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BILL ANALYSIS

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House Bill 4849 (Substitute H-1 as passed by the House)
House Bill 4850 (Substitute H-1 as passed by the House)
Sponsors: Representative Tonya Schuitmaker (H.B. 4849)
Representative Kevin Green (H.B. 4850)
House Committee: Regulatory Reform
Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 5-30-06

CONTENT

House Bill 4849 (H-1) would amend the Occupational Code to specify the minimum services that a real estate broker acting under a service provision agreement creating an exclusive agency relationship would have to provide to his or her client; and include a failure to provide the minimum services as a violation of the Code.

House Bill 4850 (H-1) would amend the Code to require the disclosure regarding real estate agency relationships to include a description of the duties an agent providing services under an exclusive service provision agreement would owe to a client.

The two bills are tie-barred to each other.

House Bill 4849 (H-1)

Under the bill, a real estate broker acting pursuant to a service provision agreement creating an exclusive agency relationship would be required, at minimum, to provide the following services to his or her client:

- When the real estate broker was representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.
- Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client sought to purchase or lease.
- Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement was executed by all parties and all contingencies were satisfied or waived.
- After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.
- Furnishing, or causing to be furnished, a complete and detailed closing statement, as required by R 339.22311 of the Michigan Administrative Code.

(Rule 339.22311 requires a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction to furnish, or cause to be furnished, to the buyer and seller a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party.)

Under the Code, a licensed real estate broker or salesperson who commits certain violations is subject to the penalties set forth in Article 6 of the Code (e.g., license suspension or revocation, a maximum civil fine of \$10,000, censure, probation, or a requirement to make restitution). Under the bill, failure to provide the required minimum services when providing services pursuant to an exclusive service provision agreement also would be subject to the penalties. A licensee providing real estate services pursuant to an agreement allowed under law that was not a service provision agreement creating an exclusive agency relationship would not be considered in violation of this provision.

As used in the bill, "service provision agreement" would mean an agreement between the broker and client that establishes an agency relationship through a listing agreement or a buyer agency agreement.

House Bill 4850 (H-1)

Under the Occupational Code, a licensed real estate broker or salesperson must 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 potential buyer or seller discloses to the licensee any confidential information specific to that potential buyer or seller.

The disclosure of the type of agency must be in writing and must conform substantially to the disclosure form included in the Code. The form defines a real estate transaction and lists the responsibilities of seller's agents, buyer's agents, and dual agents to their clients.

The bill would add to the disclosure form that an agent providing services under an exclusive service provision agreement owed the following duties to the client:

- When representing a seller or lessor, the marketing of the client's property in the agreed-upon manner.
- Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property.
- Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related notices or documents until a purchase or lease agreement was executed by all parties and all contingencies were satisfied or waived.
- After execution of a purchase agreement, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.
- Furnishing, or causing to be furnished, a complete and detailed closing statement.

MCL 339.2512 et al. (H.B. 4849)
339.2517 (H.B. 4850)

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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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.