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BILL ANALYSIS

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House Bill 4416 (Substitute H-3 as passed by the House)
House Bill 4417 (Substitute H-2 as passed by the House)
Sponsor: Representative Tonya Schuitmaker (H.B. 4416)
Representative Barbara Farrah (H.B. 4417)
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 3-11-08

CONTENT

The bills would amend Article 25 of the Occupational Code, which governs real estate brokers and salespeople, to do the following:

- Specify services and minimum duties that a real estate broker or salesperson acting under a service provision agreement would have to provide or perform.**
- Allow specific services to be waived in a limited service agreement.**
- Include the required services and duties in the statutory form for disclosure of real estate agency relationships.**
- Prescribe a limited service agreement form.**
- Extend administrative penalties to a licensee who failed to provide the minimum required services unless they were expressly waived by the client.**

The bills are tie-barred and would take effect on July 1, 2008.

House Bill 4416 (H-3)

Duties under Service Provision Agreement

The bill would define "service provision agreement" as a buyer agency agreement or listing agreement executed by a real estate broker and a client that establishes an agency relationship.

A real estate broker or salesperson acting under a service provision agreement would owe at least the following duties to his or her 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 agreement.
- Loyalty to the interest of the client.
- Compliance with the laws, rules, and regulations of the State and any applicable Federal statutes or regulations.
- Referral of the client to other licensed professionals for expert advice related to material matters not within the expertise of the licensed agent.

- A timely accounting of all money and property the agent received, in which the client had or could have an interest.
- Confidentiality of all information obtained in the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who was not an agent of the client.

A real estate broker could authorize a designated agent to represent his or her client, as long as that authorization was in writing.

Services under Service Provision Agreement

A real estate broker or salesperson acting under a service provision agreement would have to provide the following services to his or her client:

- The marketing of the client's property in the manner agreed upon in the agreement, when the broker or salesperson was 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 sought to purchase or lease.
- Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement was executed by all parties and all contingencies were satisfied or waived.
- After all parties executed a purchase agreement, assistance necessary to complete the transaction under the terms of that agreement.

The services described above, except marketing the client's property, could be waived in a limited service agreement (a written service provision agreement by which the real estate broker and client establish an agency relationship in which the client waives all or some of those services).

For a broker or associate broker who was involved at the closing of a real estate or business opportunity transaction, the required services also would include furnishing or causing to be furnished to the buyer and seller a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party.

Advertising

A real estate broker or 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.

Penalties

A licensed real estate broker or salesperson who commits certain violations is subject to the administrative penalties set forth in Article 6 of the Code (e.g., license suspension or revocation, a maximum administrative fine of \$10,000, censure, probation, or a requirement to make restitution).

Under the bill, the grounds for a penalty would include failure to provide the minimum services specified above when providing services pursuant to a service provision agreement, unless expressly waived in writing by the client (as provided in House Bill 4417 (H-2)).

House Bill 4417 (H-2)

Under Article 25, a licensed real estate broker or salesperson must disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the

licensee's duties that each agency relationship creates before the potential buyer or seller discloses to the licensee any confidential information specific to that potential buyer or seller.

Under the bill, unless knowingly waived by execution of a limited service agreement, a real estate broker or salesperson providing services under any service provision agreement would be required, at a minimum, to provide the client with the duties and services described in House Bill 4416 (H-3).

Article 25 requires the disclosure of the type of agency to be in writing and to conform substantially to the disclosure form included in the Code. The form defines a real estate transaction and lists the responsibilities of a seller's agent, buyer's agent, and a dual agent to their clients. House Bill 4417 (H-2) would require that the disclosure be provided to the client.

The bill would amend the disclosure form to list the duties of an agent providing services under a service provision agreement, and the duties of a real estate broker or salesperson acting pursuant to a service provision agreement (as set forth in House Bill 4416 (H-3)).

House Bill 4417 (H-2) also would amend the form to indicate that individual services could be waived by the seller or buyer through execution of a limited service agreement, and that only the following services could be waived by execution of such an agreement:

- Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client sought to purchase or lease.
- Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement was executed by all parties and all contingencies were satisfied or waived.
- After all parties executed a purchase agreement, assistance necessary to complete the transaction under the terms of that agreement.

The bill prescribes the language of a separate limited service agreement form that would have to be given to a client who wanted to waive any of the services described above. The proposed form contains an agreement to waive, acknowledging that the duties owed to the person under Michigan had been explained; that the real estate licensee representing the person would not provide the waived services; and that, in any proposed real estate transaction, no other real estate licensee would be required to provide those services unless the person subsequently hired someone to do so.

MCL 339.2501 et al. (H.B. 4416)
339.2517 (H.B. 4417)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.