

Act No. 125
Public Acts of 1994
Approved by the Governor
May 15, 1994
Filed with the Secretary of State
May 16, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Dunaskiss

ENROLLED SENATE BILL No. 155

AN ACT to amend sections 2512 and 2601 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 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 section 2512 as amended by Act No 177 of the Public Acts of 1993 and section 2601 as amended by Act No 269 of the Public Acts of 1990 being sections 339 2512 and 339 2601 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Sections 2512 and 2601 of Act No 299 of the Public Acts of 1980 section 2512 as amended by Act No 177 of the Public Acts of 1993 and section 2601 as amended by Act No 269 of the Public Acts of 1990 being sections 339 2512 and 339 2601 of the Michigan Compiled Laws are amended to read as follows

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) Beginning January 1 1994 failing to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction
- (c) Representing or attempting to represent a real estate broker other than the employer without the express knowledge and consent of the employer
- (d) Failure to account for or to remit money coming into the licensee s possession which belongs to others
- (e) Changing a business location without notification to the department
- (f) 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
- (g) 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
- (h) Conducting or developing a market analysis not in compliance with the requirements imposed in section 2601(a)(ii)

(i) 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 2601 As used in this article

(a) Appraisal means an opinion conclusion or analysis relating to the value of real property but does not include any of the following

(i) A market analysis performed by a person licensed under article 25 solely for the purpose of assisting a customer or potential customer in determining the potential sale purchase or listing price of real property or the rental rate of real property as long as a fee or any other valuable consideration is not charged for that analysis

(ii) A market analysis of real property for a fee performed by a broker or associate broker licensed under article 25 which does not involve a federally related transaction if the market analysis is put in writing and it states in boldface print This is a market analysis not an appraisal and was prepared by a licensed real estate broker or associate broker not a licensed appraiser Failure to do so results in the individual being subject to the penalties set forth in article 6

(iii) An assessment of the value of real property performed on behalf of a local unit of government authorized to impose property taxes when performed by an assessor certified under section 10d of the general property tax act Act No 206 of the Public Acts of 1893 being section 211 10d of the Michigan Compiled Laws or an individual employed in an assessing capacity

(b) Appraiser means an individual engaged in or offering to engage in the development and communication of appraisals of real property

(c) Federal financial institution regulatory agency means the board of governors of the federal reserve system the federal deposit insurance corporation the office of the comptroller of the currency the office of thrift supervision or the national credit union administration

(d) Federally related transaction means any real property related financial transaction in which a federal financial institution regulatory agency or the resolution trust corporation engages in contracts for or regulates and which requires the services of an appraiser under any of the following

(i) 12 C F R part 323 adopted by the federal deposit insurance corporation

(ii) 12 C F R parts 208 and 225 adopted by the board of governors of the federal reserve system

(iii) 12 C F R parts 701 722 and 741 adopted by the national credit union administration

(iv) 12 C F R part 34 adopted by the office of the comptroller of the currency

(v) 12 C F R parts 506 545 563 564 and 571 adopted by the office of thrift supervision

(vi) 12 C F R part 1608 adopted by the resolution trust corporation

(e) Real estate valuation specialist means an individual licensed under section 2611 to perform appraisals of real property not involving federally related transactions

(f) Real property means an identified tract or parcel of land including improvements on that land as well as any interests benefits or rights inherent in the land

(g) Real property related financial transaction means any of the following

(i) A sale lease purchase investment in or exchange of real property or the financing of real property

(ii) A refinancing of real property

(iii) The use of real property as security for a loan or investment including mortgage backed securities

(h) Residential real property means real property used as a residence containing a dwelling that has not more than 4 living units

(i) State certified real estate appraiser means an individual who is licensed under section 2615 to appraise all types of real property including nonresidential real property involving federally related transactions

(j) State licensed real estate appraiser means an individual who is licensed under section 2613 to appraise real property including but not limited to residential real property involving federally related transactions

(k) Uniform standards of professional appraisal practice means those standards relating to real property published by the appraisal foundation and adopted by the appraisal foundation on June 5 1990

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor