of the calendar year in which the application is submitted;

(b) the application is complete and contains no deficiencies; and

(c) the department has sufficient time and staff resources to accommodate the applicant's request during the period November 1 through December 31, which coincides with the renewal period for current licensees. Current licensees' renewal applications are given administrative priority over applications for initial licensure.

(2) All licenses expire on December 31 regardless of issuance date. A person whose license has expired may not engage in the activities for which the license was issued. Reinstatement of an expired license is governed by ARM 2.59.1731.

(3)(4) An application for initial license may be is deemed abandoned if the applicant fails to provide the documents or information requested by the department within 60 days of notification to the applicant of the deficiencies to applicant by the department or December 31, whichever comes first.

(a) If the 60-day period following notification of deficiencies has not elapsed by December 31, the application is deemed an application for the next calendar year and will be processed without submission of a new application and fee.

(b) Except as provided in (4), the application may be deemed abandoned if the requested documents or information have not been provided within the remainder of the 60-day period in the new year.

(4) The department may grant a 30-day extension of the 60-day period included in (3) if requested by the applicant in writing before the lapse of the 60-day period and if the department determines that the applicant is diligently attempting to obtain the documents or information, or that the applicant has produced satisfactory evidence that the documents or information do not exist.

(a) When the 30-day extension period expires, the application is deemed abandoned if the applicant has not produced the documents or information or satisfactory evidence that the documents or information do not exist.

(b) The licensing process may be started anew with the submission of a new license application and fee.

(5) The 60-day period for providing documents or information requested by the department and any 30-day extension granted by the department under (3) and

(4) are applicable only to persons applying for initial licensure. These time periods do not apply to renewal applicants.

AUTH: 32-9-120, 32-9-130, MCA

IMP: 32-9-120, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes that clarifying the issue of license application abandonment and streamlining the licensing function are in the public interest to assure acceptable turnaround time for the processing of license applications and continued delivery of superior service to industry applicants and the public they serve. In addition, a need exists to include in rule the priority of license renewals over applications for initial licensure at year-end when department staff members are busy processing renewals. Persons whose licenses expire on December 31 cannot continue to perform their job functions until the licenses are reinstated. That circumstance affects employers and the continuity of services to their customers. Applications for initial licensure are generally more time-consuming to process than are renewal applications and can create a bottleneck during the renewal period of November 1 through December 31.

Sections (3) and (4) are only applicable to persons applying for initial licensure and not to renewal applicants because 32-9-134(3), MCA, states any license not renewed by December 31 expires, and ARM 2.59.1731 includes the requirements, procedure, and time period for reinstatement of expired licenses.

The department believes the rule amendments fairly balance the interests of new license applicants and renewing licensees. The amendments are also necessary because the department has an obligation to promptly identify abandoned applications and an obligation to use department resources to maintain the integrity of the NMLS database by devoting those resources to applicants who are responsive and diligent concerning their pending license applications.

An amendment is needed to add an authority citation because 32-9-120, MCA, provides authority only for rulemaking concerning the issue of application abandonment. The amendments address a slightly broader spectrum of related issues not limited to abandonment. The addition of 32-9-134, MCA, as an implemented citation is necessary because provisions in this rule distinguish abandonment of initial applications and expiration, reinstatement, and termination of licenses.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Lorraine A. Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., June 11, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., June 11, 2015.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 230 persons based on the 2,303 existing mortgage licensees.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park Ave., Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed rule amendments will not significantly and directly affect small businesses.

By: Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 4, 2015.