

OCCUPATIONAL CODE (EXCERPT)
Act 299 of 1980

ARTICLE 24

339.2401 Definitions.

Sec. 2401. As used in this article:

(a) "Residential builder" means a person engaged in the construction of a residential structure or a combination residential and commercial structure who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure or combination residential and commercial structure; a person who manufactures, assembles, constructs, deals in, or distributes a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing; or a person who erects a residential structure or combination residential and commercial structure except for the person's own use and occupancy on the person's property.

(b) "Residential maintenance and alteration contractor" means a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure, or building of a garage, or laying of concrete on residential property, or who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential structure, engaging in that activity on the same structure more than twice in 1 calendar year, except in the following instances:

(i) If the work is for the person's own use and occupancy.

(ii) If the rehabilitation or improvement work of residential type property or a structure is contracted for, with, or hired entirely to be done and performed for the owner by a person licensed under this article.

(iii) If work is performed by a person employed by the owner to perform work for which the person is licensed by the state.

(c) "Residential structure" means a premises used or intended to be used for a residence purpose and related facilities appurtenant to the premises, used or intended to be used, as an adjunct of residential occupancy.

(d) "Salesperson" means an employee or agent, other than a qualifying officer, of a licensed residential builder or residential maintenance and alteration contractor, who for a salary, wage, fee, percentage, commission, or other consideration, sells or attempts to sell, negotiates or attempts to negotiate, solicits for or attempts to solicit for, obtains or attempts to obtain a contract or commitment for, or furnishes or attempts or agrees to furnish, the goods and services of a residential builder or residential maintenance and alteration contractor, except a person working for a licensed residential builder or residential maintenance and alteration contractor who makes sales which are occasional and incidental to the person's principal employment.

(e) "Wages" means money paid or to be paid on an hourly or daily basis by an owner, lessor, or occupant of a residential structure or combination residential and commercial structure as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act defined in subdivision (a) or (b).

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1991, Act 166, Imd. Eff. Dec. 19, 1991.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Popular name: Act 299

339.2402 Residential builders' and maintenance and alteration contractors' board; creation; qualifications of members.

Sec. 2402. A residential builders' and maintenance and alteration contractors' board is created. The board shall consist of 9 individuals, as follows:

(a) Four individuals who are licensed residential builders.

(b) Two individuals who are licensed maintenance and alteration contractors.

(c) Three individuals representing the general public, at least 1 of whom is registered under article 10 of

the skilled trades regulation act, MCL 339.6001 to 339.6023.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 2007, Act 157, Eff. June 1, 2008;—Am. 2016, Act 412, Eff. Apr. 4, 2017.

Popular name: Act 299

339.2403 Engaging in business or acting in capacity of residential builder or residential maintenance and alteration contractor or salesperson without license.

Sec. 2403. Notwithstanding article 6, a person may engage in the business of or act in the capacity of a residential builder or a residential maintenance and alteration contractor or salesperson in this state without a license under this article, if the person is 1 of the following:

(a) An authorized representative of the United States government, this state, or a county, township, city, village, or other political subdivision of this state.

(b) An owner of property, with reference to a structure on the property for the owner's own use and occupancy.

(c) An owner of rental property, with reference to the maintenance and alteration of that rental property.

(d) An officer of a court who is acting within the scope of that office.

(e) A person other than the salesperson that engages solely in the business of performing work and services under contract with a residential builder or a residential maintenance and alteration contractor that is licensed under this article.

(f) A person that is working on 1 undertaking or project by 1 or more contracts, if the aggregate contract price for the labor, material, and any other items for the undertaking or project is less than \$600.00. The exemption described in this subdivision does not apply if the work of a construction is only a part of a larger or major operation, whether undertaken by the same or a different residential builder or residential maintenance and alteration contractor, or in which a division of the operation is made in contracts of amounts less than \$600.00, to evade this act.

(g) An electrical contractor that is licensed under article 7 of the skilled trades regulation act, MCL 339.5701 to 339.5739. The exemption described in this subdivision applies only to the electrical installation, electrical maintenance, or electrical repair work that is performed by the electrical contractor.

(h) A plumbing contractor that is licensed under article 11 of the skilled trades regulation act, MCL 339.6101 to 339.6133. The exemption described in this subdivision applies only to plumbing installation, plumbing maintenance, or plumbing repair work that is performed by the plumbing contractor.

(i) A mechanical contractor that is licensed under article 8 of the skilled trades regulation act, MCL 339.5801 to 339.5819. The exemption described in this subdivision applies only to mechanical installation, mechanical maintenance, or mechanical repair work that is performed by the mechanical contractor.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1982, Act 6, Imd. Eff. Feb. 15, 1982;—Am. 1984, Act 191, Imd. Eff. July 3, 1984;—Am. 2016, Act 412, Eff. Apr. 4, 2017.

Popular name: Act 299

339.2404 Evidence of good moral character; proof of identity; examination; issuance of residential maintenance and alteration contractor's license; scope of crafts and trades; place of business; branch office license; duration of license; renewal; documentation of continuing competency requirements.

Sec. 2404. (1) Except as provided in section 2404c, the department may require an applicant, a licensee, or each partner, trustee, director, officer, member, or shareholder of an applicant or licensee to submit evidence of good moral character. Before the department issues a license, an applicant shall submit a copy of his or her operator's license or state personal identification card to the department. The department may use the license or card only for proof of identity of the applicant.

(2) Except as provided in section 2404c, the department shall require that an applicant for a license under this article pass an examination that establishes that the applicant has a fair knowledge of the obligations of a residential builder or residential maintenance and alteration contractor to the public and the applicant's principal, and the statutes relating to the applicant's licensure.

(3) Except as provided in section 2404c, the department may issue a residential maintenance and alteration contractor's license to an individual who applies for the license and who qualifies for the license by passing the examination. A license authorizes the licensee, according to the applicant's qualifications, crafts, and trades, to engage in the activities of a residential maintenance and alteration contractor. A license includes the following crafts and trades: carpentry; concrete; swimming pool installation; waterproofing a basement; excavation; insulation work; masonry work; roofing; siding and gutters; screen or storm sash installation; tile and marble work; and house wrecking. A license shall specify the particular craft or trade for which the

licensee is qualified. This subsection does not prohibit a specialty contractor from taking and executing a contract involving the performance of the craft or trade for which the contractor holds a license and 1 or more other crafts or trades if the performance of the work in the other craft or trade is incidental and supplemental to the performance of work in the craft or trade for which the specialty contractor is licensed.

(4) A residential builder or residential maintenance and alteration contractor shall maintain a place of business in this state. If a residential builder or residential maintenance and alteration contractor maintains more than 1 place of business in this state, the department shall issue a branch office license to the builder or contractor for each place of business maintained by the builder or contractor.

(5) The department shall issue the license of a residential builder and residential maintenance and alteration contractor for a period of 3 years in duration.

(6) An applicant for renewal of a residential builder or maintenance and alteration contractor license shall state to the department that he or she has a current copy of the Michigan residential code and meets the appropriate requirements regarding continuing competency described in this article or rules promulgated under this article.

(7) A licensee shall maintain documentation, for at least 5 years, of activities that meet the continuing competency requirements under this article.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1980, Act 496, Eff. Mar. 31, 1981;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 1984, Act 193, Imd. Eff. July 3, 1984;—Am. 1988, Act 463, Eff. Sept. 1, 1989;—Am. 2007, Act 157, Eff. June 1, 2008;—Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010;—Am. 2014, Act 176, Imd. Eff. June 17, 2014;—Am. 2018, Act 527, Eff. Mar. 28, 2019.

Popular name: Act 299

339.2404a Information to be provided as part of contract.

Sec. 2404a. A licensee shall, as part of the contract, provide information relating to his or her individual license and to any license issued to that person as a qualifying officer of another entity.

History: Add. 2007, Act 155, Eff. June 1, 2008.

Popular name: Act 299

339.2404b Licensure as residential builder or residential maintenance and alteration contractor; completion of precensure course of study; disciplinary action; continuing competency requirements; approved courses; subject matter; rules; alternate forms of continuing competency; department audit; application for inactive status; designation of licensee as inactive; exemption from requirements in subsection (1); affidavit signed by commanding officer, supervisor, or military superior; retaking examination; "armed forces" defined.

Sec. 2404b. (1) Beginning June 1, 2008, an applicant for initial licensure either as a residential builder or as a residential maintenance and alteration contractor must successfully complete the precensure course of study requirements under this subsection to obtain a license unless he or she is exempt from those requirements under this section. All of the following apply for purposes of this subsection:

(a) If an individual who holds a residential builder or a residential maintenance and alteration contractor license, or an individual who held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, on June 1, 2008 is renewing a license, he or she is exempt from the requirement of successfully completing precensure courses described in this subsection.

(b) If an individual is applying for a license or relicensure as a residential builder or residential maintenance and alteration contractor, he or she is exempt from the requirement of successfully completing precensure courses described in this subsection if all of the following are met:

(i) His or her application is submitted before the expiration of the 18-month period beginning on the effective date of the amendatory act that added this subdivision. This subdivision does not apply to applications that are submitted after that 18-month period.

(ii) He or she held an individual license as a residential builder or residential maintenance and alteration contractor, or held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, at any time within the 9-year period preceding his or her application.

(c) Unless he or she is exempt under subdivision (a) or (b), an applicant shall not receive an initial license under this act unless he or she successfully completed 60 hours of approved precensure courses that include at least 6 hours of courses in each of the following areas of competency:

(i) Business management, estimating, and job costing.

(ii) Design and building science.

(iii) Contracts, liability, and risk management.

- (iv) Marketing and sales.
- (v) Project management and scheduling.
- (vi) The current Michigan residential code.
- (vii) Construction safety standards promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) All of the following apply to an individual license under this article, as applicable:

(a) Subject to subdivision (b), if the individual licensee obtained his or her initial license as a residential builder or a residential maintenance and alteration contractor on or after January 1, 2009, he or she must successfully complete at least 21 hours of activities that demonstrate continuing competence in each 3-year license cycle, including both of the following:

(i) At least 3 hours of activities that demonstrate continuing competency in each calendar year, during the first 6 calendar years of licensure.

(ii) At least 3 hours of activities designed to develop a licensee's understanding and ability to apply state building codes and laws relating to the licensed occupation, safety, and changes in construction and business management laws.

(b) If an individual licensee described in subdivision (a) was exempt from the prelicensure course requirements of subsection (1) under subsection (1)(b) when he or she obtained his or her initial license as a residential builder or residential maintenance and alteration contractor, the hours of activities that he or she must complete in the first year of his or her first 3-year license cycle under subdivision (a) must include successful completion of at least 1 hour of codes, 1 hour of safety, and 1 hour of legal issues described in this subsection.

(c) If the licensee was initially licensed as a licensed residential builder or residential maintenance and alteration contractor, or held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, before January 1, 2009, he or she has held a license for not more than two 3-year license cycles, and the department has not taken disciplinary action against him or her for a violation of this act or a rule promulgated under this act, he or she must successfully complete at least 3 hours of activities that demonstrate continuing competency in each 3-year license cycle that includes at least 1 hour of codes, 1 hour of safety, and 1 hour of legal issues described in this subsection.

(d) If the licensee has held a license for more than two 3-year license cycles, and the department has not taken disciplinary action against him or her for a violation of this act or a rule promulgated under this act, he or she must successfully complete at least 3 hours of activities demonstrating continuing competency in each license cycle that includes 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in this subsection.

(3) In addition to the requirements of subsection (2), if the department has taken disciplinary action against a licensee for a violation of this act or a rule promulgated under this act, the licensee must successfully complete, during the next complete license cycle, at least 3 and not more than 21 hours of activities that demonstrate the development of continuing competency during that next license cycle as determined appropriate by order of the department. At least 3 hours of the continuing competency must include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in subsection (2).

(4) Any construction code update courses approved by the bureau of construction codes and any fire safety or workplace safety courses approved or sponsored by the department are also considered appropriate for fulfilling the continuing competency requirements of this section. The department may, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses or alternate activities for developing continuing competency described in this section.

(5) The subject matter of the prelicensure and continuing competency activities required under this section may be offered by a high school, an intermediate school district, a community college, a university, the bureau of construction codes, the Michigan occupational safety and health administration, a trade association, or any other proprietary school that is licensed by the department.

(6) The department shall promulgate rules to provide for the following:

(a) Requirements other than those listed in subsection (4) for determining that a course meets the minimum criteria for developing and maintaining continuing competency.

(b) Requirements for acceptable courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies other than those named in subsection (4), consulting agencies, or other entities.

(c) Acceptable distance learning.

(d) Alternate forms of continuing competency, including comprehensive testing, participation in mentoring programs, research, participation in code hearings conducted by the international code council, and publication of articles in trade journals or regional magazines as an expert in the field. The alternate forms

shall be designed to maintain and improve the licensee's ability to perform the occupation with competence and shall prescribe proofs that are necessary to demonstrate that the licensee has fulfilled the requirements of continuing competency.

(7) Each licensee may select approved courses in his or her subject matter area or specialty. A licensee's service as a lecturer or discussion leader in an approved course shall count toward his or her continuing competency requirements under this section. Alternate forms of continuing competency may be earned and documented as promulgated in rules by the department.

(8) The department may audit a predetermined percentage of licensees who renew in a year for compliance with the requirements of this section. Failure to comply with the audit or the requirements shall result in the investigation of a complaint initiated by the department, and the licensee is subject to the penalties prescribed in this act.

(9) Before the effective date of the amendatory act that added subsection (10), a licensed residential builder or residential alteration and maintenance contractor may apply for inactive status by completing an application, made available by the department, in which he or she declares that he or she is no longer actively engaged in the practice authorized by his or her license and temporarily intends to suspend activity authorized by his or her license. If a completed application is submitted, the department shall designate the licensee as inactive and note that status on records available to the public. A licensee who is designated as inactive must have a current copy of the Michigan residential code and is exempt from the continuing competency requirements imposed under this section, but must still pay the per-year license fee. An inactive licensee may activate his or her license by submitting an application to the department requesting activation of the license. If the department activates an inactive license, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(10) An individual licensee who applied for and was designated inactive under subsection (9) before the effective date of this subsection may remain in inactive status after that effective date by complying with the requirements of subsection (9). A licensee who remains in inactive status after the effective date of this subsection is exempt from the continuing competency requirements of this section while he or she remains in inactive status. A licensee may activate his or her license by submitting an application to the department requesting activation of the license. If his or her license is activated, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(11) Subject to subsection (13), an applicant for initial licensure as a residential builder or residential maintenance and alteration contractor is exempt from the requirements of subsection (1) if he or she meets all of the following:

(a) Served in the armed forces.

(b) While serving in the armed forces, was engaged in the erection, construction, replacement, repair, alteration, or demolition of buildings or other structures.

(c) Was separated from service in the armed forces, and provides to the department a form DD214, form DD215, or any other form that is satisfactory to the department that demonstrates that he or she was separated from that service, with an honorable character of service or under honorable conditions (general) character of service.

(d) Has, and provides with his or her application an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that he or she has, entry-level experience in or basic knowledge of each of the areas of competency described in subsection (1)(a) to (g).

(12) If an applicant who otherwise meets the requirements of subsection (11) does not have entry-level experience in or basic knowledge of each of the areas of competency described in subsection (1)(a) to (g), he or she may provide with his or her application an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that states in which of those areas of competency the applicant has entry-level experience or basic knowledge, and the department may in its discretion grant the applicant credit toward the 60-hour prelicensure education requirement of subsection (1) based on that experience or knowledge.

(13) If an applicant for initial licensure as a residential builder or residential maintenance and alteration contractor described in subsection (11) does not pass the examination for that license the first time he or she takes the examination, that applicant may not retake the examination until he or she successfully completes a prelicensure course of study described in subsection (1).

(14) As used in the section, "armed forces" means that term as defined in section 2 of the veteran right to employment services act, 1994 PA 39, MCL 35.1092.

History: Add. 2007, Act 157, Eff. June 1, 2008;—Am. 2013, Act 169, Eff. Feb. 12, 2014;—Am. 2014, Act 175, Eff. Sept. 16, 2014.

Compiler's note: In subsection (14), the phrase "As used in the section" evidently should read "As used in this section."

Popular name: Act 299

339.2404c Individual denied license because of financial instability.

Sec. 2404c. All of the following apply to an individual who is applying for a license or relicensure as a residential builder or residential maintenance and alteration contractor, who was a qualifying officer on December 21, 2007, and who was subsequently denied an individual license because of financial instability:

(a) The department shall determine whether the applicant should receive a license under this article and what requirements described in section 2404 the applicant must meet to qualify for that license.

(b) In making its determination under subdivision (a), the department shall consider the information it receives under section 2404(1) concerning the good moral character of the applicant and other persons described in section 2404(1), shall determine whether the applicant is required to pass an examination under section 2404(2) or (3) or 2405(1), and may require that the applicant meet other requirements to qualify for a license.

(c) The applicant shall certify that he or she successfully completed at least 3 hours of activities that demonstrate continuing competency, that include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues described in section 2404b(2), in the 12 months immediately preceding the date of application.

History: Add. 2014, Act 176, Imd. Eff. June 17, 2014.

Popular name: Act 299

339.2405 Application for license by corporation, partnership, association, limited liability company, or other entity; designation and responsibilities of qualifying officer; age and license requirements; suspension, revocation, or denial of license.

Sec. 2405. (1) Subject to section 2404c, if a corporation, partnership, association, limited liability company, or other entity applies for a license, the applicant shall designate 1 of its officers, partners, or members or its managing agent as a qualifying officer. A qualifying officer who takes and passes the examination and meets all other requirements of this article is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. A qualifying officer shall also obtain and maintain a license under this article as an individual. A qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. The department shall not issue a license to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, or member, and each person that exercises control over the entity, is at least 18 years of age and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the department shall include the individual's name and license number on any license issued to the individual as a qualifying officer. If the department issues a license under this subsection to an officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, that individual shall provide a copy of his or her operator's license or state personal identification card to the department. The department shall use the license or card only for identification purposes. A licensee granted inactive status under section 2404b is not eligible to serve as a qualifying officer.

(2) The license of a corporation, partnership, association, limited liability company, or other entity is suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, or member, or a person that exercises control of the corporation, partnership, association, limited liability company, or other entity, is suspended, revoked, or denied. The suspension shall remain in force until the board determines that the disability created by the suspension, revocation, or denial is removed.

(3) If an individual's license under this article is suspended, revoked, or denied by the board, any other license issued or applied for under this article is suspended, revoked, or denied. If the license of a corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied, any other license issued to or applied for by the qualifying officer of that entity is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, on request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 2007, Act 155, Eff. June 1, 2008;—Am. 2007, Act 157, Eff. June 1, 2008;—Am. 2014, Act 176, Imd. Eff. June 17, 2014.

Popular name: Act 299

339.2406 Nonresident licensee; issuing license to foreign corporation; irrevocable consent to service of process; resolution authorizing consent; service of process or pleading.

Sec. 2406. A nonresident of this state may become a licensee under this article by conforming with this

article. A license shall not be issued to a foreign corporation unless the corporation is authorized to do business in this state by the corporation and securities commission. The nonresident shall file an irrevocable consent to service of process. The consent shall be signed by the applicant or by an authorized officer, member, or partner of the applicant and shall be notarized. If the applicant is a corporation, consent shall be accompanied by a certified copy of the resolution of the corporation authorizing the consent. A process or pleading served upon the department shall be sufficient service upon the licensee. A process or pleading served upon the department under this section shall be in duplicate. The department immediately shall forward by registered mail 1 copy of the process or pleading to the main office of the licensee served.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299

339.2407 Licensing salesperson in employ of 1 builder or contractor; application for transfer and issuance of new license; submission of salesperson's license application.

Sec. 2407. (1) A salesperson shall be licensed in the employ of only 1 residential builder or maintenance and alteration contractor. If a salesperson desires to change employment from 1 residential builder or maintenance and alteration contractor to another, the license shall be forwarded to the department and application made for a transfer and the issuance of a new license under the salesperson's new employer.

(2) An application for a salesperson's license shall be submitted by the employing residential builder or residential maintenance and alteration contractor.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 463, Eff. Sept. 1, 1989.

Popular name: Act 299

339.2408 Repealed. 1988, Act 463, Eff. Sept. 1, 1989.

Compiler's note: The repealed section pertained to disposition of license fee after failure to pass examination.

Popular name: Act 299

339.2409 Reporting certain changes.

Sec. 2409. A licensee shall report to the department a change of name or address or a change of members or addresses of the partnership, association, or corporation holding a license under this article within 30 days after the change occurs.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1980, Act 496, Eff. Mar. 31, 1981;—Am. 1982, Act 410, Imd. Eff. Dec. 28, 1982;—Am. 1988, Act 463, Eff. Sept. 1, 1989;—Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010.

Popular name: Act 299

339.2410 Repeating examination not required when making application for additional license.

Sec. 2410. A person or qualifying officer for a corporation or member of a partnership or other business association who currently holds a residential builder or maintenance and alteration contractor license shall not be required to repeat an examination for that license when making application for an additional license. However, a maintenance and alteration contractor who currently holds a license and makes application for a residential builders' license shall be required to take an examination for that license.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299

339.2411 Complaint; conduct subject to penalty; violations; review; administrative proceedings regarding workmanship; order of default; "verified complaint" defined.

Sec. 2411. (1) A complaint filed under this section or article 5, or both, shall be made within 18 months after the latest of the following regarding a residential structure or a combination of residential and commercial structure as follows:

(a) In the case of a maintenance and alteration contract:

(i) Completion.

(ii) Occupancy.

(iii) Purchase.

(b) In the case of a project requiring an occupancy permit:

(i) Issuance of the certificate of occupancy or temporary certificate of occupancy.

(ii) Closing.

(2) A licensee or applicant who commits 1 or more of the following is subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

(b) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property application or use for any other construction project or operation, obligation, or purposes.

(c) Failure to account for or remit money coming into the person's possession that belongs to others.

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(e) A willful violation of the building laws of this state or of a political subdivision of this state.

(f) In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract.

(g) If a licensed residential builder or licensed residential maintenance and alteration contractor, failure to notify the department within 10 days of a change in the control or direction of the business of the licensee resulting from a change in the licensee's partners, directors, officers, or trustees, or a change in the control or direction of the business of the licensee resulting from any other occurrence or event.

(h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure that is prefabricated, preassembled, precut, packaged, or shell housing.

(i) If a salesperson, failure to pay over immediately upon receipt money received by the salesperson, in connection with a transaction governed by this article to the residential builder or residential maintenance and alteration contractor under whom the salesperson is licensed.

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

(k) Acceptance of a commission, bonus, or other valuable consideration by a salesperson for the sale of goods or the performance of service specified in the article from a person other than the residential builder or residential maintenance and alteration contractor under whom the person is licensed.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(3) The department shall conduct a review upon notice that the licensee has violated the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may suspend or revoke that person's license for a knowing violation of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319.

(4) Notwithstanding article 5, the following apply to administrative proceedings regarding workmanship under subsection (2)(m):

(a) A complaint submitted by an owner shall describe in writing to the department the factual basis for the allegation. The homeowner shall send a copy of the initial complaint to the licensee concurrent with the submission of the complaint to the department.

(b) The department shall presume the innocence of the licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under article 5. The licensee has the burden of refuting evidence submitted by a person during the administrative hearing. The licensee also has the burden of proof regarding the reason deficiencies were not corrected.

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. If the department

does not send a copy of the verified complaint within 30 days after receipt of the building inspection report, the department shall not assess a fine against the licensee under article 6, but the department may pursue restitution, license suspension, or other remedies provided under this act.

(d) A licensee may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the department. The procedure shall be conducted by a neutral third party for determining the rights and responsibilities of the parties and shall be initiated by the licensee, who shall provide notice of the initiation of the procedure to the complainant by certified mail not less than 30 days before the commencement of that procedure. The procedure shall be conducted at a location mutually agreed to by the parties.

(e) The department shall not initiate a proceeding against a licensee under this subsection if the licensee has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (d) is not available to the complainant.

(f) The complainant shall demonstrate that notice has been provided to the licensee describing reasonable times and dates that the residential structure was accessible for any needed repairs and proof acceptable to the department that the repairs were not made within 60 days after the sending of the notice. This subdivision does not apply if the department determines a necessity to safeguard the structure or to protect the occupant's health and safety and, in such case, the department may utilize any remedy available under section 504(3).

(g) If the owner and licensee have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the department shall consider those guidelines in its evaluation of a complaint. The guidelines shall be consistent with the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(5) If the licensee or respondent fails to appear or participate in or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

(6) As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by an affidavit of the state or local building official.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1980, Act 496, Eff. Mar. 31, 1981;—Am. 1982, Act 410, Imd. Eff. Dec. 28, 1982;—Am. 1990, Act 6, Imd. Eff. Feb. 12, 1990;—Am. 1991, Act 166, Imd. Eff. Dec. 19, 1991;—Am. 2001, Act 113, Imd. Eff. July 31, 2001;—Am. 2007, Act 155, Eff. June 1, 2008;—Am. 2007, Act 157, Eff. June 1, 2008;—Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010

Popular name: Act 299

339.2411a Final order of board; posting on website.

Sec. 2411a. (1) The department shall post on its website any final order of the board and the date it was issued. The posting shall occur within 30 days after the final order is issued.

(2) The department shall annually post on its website the number of final orders of the board.

History: Add. 2007, Act 157, Eff. June 1, 2008.

Popular name: Act 299

339.2412 Action for collection of compensation for performance of act or contract; alleging and proving licensure; failure to use alternative dispute resolution; other legal action; civil violation.

Sec. 2412. (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

(2) Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure shall be an affirmative defense to an action brought in a court of this state against a licensee under this article.

(3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal or other action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

(4) A prosecuting attorney and the attorney general may bring an action for a civil violation in a court of competent jurisdiction against a person not licensed under this article that has violated section 601(1) or (2).

The court shall assess a civil fine, to be paid to the prosecuting attorney or the attorney general bringing the action, of not less than \$5,000.00 and not more than \$25,000.00, aside from any civil damages or restitution.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1980, Act 496, Eff. Mar. 31, 1981;—Am. 2001, Act 113, Imd. Eff. July 31, 2001;—Am. 2007, Act 155, Eff. June 1, 2008.

Popular name: Act 299