

Act No. 333
Public Acts of 1994
Approved by the Governor
October 18, 1994
Filed with the Secretary of State
October 18, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Pridnua

ENROLLED SENATE BILL No. 70

AN ACT to amend sections 2501 and 2512 of Act No. 299 of the Public Acts of 1980 entitled as amended 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 section 2501 as amended by Act No. 93 of the Public Acts of 1993 and section 2512 as amended by Act No. 125 of the Public Acts of 1994 being sections 339 2501 and 339 2512 of the Michigan Compiled Laws and to add section 2512c

The People of the State of Michigan enact

Section 1 Sections 2501 and 2512 of Act No. 299 of the Public Acts of 1980 section 2501 as amended by Act No. 93 of the Public Acts of 1993 and section 2512 as amended by Act No. 125 of the Public Acts of 1994 being sections 339 2501 and 339 2512 of the Michigan Compiled Laws are amended and section 2512c is added to read as follows

Sec 2501 As used in this article

(a) Property management means the leasing or renting or the offering to lease or rent of real property of others for a fee commission compensation or other valuable consideration pursuant to a property management employment contract

(b) Property management account means an interest bearing or noninterest bearing account or instrument used in the operation of property management

(c) Property management employment contract means the written agreement entered into between a real estate broker and client concerning the real estate broker's employment as a property manager for the client setting forth the real estate broker's duties responsibilities and activities as a property manager and setting forth the handling management safekeeping investment disbursement and use of property management money funds and accounts

(d) Real estate broker means an individual sole proprietorship partnership association corporation common law trust or a combination of those entities who with intent to collect or receive a fee compensation or valuable consideration sells or offers for sale buys or offers to buy provides or offers to provide market analyses lists or offers or attempts to list or negotiates the purchase or sale or exchange or mortgage of real estate or negotiates for the construction of a building on real estate who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others as a whole or partial vocation who engages in property management as a whole or partial vocation who sells or offers for sale buys or offers to buy leases or offers to lease or negotiates the purchase or sale or exchange of a business business opportunity or the goodwill of an existing business for others or who as owner or otherwise engages in the sale of real estate as a principal vocation

(e) Real estate salesperson means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell to buy or offer to buy to provide or offer to provide market analyses to list or offer or attempt to list or to negotiate the purchase or sale or exchange or mortgage of real estate or to negotiate for the construction of a building on real estate or to lease or offer to lease rent or offer for rent real estate who is employed by a real estate broker to engage in property management or who sells or offers for sale buys or offers to buy leases or offers to lease or negotiates the purchase or sale or exchange of a business business opportunity or the goodwill of an existing business for others as a whole or partial vocation

(f) Employ or employment means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article

(g) Independent contractor relationship means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate

Sec 2512 A licensee shall be subject to the penalties set forth in article 6 who commits 1 of the following

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

(b) Beginning January 1 1994 failing to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction

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

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

(e) Changing a business location without notification to the department

(f) In the case of a real estate broker failing 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 violation of section 2512c(2) (5) or (6)

(h) Except as provided in section 2512b sharing or paying a fee commission or 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) Conducting or developing a market analysis not in compliance with the requirements imposed in section 2601(a)(ii)

(j) Except in the case of property management accounts failure 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 deposit or other money accepted by a person partnership corporation or association holding a real estate broker's license under this article shall be retained by a real estate broker pending consummation or termination of the transaction involved and shall be accounted for in the full amount of the money at the time of the consummation or termination

(ii) A real estate salesperson on receipt of a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of a real estate broker employer shall pay over the deposit or other money to 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 signing of a purchase agreement by all parties but not later than 5 days after receipt 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 act and the rules promulgated pursuant to this act shall not be construed to prohibit the deposit of money accepted under this act in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union

Sec 2512c (1) Except as otherwise provided in this section all property management duties responsibilities and activities performed by a real estate broker and his or her agent engaged in property management shall be governed by and performed in accordance with a property management employment contract

(2) A real estate broker who engages in property management shall maintain property management accounts separate from all other accounts Except as provided in this section a property management account shall be managed in accordance with the property management employment contract

(3) A property management account may be an interest bearing account or instrument unless the property management employment contract provides to the contrary The interest earned on a property management account shall be handled in accordance with the property management employment contract

(4) A real estate broker or any designated employee of the real estate broker engaged in property management may be signatory on drafts or checks drawn on property management accounts

(5) A person who engages in property management shall maintain records of funds deposited and withdrawn from property management accounts Property management account records shall indicate the date of the transaction from whom the money was received or to whom it was given and other pertinent information concerning the transaction the property management employment contract may require

(6) A real estate broker engaged in property management shall render an accounting to his or her property management client and remit all money strictly in accordance with the property management employment contract

(7) All records required to be kept pursuant to this section or pursuant to the property management employment contract shall be subject to inspection by the department

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor