

REPRINT

SUBSTITUTE FOR
SENATE BILL NO. 1313

(As Passed the Senate September 28, 2000)

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2512 and 2517 (MCL 339.2512 and 339.2517),
section 2512 as amended by 1996 PA 430 and section 2517 as
amended by 2000 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2512. A licensee who commits 1 or more of the follow-
2 ing is subject to the penalties set forth in article 6:

3 (a) Except in a case involving property management, acts for
4 more than 1 party in a transaction without the knowledge of the
5 parties.

6 (b) ~~Beginning January 1, 1994, fails~~ FAILS to provide a
7 written agency disclosure to a prospective buyer or seller in a
8 real estate transaction AS DEFINED IN SECTION 2517.

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1 (c) Represents or attempts to represent a real estate broker
2 other than the employer without the express knowledge and consent
3 of the employer.

4 (d) Fails to account for or to remit money coming into the
5 licensee's possession which belongs to others.

6 (e) Changes a business location without notification to the
7 department.

8 (f) In the case of a real estate broker, fails to return a
9 real estate salesperson's license within 5 days as provided in
10 section 2507.

11 (g) In the case of a licensee engaged in property manage-
12 ment, violates section 2512c(2), (5), or (6).

13 (h) Except as provided in section 2512b, shares or pays a
14 fee, commission, or other valuable consideration to a person not
15 licensed under this article including payment to any person pro-
16 viding the names of, or any other information regarding, a poten-
17 tial seller or purchaser of real estate but excluding payment for
18 the purchase of commercially prepared lists of names. However, a
19 licensed real estate broker may pay a commission to a licensed
20 real estate broker of another state if the nonresident real
21 estate broker does not conduct in this state a negotiation for
22 which a commission is paid.

23 (i) Conducts or develops a market analysis not in compliance
24 with section 2601(a)(ii).

25 (j) Except in the case of property management accounts,
26 fails to deposit in a custodial trust or escrow account money

1 belonging to others coming into the hands of the licensee in
2 compliance with the following:

3 (i) A real estate broker shall retain a deposit or other
4 money accepted by a person, partnership, corporation, or associa-
5 tion holding a real estate broker's license under this article
6 pending consummation or termination of the transaction involved
7 and shall account for the full amount of the money at the time of
8 the consummation or termination of the transaction.

9 (ii) A real estate salesperson shall pay over to the real
10 estate broker, upon receipt, a deposit or other money on a trans-
11 action in which the real estate salesperson is engaged on behalf
12 of the real estate broker.

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

17 (iv) A real estate broker shall deposit, within 2 banking
18 days after the broker has received notice that an offer to pur-
19 chase is accepted by all parties, money belonging to others in a
20 separate custodial trust or escrow account maintained by the real
21 estate broker with a bank, savings and loan association, credit
22 union, or recognized depository until the transaction involved is
23 consummated or terminated, at which time the real estate broker
24 shall account for the full amount received.

25 (v) A real estate broker shall keep records of funds depos-
26 ited in a custodial trust or escrow account, which records shall
27 indicate clearly the date and from whom the money was received,

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1 the date deposited, the date of withdrawal, and other pertinent
2 information concerning the transaction, and shall show clearly
3 for whose account the money is deposited and to whom the money
4 belongs. The records shall be subject to inspection by the
5 department. A separate custodial trust or escrow account shall
6 designate the real estate broker as trustee, and the custodial
7 trust or escrow account shall provide for withdrawal of funds
8 without previous notice. This article and the rules promulgated
9 pursuant to this article do not prohibit the deposit of money
10 accepted under this section in a noninterest bearing account of a
11 state or federally chartered savings and loan association or a
12 state or federally chartered credit union.

13 Sec. 2517. (1) A licensee shall disclose to a potential
14 buyer or seller IN A REAL ESTATE TRANSACTION OR POTENTIAL REAL
15 ESTATE TRANSACTION all types of agency relationships available
16 and the licensee's duties that each agency relationship creates
17 before the disclosure by the potential buyer or seller to the
18 licensee of any confidential information specific to that poten-
19 tial buyer or seller.

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

22 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

23 Before you disclose confidential information to a real
24 estate licensee regarding a real estate transaction, you should
25 understand what type of agency relationship you have with that
26 licensee. A REAL ESTATE TRANSACTION IS A TRANSACTION INVOLVING

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1 THE SALE OR LEASE OF ANY LEGAL OR EQUITABLE INTEREST IN REAL
2 ESTATE CONSISTING OF NOT LESS THAN 1 OR NOT MORE THAN 4 RESIDEN-
3 TIAL DWELLING UNITS OR CONSISTING OF A BUILDING SITE FOR A RESI-
4 DENTIAL UNIT ON EITHER A LOT AS DEFINED IN SECTION 102 OF THE
LAND DIVISION ACT, 1967 PA 288, MCL 560.102, OR A CONDOMINIUM
UNIT AS DEFINED IN SECTION 4 OF THE CONDOMINIUM ACT, 1978 PA 59,
MCL 559.104.

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

9 Seller's Agents

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

18 Buyer's Agents

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

23 Dual Agents

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

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

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

7 Licensee Disclosure (check one)

8 I hereby disclose that the agency status of the licensee
9 named below is:

10 _____ Seller's Agent

11 _____ Buyer's Agent

12 _____ Dual Agent

13 _____ None of the above

14 Affiliated Licensee Disclosure (check one)

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

21 _____ All affiliated licensees have the same agency relation-
22 ship as the licensee named below.

23 Further, this form was provided to the buyer or seller
24 before disclosure of any confidential information.

25 _____

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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) A broker and a client may enter into a designated agency agreement. In the absence of a written designated agency agreement, a client is considered to have an agency relationship with the broker and all affiliated licensees.

(5) A designated agency agreement shall contain the name of all associate brokers who are authorized to act as supervisory brokers. If designated agents who are affiliated licensees represent different parties in the same real estate transaction, the broker and all supervisory brokers are considered disclosed consensual dual agents for that real estate transaction. Designated agents who are affiliated licensees representing

1 different parties in the same transaction shall notify their
2 clients that their broker represents both buyer and seller before
3 an offer to purchase is made or presented.

4 (6) Except as otherwise provided in subsection (5), a client
5 with a designated agency agreement is not considered to have an
6 agency relationship with any affiliated licensees of the desig-
7 nated agent. Two designated agents who are affiliated licensees
8 may each represent a different party in the same transaction and
9 shall not be considered dual agents. The designated agent's
10 knowledge of confidential information of a client is not imputed
11 to any affiliated licensee not having an agency relationship with
12 that client.

13 (7) A designated agent shall not disclose confidential
14 information of a client to any licensee, whether or not an affil-
15 iated licensee, except that a designated agent may disclose to
16 any supervisory broker confidential information of a client for
17 purposes of seeking advice or assistance for the benefit of the
18 client. A licensee who represents a client in an agency capacity
19 does not breach any duty or obligation owed to that client by
20 failing to disclose to that client information obtained through a
21 present or prior agency relationship.

22 (8) A listing agreement or a buyer's agency agreement may be
23 amended to establish a designated agency relationship, to change
24 a designated agent, or to change supervisory brokers at any time
25 pursuant to a written addendum signed by the parties.

26 (9) As used in this section:

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1 (a) "Affiliated licensees" means individuals licensed as
2 salespersons or associate brokers who are employed by the same
3 broker.

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

6 (c) "Buyer's agent" means a licensee acting on behalf of the
7 buyer IN A REAL ESTATE TRANSACTION who undertakes to accept the
8 responsibility of serving the buyer consistent with those fidu-
9 ciary duties existing under common law.

10 (d) "Designated agent" means an individual salesperson or an
11 associate broker who is designated by the broker as the client's
12 legal agent pursuant to a designated agency agreement.

13 (e) "Designated agency agreement" means a written agreement
14 between a broker and a client in which an individual salesperson
15 or associate broker affiliated with that broker is named as that
16 client's designated agent.

17 (f) "Dual agent" means a licensee who is acting as the agent
18 of both the buyer and the seller and provides services to com-
19 plete a real estate transaction without the full range of fidu-
20 ciary duties owed by a buyer's agent and a seller's agent.

21 (g) "Real estate transaction" means the sale or lease of any
22 legal or equitable interest in real estate WHERE THE INTEREST IN
23 REAL ESTATE CONSISTS OF NOT LESS THAN 1 OR NOT MORE THAN 4 RESI-
24 DENTIAL DWELLING UNITS OR CONSISTS OF A BUILDING SITE FOR A RESI-
25 DENTIAL UNIT ON EITHER A LOT AS DEFINED IN SECTION 102 OF THE
LAND DIVISION ACT, 1967 PA 288, MCL 560.102, OR A CONDOMINIUM
UNIT AS DEFINED IN SECTION 4 OF THE CONDOMINIUM ACT, 1978 PA 59,
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26 (h) "Seller" means the equitable or legal owner of real
27 estate.

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1 (i) "Seller's agent" means a licensee acting on behalf of
2 the seller IN A REAL ESTATE TRANSACTION who undertakes to accept
3 the responsibility of serving the seller consistent with those
4 fiduciary duties existing under common law.

5 (j) "Supervisory broker" means an associate broker desig-
6 nated in a written agency agreement to act in a supervisory role
7 in an agency relationship.

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