

Act No. 436
Public Acts of 2000
Approved by the Governor
January 9, 2001
Filed with the Secretary of State
January 9, 2001
EFFECTIVE DATE: January 9, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator McCotter

ENROLLED SENATE BILL No. 1313

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," 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:

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

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

(b) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in section 2517.

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

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

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

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

(g) In the case of a licensee engaged in property management, violates section 2512c(2), (5), or (6).

(h) Except as provided in section 2512b, shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.

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

(j) Except in the case of property management accounts, fails to deposit in a custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:

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

(ii) A real estate salesperson shall pay over to the real estate broker, upon receipt, a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.

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

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

(v) A real estate broker shall keep records of funds deposited in a custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall provide for withdrawal of funds without previous notice. This article and the rules promulgated pursuant to this article do not prohibit the deposit of money accepted under this section in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.

Sec. 2517. (1) A licensee shall disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the licensee's duties that each agency relationship creates before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller.

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

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential 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.

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

Seller's Agents

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

Buyer's Agents

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

Dual Agents

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

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

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

Licensee Disclosure (check one)

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

- ☐ Seller's Agent
☐ Buyer's Agent
☐ Dual Agent
☐ None of the above

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.

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

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

(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 designated agent. Two designated agents who are affiliated licensees may each represent a different party in the same transaction and shall not be considered dual agents. The designated agent's knowledge of confidential information of a client is not imputed to any affiliated licensee not having an agency relationship with that client.

(7) A designated agent shall not disclose confidential information of a client to any licensee, whether or not an affiliated licensee, except that a designated agent may disclose to any supervisory broker confidential information of a client for purposes of seeking advice or assistance for the benefit of the client. A licensee who represents a client in an agency capacity does not breach any duty or obligation owed to that client by failing to disclose to that client information obtained through a present or prior agency relationship.

(8) A listing agreement or a buyer's agency agreement may 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.

(9) As used in this section:

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

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

(c) "Buyer's agent" means a licensee acting on behalf of the buyer in a real estate transaction who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law.

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

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

(f) "Dual agent" means a licensee who is acting as the agent of both the buyer and the seller and provides services to complete a real estate transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.

(g) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate where the interest in real estate consists of not less than 1 or not more than 4 residential dwelling units or consists of a building site for a residential 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.

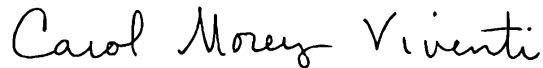
(h) "Seller" means the equitable or legal owner of real estate.

(i) "Seller's agent" means a licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.

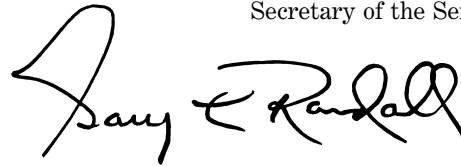
(j) "Supervisory broker" means an associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.

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

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.