Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5643 (as reported with amendment)
Sponsor: Representative Susan Grimes Munsell
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 9-20-96

RATIONALE

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 into a custodial trust or escrow account maintained by the broker, within two banking 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.

In most cases, a purchase offer is agreed to (or rejected) within a few days of its initial submission, which gives the broker 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 accepted. If a broker then deposits the money, as required, and the deal falls through, the unsuccessful buyer may be delayed in getting his or her money back. If the broker decides to wait to deposit the money until an offer is actually accepted, however, he or she is in violation of the law for failing to meet the five-day deadline. Some people believe that this problem could be resolved by eliminating the requirement that a real estate broker deposit earnest money within five days of receiving it and, instead, simply requiring it to be deposited within two banking days after the broker was notified that a purchase offer had been accepted.

CONTENT

The bill would amend the Occupational Code to revise the deadline for a real estate broker's deposit of money belonging to others and put forth in connection with a purchase offer.

Currently under the Code, within two banking days after the signing of a purchase agreement by all parties, but not later than five days receipt, a real estate broker must deposit money belonging to others in a separate custodial trust or escrow account maintained by the broker with a bank, savings and loan association, credit union, or recognized depository. When the transaction involved is consummated or terminated, the broker must account for the full amount received. Under the bill, a real estate broker would have to deposit the money within two banking days after he or she received notice that an offer to purchase was accepted by all parties.

The bill would take effect on January 1, 1997.

MCL 339.2512

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would make a simple change to the Occupational Code that would allow real estate brokers to facilitate transactions with more control over the disposition of their clients' earnest money. Depending on the specific circumstances of a sale negotiation, some brokers apparently choose not to deposit a prospective buyer's earnest money after five days, fearing that their client would be inconvenienced if, after the check was deposited, the deal fell through, at which point the client would have to wait for the check to clear in order to get the earnest money back. This apparently can become particularly 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 for both real estate brokers and their clients by requiring only that earnest money be deposited within two banking days after the broker was notified that an offer to purchase property had been accepted.

Opposing Argument

The Code 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, a person who made an offer to purchase property could stand a higher risk of losing his or her earnest money the longer it took the seller to agree to an offer.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.