

HOUSE BILL No. 5764

February 28, 2006, Introduced by Rep. Waters and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2512 and 2517 (MCL 339.2512 and 339.2517), section 2512 as amended by 2002 PA 42 and section 2517 as amended by 2000 PA 436.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2512. A licensee who commits 1 or more of the following
2 is subject to the penalties set forth in article 6:

3 (a) Except in a case involving property management, acts for
4 more than 1 party in a transaction. ~~without the knowledge of the~~
5 ~~parties.~~

6 (b) Fails to provide a written agency disclosure to a
7 prospective buyer or seller in a real estate transaction as

1 defined in section 2517.

2 (c) Represents or attempts to represent a real estate broker
3 other than the employer without the express knowledge and consent
4 of the employer.

5 (d) Fails to account for or to remit money coming into the
6 licensee's possession which belongs to others.

7 (e) Changes a business location without notification to the
8 department.

9 (f) In the case of a real estate broker, fails to return a
10 real estate salesperson's license within 5 days as provided in
11 section 2507.

12 (g) In the case of a licensee engaged in property
13 management, violates section 2512c(2), (5), or (6).

14 (h) Except as provided in section 2512b, shares or pays a
15 fee, commission, or other valuable consideration to a person not
16 licensed under this article including payment to any person
17 providing the names of, or any other information regarding, a
18 potential seller or purchaser of real estate but excluding
19 payment for the purchase of commercially prepared lists of names.
20 However, a licensed real estate broker may pay a commission to a
21 licensed real estate broker of another state if the nonresident
22 real estate broker does not conduct in this state a negotiation
23 for which a commission is paid.

24 (i) Conducts or develops a market analysis not in compliance
25 with section 2601(a)(ii).

26 (j) Except in the case of property management accounts,
27 fails to deposit in the real estate broker's custodial trust or

1 escrow account money belonging to others coming into the hands of
2 the licensee in compliance with the following:

3 (i) A real estate broker shall retain a deposit or other
4 money made payable to a person, partnership, corporation, or
5 association holding a real estate broker's license under this
6 article pending consummation or termination of the transaction
7 involved and shall account for the full amount of the money at
8 the time of the consummation or termination of the transaction.

9 (ii) A real estate salesperson shall pay over to the real
10 estate broker, upon receipt, a deposit or other money on a
11 transaction in which the real estate salesperson is engaged on
12 behalf of the real estate broker.

13 (iii) A real estate broker shall not permit an advance payment
14 of funds belonging to others to be deposited in the real estate
15 broker's business or personal account or to be commingled with
16 funds on deposit belonging to the real estate broker.

17 (iv) A real estate broker shall deposit, within 2 banking
18 days after the broker has received notice that an offer to
19 purchase is accepted by all parties, money belonging to others
20 made payable to the real estate broker into a separate custodial
21 trust or escrow account maintained by the real estate broker with
22 a bank, savings and loan association, credit union, or recognized
23 depository until the transaction involved is consummated or
24 terminated, at which time the real estate broker shall account
25 for the full amount received.

26 (v) A real estate broker shall keep records of funds
27 deposited in its custodial trust or escrow account, which records

1 shall indicate clearly the date and from whom the money was
2 received, the date deposited, the date of withdrawal, and other
3 pertinent information concerning the transaction, and shall show
4 clearly for whose account the money is deposited and to whom the
5 money belongs. The records shall be subject to inspection by the
6 department. A real estate broker's separate custodial trust or
7 escrow account shall designate the real estate broker as trustee,
8 and the custodial trust or escrow account shall provide for
9 withdrawal of funds without previous notice. This article and the
10 rules promulgated pursuant to this article do not prohibit the
11 deposit of money accepted under this section in a noninterest
12 bearing account of a state or federally chartered savings and
13 loan association or a state or federally chartered credit union.

14 (vi) If a purchase agreement signed by a seller and purchaser
15 provides that a deposit be held by an escrowee other than a real
16 estate broker, a licensee in possession of such a deposit shall
17 cause the deposit to be delivered to the named escrowee within 2
18 banking days after the licensee has received notice that an offer
19 to purchase is accepted by all parties.

20 Sec. 2517. (1) A licensee shall disclose to a potential
21 buyer or seller in a real estate transaction all types of agency
22 relationships available and the licensee's duties that each
23 agency relationship creates before the disclosure by the
24 potential buyer or seller to the licensee of any confidential
25 information specific to that potential buyer or seller.

26 (2) The disclosure of the type of agency relationship shall
27 be in writing and substantially conform to the following:

1 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

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

13 Michigan law requires real estate licensees who are acting
14 as agents of sellers or buyers of real property to advise the
15 potential sellers or buyers with whom they work of the nature of
16 their agency relationship.

17 Seller's Agents

18 A seller's agent, under a listing agreement with the seller,
19 acts solely on behalf of the seller. A seller can authorize a
20 seller's agent to work with subagents, buyer's agents and/or
21 transaction coordinators. A subagent is one who has agreed to
22 work with the listing agent, and who, like the listing agent,
23 acts solely on behalf of the seller. Seller's agents and
24 subagents will disclose to the seller known information about the
25 buyer which may be used to the benefit of the seller.

26 Buyer's Agents

27 A buyer's agent, under a buyer's agency agreement with the

1 buyer, acts solely on behalf of the buyer. Buyer's agents and
2 subagents will disclose to the buyer known information about the
3 seller which may be used to benefit the buyer.

4 ~~_____ Dual Agents _____~~

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

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

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

14 Licensee Disclosure (check one)

15 I hereby disclose that the agency status of the licensee
16 named below is:

17 Seller's Agent

18 Buyer's Agent

19 ~~Dual Agent~~

20 None of the above

21 Affiliated Licensee Disclosure (check one)

22 Only the licensee's broker and a named supervisory
23 broker have the same agency relationship as the licensee named
24 below. If the other party in a transaction is represented by an
25 affiliated licensee, then the licensee's broker and all named
26 supervisory brokers shall be considered disclosed consensual dual
27 agents.

1 _____All affiliated licensees have the same agency
2 relationship as the licensee named below.

3 Further, this form was provided to the buyer or seller
4 before disclosure of any confidential information.

5 _____
6 Licensee Date

7 _____
8 Licensee Date

9 Acknowledgment

10 By signing below, the parties confirm that they have
11 received and read the information in this agency disclosure
12 statement and that this form was provided to them before the
13 disclosure of any confidential information specific to the
14 potential sellers or buyers.

15 _____
16 Potential Buyer/Seller (circle one) Date

17 _____
18 Potential Buyer/Seller (circle one) Date

19 (3) This article does not prevent a licensee from acting as
20 a transaction coordinator upon proper notice to all parties to a
21 real estate transaction.

22 (4) A broker and a client may enter into a designated agency
23 agreement. In the absence of a written designated agency
24 agreement, a client is considered to have an agency relationship
25 with the broker and all affiliated licensees.

26 (5) A designated agency agreement shall contain the name of

1 all associate brokers who are authorized to act as supervisory
2 brokers. ~~If designated agents who are affiliated licensees
3 represent different parties in the same real estate transaction,
4 the broker and all supervisory brokers are considered disclosed
5 consensual dual agents for that real estate transaction.~~

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

10 (6) Except as otherwise provided in subsection (5), a client
11 with a designated agency agreement is not considered to have an
12 agency relationship with any affiliated licensees of the
13 designated agent. Two designated agents who are affiliated
14 licensees may each represent a different party in the same
15 transaction. ~~and shall not be considered dual agents.~~ The
16 designated agent's knowledge of confidential information of a
17 client is not imputed to any affiliated licensee not having an
18 agency relationship with that client.

19 (7) A designated agent shall not disclose confidential
20 information of a client to any licensee, whether or not an
21 affiliated licensee, except that a designated agent may disclose
22 to any supervisory broker confidential information of a client
23 for purposes of seeking advice or assistance for the benefit of
24 the client. A licensee who represents a client in an agency
25 capacity does not breach any duty or obligation owed to that
26 client by failing to disclose to that client information obtained
27 through a present or prior agency relationship.

1 (8) A listing agreement or a buyer's agency agreement may be
2 amended to establish a designated agency relationship, to change
3 a designated agent, or to change supervisory brokers at any time
4 pursuant to a written addendum signed by the parties.

5 (9) As used in this section:

6 (a) "Affiliated licensees" means individuals licensed as
7 salespersons or associate brokers who are employed by the same
8 broker.

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

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

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

18 (e) "Designated agency agreement" means a written agreement
19 between a broker and a client in which an individual salesperson
20 or associate broker affiliated with that broker is named as that
21 client's designated agent.

22 ~~—— (f) "Dual agent" means a licensee who is acting as the agent~~
23 ~~of both the buyer and the seller and provides services to~~
24 ~~complete a real estate transaction without the full range of~~
25 ~~fiduciary duties owed by a buyer's agent and a seller's agent.~~

26 **(F)** ~~(g)~~ "Real estate transaction" means the sale or lease
27 of any legal or equitable interest in real estate where the

1 interest in real estate consists of not less than 1 or not more
2 than 4 residential dwelling units or consists of a building site
3 for a residential unit on either a lot as defined in section 102
4 of the land division act, 1967 PA 288, MCL 560.102, or a
5 condominium unit as defined in section 4 of the condominium act,
6 1978 PA 59, MCL 559.104.

7 (G) ~~(h)~~ "Seller" means the equitable or legal owner of
8 real estate.

9 (H) ~~(i)~~ "Seller's agent" means a licensee acting on behalf
10 of the seller in a real estate transaction who undertakes to
11 accept the responsibility of serving the seller consistent with
12 those fiduciary duties existing under common law.

13 (I) ~~(j)~~ "Supervisory broker" means an associate broker
14 designated in a written agency agreement to act in a supervisory
15 role in an agency relationship.

16 (J) ~~(k)~~ "Transaction coordinator" means a licensee who is
17 not acting as the agent of either the buyer or the seller.