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CLARIFY DEADLINE TO DEPOSIT REAL ESTATE EARNEST MONEY

House Bill 5643 with committee amendment
First Analysis (3-14-96)

Sponsor: Rep. Susan Grimes Munsell
Committee: Commerce

THE APPARENT PROBLEM:

When someone wants to buy real estate, he or she usually submits to the seller a purchase offer on the property as well as "earnest money"--typically, some percentage of the property's asking price--which conveys to the seller the prospective buyer's serious interest in the property. Under the Occupational Code, a real estate broker is required to deposit the buyer's earnest money (usually, a personal check) into a custodial trust or escrow account maintained by the broker within two business days after a purchase agreement has been signed by both parties, but no later than five days after he or she receives the money from the prospective buyer. (This money later would become part of the downpayment on the property if, after the seller accepts the offer, the buyer is able to secure a mortgage and work out other legal aspects of the transaction.) In most cases, a purchase offer will be agreed to within a few days of its initial submission, upon which the broker has two days to deposit the earnest money. Sometimes, however, brokers find themselves in a difficult position if by the fifth day an offer still has not been agreed to. If a broker then deposits the money as required and the deal falls through, the buyer may not be able to get his or her money back until the check clears--which could take a week or more, particularly if the buyer is from another state or country. But if the broker decides to wait to deposit the money until an offer is actually accepted, he or she would be in technical violation of the law. Some people believe this problem could be resolved by eliminating the requirement for a real estate broker to deposit earnest money within five days of receiving it and, instead, simply requiring it to be deposited within two banking days after he or she was notified that a purchase offer had been accepted.

THE CONTENT OF THE BILL:

The Occupational Code currently establishes penalties for licensed real estate brokers who commit certain prohibited activities, including failing to deposit earnest money paid toward the purchase of real estate into a qualified custodial trust or escrow account maintained by the broker. Currently, the act specifies that such money must be deposited within two "banking days" (which are not necessarily the same as "business days") after an offer to purchase real estate is accepted by all parties, "but not later than 5 days after receipt." The bill would delete the phrase "but not later than 5 days after receipt," and would require that earnest money be deposited within two banking days after a broker had received notice that an offer was accepted by all parties.

MCL 339.2512

FISCAL IMPLICATIONS:

The Department of Commerce says the bill would not affect state or local budget expenditures. (3-13-96)

ARGUMENTS:

For:

The bill would make a simple change to the Occupational Code that would enable real estate brokers to gain more control over some real estate transactions in which they become involved. Currently, when a prospective buyer of real estate makes an offer to purchase property, he or she submits with the offer some percentage of the property's asking price (known as earnest money) to indicate his or her level of interest in the property. In most cases, the parties will agree to some kind of offer within days after the initial offer is made, enabling the broker to then deposit the earnest money into a financial institution account where it remains until the deal is consummated. But if the process of agreeing to an offer takes more than five days, the broker then must decide either to deposit the money as required by law or wait for a deal to be struck. Depending on the specific circumstances, some brokers apparently choose not to deposit the check after five days, fearing that their client would become upset if--after the check was deposited--the deal fell through, at which point the client would have to wait a week or more for the check to clear in order to get the earnest money back. This can become burdensome if the client needs to purchase property quickly (for instance, if he or she is moving from another state due to a work transfer) and a significant amount of money is tied up in the failed offer. The bill would eliminate this problem both for real estate brokers and their prospective clients by requiring earnest money to be deposited within two banking days after the broker was notified that an offer to purchase property had been accepted.

Against:

The act specifies a date certain by which earnest money must be deposited in order to protect it from being stolen or lost by the broker. Under the bill, someone who made an offer to purchase property would stand a higher risk of losing his or her earnest money the longer it took the seller to agree to an offer.

POSITIONS:

The Michigan Association of Realtors supports the bill. (3-13-96)

The Department of Commerce has not yet taken a position on the bill. (3-13-96)

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.