



HOUSE BILL No. 5719

May 2, 2000, Introduced by Reps. Richner, Raczkowski, Frank, Howell, Sheltroun, Neumann, Woodward, Sanborn, Pestka, Pappageorge, Shulman, Green, DeRossett, Schermesser, DeHart, Minore, Voorhees, Rivet, Schauer, O'Neil, Callahan and Daniels and referred to the Committee on Family and Civil Law.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 2517 (MCL 339.2517), as added by 1993 PA 93.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2517. (1) A licensee shall disclose to a potential
2 buyer or seller all types of agency relationships available and
3 the licensee's duties that each agency relationship creates —
4 ~~prior to~~ BEFORE the disclosure by the potential buyer or seller
5 to the licensee of any confidential information specific to that
6 potential buyer or seller.

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

1 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

2 Before you disclose confidential information to a real
3 estate licensee regarding a real estate transaction, you should
4 understand what type of agency relationship you have with that
5 licensee.

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

10 Seller's Agents

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

19 Buyer's Agents

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

24 Dual Agents

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

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 ~~I/we have with the~~
 9 ~~buyer and/or seller~~ OF THE LICENSEE 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 ~~them~~ THE BUYER OR
 24 SELLER before disclosure of any confidential information.

25 _____
 26 Licensee Date
 27 _____
 28 _____
 29 _____

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.

(6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A CLIENT WITH A DESIGNATED AGENCY AGREEMENT IS NOT CONSIDERED TO HAVE AN AGENCY RELATIONSHIP WITH ANY AFFILIATED LICENSEES OF THE

1 DESIGNATED AGENT. DESIGNATED AGENTS WHO ARE AFFILIATED LICENSEES
2 MAY REPRESENT DIFFERENT PARTIES IN THE SAME TRANSACTION AND ARE
3 NOT CONSIDERED DUAL AGENTS. THE DESIGNATED AGENT'S KNOWLEDGE OF
4 CONFIDENTIAL INFORMATION OF A CLIENT IS NOT IMPUTED TO ANY AFFIL-
5 IATED LICENSEE NOT HAVING AN AGENCY RELATIONSHIP WITH THAT
6 CLIENT.

7 (7) A DESIGNATED AGENT SHALL NOT DISCLOSE CONFIDENTIAL
8 INFORMATION OF A CLIENT TO ANY LICENSEE, WHETHER OR NOT AN AFFIL-
9 IATED LICENSEE, EXCEPT THAT A DESIGNATED AGENT MAY DISCLOSE TO
10 ANY SUPERVISORY BROKER CONFIDENTIAL INFORMATION OF A CLIENT FOR
11 PURPOSES OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE
12 CLIENT. A LICENSEE WHO REPRESENTS A CLIENT IN AN AGENCY CAPACITY
13 DOES NOT BREACH ANY DUTY OR OBLIGATION OWED TO THAT CLIENT BY
14 FAILING TO DISCLOSE TO THAT CLIENT INFORMATION OBTAINED THROUGH A
15 PRESENT OR PRIOR AGENCY RELATIONSHIP.

16 (8) A LISTING AGREEMENT OR A BUYER'S AGENCY AGREEMENT MAY BE
17 AMENDED TO ESTABLISH A DESIGNATED AGENCY RELATIONSHIP, TO CHANGE
18 A DESIGNATED AGENT, OR TO CHANGE SUPERVISORY BROKERS AT ANY TIME
19 PURSUANT TO A WRITTEN ADDENDUM SIGNED BY THE PARTIES.

20 (9) ~~-(4)-~~ As used in this section:

21 (A) "AFFILIATED LICENSEES" MEANS INDIVIDUALS LICENSED AS
22 SALESPERSONS OR ASSOCIATE BROKERS WHO ARE EMPLOYED BY THE SAME
23 BROKER.

24 (B) ~~-(a)-~~ "Buyer" means a purchaser, tenant, or lessee of
25 any legal or equitable interest in real estate.

26 (C) ~~-(b)-~~ "Buyer's agent" means a licensee acting on behalf
27 of the buyer who undertakes to accept the responsibility of

1 serving the buyer consistent with those fiduciary duties existing
2 under common law.

3 (D) "DESIGNATED AGENT" MEANS AN INDIVIDUAL SALESPERSON OR AN
4 ASSOCIATE BROKER WHO IS DESIGNATED BY THE BROKER AS THE CLIENT'S
5 LEGAL AGENT PURSUANT TO A DESIGNATED AGENCY AGREEMENT.

6 (E) "DESIGNATED AGENCY AGREEMENT" MEANS A WRITTEN AGREEMENT
7 BETWEEN A BROKER AND A CLIENT IN WHICH AN INDIVIDUAL SALESPERSON
8 OR ASSOCIATE BROKER AFFILIATED WITH THAT BROKER IS NAMED AS THAT
9 CLIENT'S DESIGNATED AGENT.

10 (F) ~~-(c)-~~ "Dual agent" means a licensee who is acting as the
11 agent of both the buyer and the seller and provides services to
12 complete a real estate transaction without the full range of
13 fiduciary duties owed by a buyer's agent and a seller's agent.

14 (G) ~~-(d)-~~ "Real estate transaction" means the sale or lease
15 of any legal or equitable interest in real estate.

16 (H) ~~-(e)-~~ "Seller" means the equitable or legal owner of
17 real estate.

18 (I) ~~-(f)-~~ "Seller's agent" means a licensee acting on behalf
19 of the seller who undertakes to accept the responsibility of
20 serving the seller consistent with those fiduciary duties exist-
21 ing under common law.

22 (J) "SUPERVISORY BROKER" MEANS AN ASSOCIATE BROKER DESIG-
23 NATED IN A WRITTEN AGENCY AGREEMENT TO ACT IN A SUPERVISORY ROLE
24 IN AN AGENCY RELATIONSHIP.

25 (K) ~~-(g)-~~ "Transaction coordinator" means a licensee who is
26 not acting as the agent of either the buyer or the seller.