



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

REAL ESTATE BROKERS: DEPOSITS TO OTHER ESCROWEES

House Bill 4987 as introduced
First Analysis (11-27-01)

Sponsor: Rep. Michael Bishop
Committee: Commerce

THE APPARENT PROBLEM:

According to representatives of realtors, if a deposit stemming from a real estate transaction (e.g., so-called earnest money from a buyer) is intended to be deposited in an escrow account maintained by someone other than the real estate broker, the broker is not allowed to handle the deposit. For example, if the buyer makes out a check to a title company, as reportedly is not uncommon, the broker cannot as a service to the customer carry the deposit to the title insurance company. The Occupational Code is understood to say that a real estate broker can deposit money belonging to others only in a separate custodial trust or escrow account maintained by the broker with a bank or other recognized depository until a transaction is consummated or terminated. The code is understood not to permit a real estate broker to deposit such money with another escrowee, even when that is the desire of all parties. There is an attorney general's opinion on this subject: number 7064, issued on October 27, 2000 (See [Background Information](#)). Realtors say this is an absurd situation resulting from an outmoded statute that appears to assume that only brokers will maintain escrow accounts for real estate deposits.

THE CONTENT OF THE BILL:

The bill would amend a section of the Occupational Code that deals with licensed real estate brokers and salespersons in order to specify that in cases when a seller and purchaser have signed a purchase agreement providing that a deposit be held by an escrowee other than the real estate broker, a licensee in possession of the deposit would deliver the deposit to the named escrowee.

MCL 339.2512

BACKGROUND INFORMATION:

The attorney general issued opinion 7064 on October 27, 2000 in response to a request from Rep. Andy Neumann asking if under the Occupational Code, a

real estate broker could accept from a buyer an earnest money deposit check payable to a title insurance company. The opinion said a broker could not accept such a check. Real estate industry representatives say this opinion affirmed earlier interpretations from the Department of Consumer and Industry Services. The three-page opinion cited, among other things, the current requirements that:

- 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 consummation or termination of the transaction; and
- A real estate broker shall deposit, within two 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.

The attorney general, as a result of analyzing the legislative intent of these and related provisions, also said that the code did not prohibit a seller and buyer from agreeing to have an earnest money deposit held in an escrow account maintained with a title insurance company, "provided that a real estate broker is not involved in facilitating or handling the deposit".

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local units of government. (HFA fiscal note dated 10-30-01)

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ARGUMENTS:***For:***

The bill would correct the current situation whereby a real estate broker cannot handle a check made out by a buyer to an escrow account maintained by another party. The bill would simply allow a broker, for example, to carry a check from a customer made out to a title company to the title company for deposit. Under current law, brokers can only handle money belonging to others if they deposit it in an account that they maintain with a bank or similar institution. The bill recognizes that entities other than licensed brokers maintain escrow accounts for the use of parties to real estate transactions and that licensed real estate professionals, as part of their service to clients, should be allowed to transmit checks to the companies maintaining the escrow accounts.

POSITIONS:

The Michigan Association of Realtors supports the bill. (11-7-01)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.