

# HOUSE BILL No. 4417

March 6, 2007, Introduced by Reps. Farrah and Schuitmaker and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled  
"Occupational code,"  
by amending section 2517 (MCL 339.2517), as amended by 2000 PA  
436.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7       (2) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON  
8   PROVIDING SERVICES UNDER ANY SERVICE PROVISION AGREEMENT SHALL,

1 AT A MINIMUM, PROVIDE TO THE CLIENT THE DUTIES DESCRIBED IN  
2 SECTION 2512D(2) AND THE SERVICES DESCRIBED IN SECTION 2512D(3).

3 (3) THE SERVICES DESCRIBED IN SECTION 2512D(3)(B), (C), AND  
4 (D) MAY BE WAIVED UNDER A LIMITED SERVICE AGREEMENT.

5 (4) ~~(2)~~—The disclosure of the type of agency relationship  
6 shall be in writing and substantially conform to the following:

7 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

8 Before you disclose confidential information to a real  
9 estate licensee regarding a real estate transaction, you should  
10 understand what type of agency relationship you have with that  
11 licensee. A real estate transaction is a transaction involving  
12 the sale or lease of any legal or equitable interest in real  
13 estate consisting of not less than 1 or not more than 4  
14 residential dwelling units or consisting of a building site for a  
15 residential unit on either a lot as defined in section 102 of the  
16 land division act, 1967 PA 288, MCL 560.102, or a condominium  
17 unit as defined in section 4 of the condominium act, 1978 PA 59,  
18 MCL 559.104.

19 AN AGENT PROVIDING SERVICES UNDER ANY SERVICE PROVISION  
20 AGREEMENT OWES, AT A MINIMUM, THE FOLLOWING DUTIES TO THE CLIENT:

21 (A) THE EXERCISE OF REASONABLE CARE AND SKILL IN  
22 REPRESENTING THE CLIENT AND CARRYING OUT THE RESPONSIBILITIES OF  
23 THE AGENCY RELATIONSHIP.

24 (B) THE PERFORMANCE OF THE TERMS OF THE SERVICE PROVISION  
25 AGREEMENT.

1 (C) LOYALTY TO THE INTEREST OF THE CLIENT.

2 (D) COMPLIANCE WITH THE LAWS, RULES, AND REGULATIONS OF THIS  
3 STATE AND ANY APPLICABLE FEDERAL STATUTES OR REGULATIONS.

4 (E) THE RECOMMENDATION TO THE CLIENT TO OBTAIN EXPERT ADVICE  
5 RELATED TO MATERIAL MATTERS WHEN NECESSARY OR APPROPRIATE.

6 (F) AN ACCOUNTING IN A TIMELY MANNER OF ALL MONEY AND  
7 PROPERTY RECEIVED BY THE AGENT IN WHICH THE CLIENT HAS OR MAY  
8 HAVE AN INTEREST.

9 (G) CONFIDENTIALITY OF ALL INFORMATION, UNLESS DISCLOSED  
10 WITH THE CLIENT'S PERMISSION OR AS PROVIDED BY LAW, INCLUDING THE  
11 DUTY NOT TO DISCLOSE CONFIDENTIAL INFORMATION TO ANY LICENSEE WHO  
12 IS NOT AN AGENT OF THE CLIENT.

13 A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON ACTING  
14 PURSUANT TO A SERVICE PROVISION AGREEMENT SHALL PROVIDE THE  
15 FOLLOWING SERVICES TO HIS OR HER CLIENT:

16 (A) WHEN THE REAL ESTATE BROKER OR REAL ESTATE SALESPERSON  
17 IS REPRESENTING A SELLER OR LESSOR, THE MARKETING OF THE CLIENT'S  
18 PROPERTY IN THE MANNER AGREED UPON IN THE SERVICE PROVISION  
19 AGREEMENT.

20 (B) ACCEPTANCE OF DELIVERY AND PRESENTATION OF OFFERS AND  
21 COUNTEROFFERS TO BUY, SELL, OR LEASE THE CLIENT'S PROPERTY OR THE  
22 PROPERTY THE CLIENT SEEKS TO PURCHASE OR LEASE.

23 (C) ASSISTANCE IN DEVELOPING, COMMUNICATING, NEGOTIATING,  
24 AND PRESENTING OFFERS, COUNTEROFFERS, AND RELATED DOCUMENTS OR  
25 NOTICES UNTIL A PURCHASE OR LEASE AGREEMENT IS EXECUTED BY ALL  
26 PARTIES AND ALL CONTINGENCIES ARE SATISFIED OR WAIVED.

27 (D) AFTER EXECUTION OF A PURCHASE AGREEMENT BY ALL PARTIES,

1 ASSISTANCE AS NECESSARY TO COMPLETE THE TRANSACTION UNDER THE  
2 TERMS SPECIFIED IN THE PURCHASE AGREEMENT.

3 (E) FURNISHING, OR CAUSING TO BE FURNISHED, A COMPLETE AND  
4 DETAILED CLOSING STATEMENT AS REQUIRED BY R 339.22311 OF THE  
5 MICHIGAN ADMINISTRATIVE CODE.

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  
17 subagents will disclose to the seller known information about the  
18 buyer which may be used to the benefit of the seller. **CERTAIN**  
19 **INDIVIDUAL SERVICES MAY BE WAIVED BY THE SELLER THROUGH MEANS OF**  
20 **A LIMITED SERVICE AGREEMENT, WHICH ARE WAIVED BY THE SELLER**  
21 **SIGNING A SEPARATE WAIVER DOCUMENT.**

22 Buyer's Agents

23 A buyer's agent, under a buyer's agency agreement with the  
24 buyer, acts solely on behalf of the buyer. Buyer's agents and

1 subagents will disclose to the buyer known information about the  
 2 seller which may be used to benefit the buyer. **CERTAIN INDIVIDUAL**  
 3 **DUTIES MAY BE WAIVED BY THE BUYER THROUGH MEANS OF A LIMITED**  
 4 **SERVICE AGREEMENT, WHICH ARE WAIVED BY THE BUYER SIGNING A**  
 5 **SEPARATE WAIVER DOCUMENT.**

# 6 Dual Agents

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

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

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

# 16 Licensee Disclosure (check one)

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

- 19 \_\_\_\_\_ Seller's Agent
- 20 \_\_\_\_\_ **SELLER'S AGENT - LIMITED SERVICE AGREEMENT**
- 21 \_\_\_\_\_ Buyer's Agent
- 22 \_\_\_\_\_ **BUYER'S AGENT - LIMITED SERVICE AGREEMENT**
- 23 \_\_\_\_\_ Dual Agent
- 24 \_\_\_\_\_ 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

(5) ON A SEPARATE FORM, THE FOLLOWING SHALL BE PROVIDED TO A  
 CLIENT DESIRING TO WAIVE ANY OF THE SERVICES REQUIRED UNDER  
 SECTION 2512D(3)(B), (C), AND (D) PURSUANT TO A LIMITED SERVICE  
 AGREEMENT:

SERVICES THAT MAY BE WAIVED ARE AS FOLLOWS:

UNDER MICHIGAN LAW, A REAL ESTATE LICENSEE IS REQUIRED TO  
 PERFORM CERTAIN DUTIES FOR HIS OR HER CLIENT UNLESS THESE  
SERVICES ARE WAIVED BY THE CLIENT. BY SIGNING BELOW, THE  
 CLIENT AGREES THAT THE REAL ESTATE LICENSEE WILL NOT PERFORM  
 THE SERVICES INITIALED (ONLY INITIAL THE SERVICES WAIVED)

SELLERS MAY WAIVE: INITIAL IF WAIVED:

--ACCEPTANCE OF DELIVERY AND PRESENTA-  
 TION OF OFFERS AND COUNTEROFFERS  
 TO BUY, SELL, OR LEASE THE CLIENT'S  
 PROPERTY OR THE PROPERTY THE CLIENT  
 SEEKS TO PURCHASE OR LEASE.

--ASSISTANCE IN DEVELOPING, COMMUNICA-  
 TING, NEGOTIATING, AND PRESENTING  
 OFFERS, COUNTEROFFERS, AND RELATED  
 DOCUMENTS OR NOTICES UNTIL A PURCHASE  
 OR LEASE AGREEMENT IS EXECUTED BY ALL  
 PARTIES AND ALL CONTINGENCIES ARE  
 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.

BUYERS MAY WAIVE:

--ACCEPTANCE OF DELIVERY AND PRESENTA-

TION OF OFFERS AND COUNTEROFFERS  
TO BUY, SELL, OR LEASE THE CLIENT'S  
PROPERTY OR THE PROPERTY THE CLIENT  
SEEKS TO PURCHASE OR LEASE.

--ASSISTANCE IN DEVELOPING, COMMUNICA-  
TING, NEGOTIATING, AND PRESENTING  
OFFERS, COUNTEROFFERS, AND RELATED  
DOCUMENTS OR NOTICES UNTIL A PURCHASE  
OR LEASE AGREEMENT IS EXECUTED BY ALL  
PARTIES AND ALL CONTINGENCIES ARE  
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.

AGREEMENT TO WAIVE  
BY SIGNING BELOW, I AGREE THAT THE REAL ESTATE LICENSEE  
WHO REPRESENTS ME WILL NOT PROVIDE THE SERVICES THAT ARE  
INITIALED ABOVE. I ALSO UNDERSTAND THAT IN ANY PROPOSED  
REAL ESTATE TRANSACTION, NO OTHER REAL ESTATE LICENSEE  
IS REQUIRED TO PROVIDE THE WAIVED SERVICES UNLESS I  
SUBSEQUENTLY HIRE THEM TO DO SO, AND REALIZE THAT I MAY  
NEED TO HIRE OTHER PROFESSIONALS SUCH AS AN ATTORNEY.

SELLER OR BUYER \_\_\_\_\_ DATE

SELLER OR BUYER \_\_\_\_\_ DATE

REAL ESTATE BROKER OR SALESPERSON \_\_\_\_\_ DATE

BROKERAGE NAME \_\_\_\_\_



1       (6) ~~(3)~~—This article does not prevent a licensee from acting  
2 as a transaction coordinator upon proper notice to all parties to  
3 a real estate transaction.

4       (7) ~~(4)~~—A broker and a client may enter into a designated  
5 agency agreement. In the absence of a written designated agency  
6 agreement, a client is considered to have an agency relationship  
7 with the broker and all affiliated licensees.

8       (8) ~~(5)~~—A designated agency agreement shall contain the name  
9 of all associate brokers who are authorized to act as supervisory  
10 brokers. If designated agents who are affiliated licensees  
11 represent different parties in the same real estate transaction,  
12 the broker and all supervisory brokers are considered disclosed  
13 consensual dual agents for that real estate transaction.

14 Designated agents who are affiliated licensees representing  
15 different parties in the same transaction shall notify their  
16 clients that their broker represents both buyer and seller before  
17 an offer to purchase is made or presented.

18       (9) ~~(6)~~—Except as otherwise provided in subsection ~~(5)~~—(8),  
19 a client with a designated agency agreement is not considered to  
20 have an agency relationship with any affiliated licensees of the  
21 designated agent. Two designated agents who are affiliated  
22 licensees may each represent a different party in the same  
23 transaction and shall not be considered dual agents. The  
24 designated agent's knowledge of confidential information of a  
25 client is not imputed to any affiliated licensee not having an  
26 agency relationship with that client.

27       (10) ~~(7)~~—A designated agent shall not disclose confidential

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

9       (11) ~~(8)~~—A listing agreement or a buyer's agency agreement  
10 may be amended to establish a designated agency relationship, to  
11 change a designated agent, or to change supervisory brokers at  
12 any time pursuant to a written addendum signed by the parties.

13       (12) ~~(9)~~—As used in this section:

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

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

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

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

26       (e) "Designated agency agreement" means a written agreement  
27 between a broker and a client in which an individual salesperson

1 or associate broker affiliated with that broker is named as that  
2 client's designated agent.

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

7 (g) "Real estate transaction" means the sale or lease of any  
8 legal or equitable interest in real estate where the interest in  
9 real estate consists of not less than 1 or not more than 4  
10 residential dwelling units or consists of a building site for a  
11 residential unit on either a lot as defined in section 102 of the  
12 land division act, 1967 PA 288, MCL 560.102, or a condominium  
13 unit as defined in section 4 of the condominium act, 1978 PA 59,  
14 MCL 559.104.

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

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

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

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

26 Enacting section 1. This amendatory act does not take effect  
27 unless Senate Bill No. \_\_\_\_ or House Bill No. 4416(request no.

1 01803'07) of the 94th Legislature is enacted into law.

2 Enacting section 2. This amendatory act takes effect July 1,

3 2007.