

Act No. 93  
Public Acts of 1993  
Approved by the Governor  
July 12, 1993  
Filed with the Secretary of State  
July 13, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Joe Young, Jr. and Murphy

# **ENROLLED HOUSE BILL No. 4269**

AN ACT to amend the title and sections 2501, 2512, and 2515 of Act No. 299 of the Public Acts of 1980, entitled as amended "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of the department of licensing and regulation and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," section 2501 as amended by Act No. 269 of the Public Acts of 1990 and section 2515 as amended by Act No. 83 of the Public Acts of 1981, being sections 339.2501, 339.2512, and 339.2515 of the Michigan Compiled Laws; and to add sections 2517 and 2518.

*The People of the State of Michigan enact:*

Section 1. The title and sections 2501, 2512, and 2515 of Act No. 299 of the Public Acts of 1980, section 2501 as amended by Act No. 269 of the Public Acts of 1990 and section 2515 as amended by Act No. 83 of the Public Acts of 1981, being sections 339.2501, 339.2512, and 339.2515 of the Michigan Compiled Laws, are amended and sections 2517 and 2518 are added to read as follows:

## **TITLE**

An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts.

Sec. 2501. As used in this article:

(a) "Real estate broker" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(b) "Real estate salesperson" means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

(c) "Employ" or "employment" means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article.

(d) "Independent contractor relationship" means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

Sec. 2512. A licensee shall be subject to the penalties set forth in article 6 who commits 1 of the following:

(a) Acting for more than 1 party in a transaction without the knowledge of the parties.

(b) Representing or attempting to represent a real estate broker other than the employer, without the express knowledge and consent of the employer.

(c) Failure to account for or to remit money coming into the licensee's possession which belongs to others.

(d) Changing a business location without notification to the department.

(e) In the case of a real estate broker, failing to return a real estate salesperson's license within 5 days as provided in section 2507.

(f) Except as provided in section 2512b, sharing or paying a fee, commission, or valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.

(g) Failing to deposit in a custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:

(i) A deposit or other money accepted by a person, partnership, corporation, or association holding a real estate broker's license under this article shall be retained by a real estate broker pending consummation or termination of the transaction involved, and shall be accounted for in the full amount of the money at the time of the consummation or termination.

(ii) A real estate salesperson, on receipt of a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of a real estate broker-employer, shall pay over the deposit or other money to the real estate broker.

(iii) A real estate broker shall not permit an advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with funds on deposit belonging to the real estate broker.

(iv) A real estate broker shall deposit within 2 banking days after the signing of a purchase agreement by all parties, but not later than 5 days after receipt, money belonging to others in a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.

(v) A real estate broker shall keep records of funds deposited in a custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall provide for withdrawal of funds without previous notice. This act and the rules promulgated pursuant to this act shall not be construed to prohibit the deposit of money accepted under this act in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.

Sec. 2515. (1) A listing agreement entered into between the broker and seller or lessor of property shall contain language that discrimination because of religion, race, color, national origin, age, sex, handicap, familial status, or marital status on the part of the real estate broker, real estate salesperson, seller, or lessor is prohibited.

(2) This article shall not authorize the department to assume any facts not in evidence or compel a party to prove innocence of charges before the charges have been proven by the department. The department shall at all times bear the burden of proof to all charges made against a party.

(3) This article shall not diminish the right of a party to pursue and utilize direct and immediate legal or equitable remedies in a court of competent jurisdiction.

Sec. 2517. (1) A licensee shall disclose to a potential buyer or seller all types of agency relationships available and the licensee's duties that each agency relationship creates, prior to the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller.

(2) The disclosure of the type of agency relationship shall be in writing and substantially conform to the following:

#### Disclosure Regarding Real Estate Agency Relationships

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

#### Seller's Agents

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller.

#### Buyer's Agents

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. Buyer's agents and subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer.

#### Dual Agents

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller, and the buyer.

#### Licensee Disclosure

I hereby disclose that the agency status I/we have with the buyer and/or seller below is:

- ☐ Seller's Agent
- ☐ Buyer's Agent
- ☐ Dual Agent
- ☐ None of the above

Further, this form was provided to them before disclosure of any confidential information.

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

### Acknowledgment

By signing below, the parties confirm that they have received and read the information in this agency disclosure statement and that this form was provided to them before the disclosure of any confidential information specific to the potential sellers or buyers.

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

(3) This article does not prevent a licensee from acting as a transaction coordinator upon proper notice to all parties to a real estate transaction.

(4) As used in this section:

(a) "Buyer" means a purchaser, tenant, or lessee of any legal or equitable interest in real estate.

(b) "Buyer's agent" means a licensee acting on behalf of the buyer who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law.

(c) "Dual agent" means a licensee who is acting as the agent of both the buyer and the seller and provides services to complete a real estate transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.

(d) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate.

(e) "Seller" means the equitable or legal owner of real estate.

(f) "Seller's agent" means a licensee acting on behalf of the seller who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.

(g) "Transaction coordinator" means a licensee who is not acting as the agent of either the buyer or the seller.

Sec. 2518. An action shall not be brought against a real estate broker, an associate broker, or a real estate salesperson under the following circumstances:

(a) For failure to disclose to a purchaser or lessee of real property that a former occupant has or is suspected of having a handicap as that term is defined and interpreted under, and disclosure of which would constitute unlawful discrimination under, sections 804, 805, 806, or 818 of the fair housing act, title VIII of Public Law 90-284, 42 U.S.C. 3604, 3605, 3606, and 3617.

(b) For failure to disclose to a purchaser or lessee of real property that the real property was or was suspected to have been the site of a homicide, suicide, or other occurrence prohibited by law which had no material effect on the condition of the real property or improvements located on the real property.

Section 2. Section 2517 of Act No. 299 of the Public Acts of 1980, as added by this amendatory act, shall take effect January 1, 1994.

This act is ordered to take immediate effect.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.