

Legislative Analysis



REAL ESTATE BROKER RESPONSIBILITIES

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House Bill 4416

Sponsor: Rep. Tonya Schuitmaker

House Bill 4417

Sponsor: Rep. Barbara Farrah

Committee: Regulatory Reform

Complete to 11-26-07

A SUMMARY OF HOUSE BILLS 4416 AND 4417 AS INTRODUCED 3-6-07

The bills would amend Article 25 of the Occupational Code [MCL 339.2501 et al. (HB 4416) and 339.2517 (HB 4417)] to require brokers and real estate salespersons to undertake certain minimum duties and services, and require disclosure of those responsibilities. The bills would take effect July 1, 2007 and are tie-barred to each other, meaning neither could take effect unless both are enacted.

House Bill 4416 would require a real estate broker or real estate salesperson to perform certain duties under a service provision agreement. "Service provision agreement" would mean an agreement between a broker and client that established an agency relationship through a listing agreement or a buyer agency agreement. (This is the same definition as provided in the Michigan Administrative Code.) A broker could authorize a designated agent to represent the client, as long as the authorization was in writing. At a minimum, the following duties would be owed to the client:

- The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.
- The performance of the terms of the service provision agreement.
- Loyalty to the interest of the client.
- Compliance with the laws, rules, and regulations of state and applicable federal statutes or regulations.
- The recommendation to the client to obtain expert advice related to material matters when necessary or appropriate.
- An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.
- Confidentiality of all information, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

The bill would also specify that, unless expressly waived by the client, a licensed real estate broker or real estate salesperson who failed to provide certain minimum services under a service provision agreement would be subject to the code's penalties. At a minimum, the following services would be required to be provided to the client:

- Market the client's property in the manner agreed upon in the service provision agreement, when representing a seller or lessor;
- Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease (this service could be waived under a limited service agreement);
- Assist in developing, communicating, negotiating, and presenting offers, counteroffers, and related notices or documents until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived (this service could be waived under a limited service agreement);
- After execution of a purchase agreement, assist as necessary to complete the transaction under the terms specified in the purchase agreement (this service could be waived under a limited service agreement); and,
- Furnish, or cause to be furnished, a complete and detailed closing statement.

A broker or real estate salesperson representing a seller under a service provision agreement could not advertise the property to the public as "FOR SALE BY OWNER" or otherwise mislead the public to believe that the seller was not represented by a real estate broker.

Under House Bill 4417, the written agency disclosure statement required of a real estate broker and real estate salesperson providing services under a service provision agreement would have to include the duties and services listed in House Bill 4416.

The disclosure statement would also have to inform the client that certain individual services required to be provided by the broker or real estate salesperson could be waived by the seller and certain individual duties required to be performed could be waived by the buyer if a separate waiver document was signed. The bill would also include the wording of the form that must be provided to a client who desired to waive any of the services required under House Bill 4416.

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local governmental units.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.