

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5719 (Substitute H-1 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Family and Civil Law
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 5-23-00

CONTENT

The bill would amend Article 25 (Real Estate Brokers and Salespersons) of the Occupational Code to permit a broker and a client to enter into a designated agency agreement, naming an individual salesperson or associate broker as that client's designated agent; specify the duties of a designated agent with respect to affiliated licensees (salespersons or associate brokers employed by the same broker); and include an affiliated licensee disclosure on the statutory form for disclosure of types of agency relationships.

The bill specifies that, in the absence of a written designated agency agreement, a client would be considered to have an agency relationship with the broker and all affiliated licensees.

A designated agency agreement would have to contain the name of all associate brokers who were authorized to act as supervisory brokers. ("Supervisory broker" would mean an associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.)

If designated agents who were affiliated licensees represented different parties in the same real estate transaction, the broker and all supervisory brokers would be considered disclosed consensual dual agents for that transaction. (Under Article 25, a real estate licensee may be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent of both the seller and the buyer. A dual agent does not have the full range of fiduciary duties owed by a buyer's agent and a seller's agent.)

Designated agents who were affiliated licensees representing different parties in the same transaction would have to notify their clients that their broker represented both buyer and seller before an offer to purchase was made or presented.

Except as provided above, a client with a designated agency agreement would not be considered to have an agency relationship with any affiliated licensees of the designated agent. Two designated agents who were affiliated licensees each could represent a different party in the same transaction and would not be considered dual agents. A designated agent's knowledge of a client's confidential information would not be imputed to any affiliated licensee not having an agency relationship with that client.

A designated agent could not disclose confidential information of a client to any licensee, whether or not an affiliated licensee, although a designated agent could disclose to any supervisory broker a client's confidential information for purposes of seeking advice or assistance for the client's benefit. A licensee representing a client in an agency capacity would not breach any duty or obligation owed to that client by failing to disclose to the client information obtained through a present or prior agency relationship.

A listing agreement or a buyer's agent agreement could be amended to establish a designated agency relationship, to change a designated agent, or to change supervisory brokers at any time pursuant to a written addendum signed by the parties.

Under Article 25, a licensee must disclose to a potential buyer or seller all types of agency relationships available and the licensee's duties that each agency relationship creates, before the potential buyer or seller reveals to the licensee any confidential information specific to that party. The disclosure of the type of agency relationships must be in writing and substantially conform to a form described in the Code. Under the bill, this form would include the following language:

Affiliated Licensee Disclosure (check one)

____ Only the licensee's broker and a named supervisory broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

____ All affiliated licensees have the same agency relationship as the licensee named below.

MCL 339.2517

Legislative Analyst: S. Lowe

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.