

HOUSE BILL No. 5485

March 15, 2012, Introduced by Rep. Yonker and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2501, 2503, and 2505 (MCL 339.2501, 339.2503,
and 339.2505), section 2501 as amended by 2008 PA 90, section 2503
as amended by 1990 PA 269, and section 2505 as amended by 2003 PA
196.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2501. As used in this article:

2 **(A) "AFFILIATED COMPANY" MEANS A LEGAL ENTITY THAT IS WHOLLY**
3 **OWNED, CONTROLLED, OPERATED, OR MANAGED BY ANOTHER LEGAL ENTITY.**

4 **(B) ~~(a)~~**"Employ" or "employment" means the relationship
5 between a real estate broker and an associate broker or a real
6 estate salesperson which may include an independent contractor
7 relationship. The existence of an independent contractor

1 relationship between a real estate broker and an individual
2 licensed to the real estate broker ~~shall~~**DOES** not relieve the real
3 estate broker of the responsibility to supervise acts of the
4 licensee regulated ~~by~~**UNDER** this article.

5 (C) ~~(b)~~-"Independent contractor relationship" means a
6 relationship between a real estate broker and an associate broker
7 or real estate salesperson that satisfies both of the following
8 conditions:

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

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

15 (D) ~~(e)~~-"Limited service agreement" means a written service
16 provision agreement by which the real estate broker and client
17 establish an agency relationship in which certain enumerated
18 services, as set forth in section 2512d(3)(b), (c), and (d), are
19 knowingly waived in whole or part by the client.

20 (E) **"NEGOTIATE THE MORTGAGE OF REAL ESTATE" DOES NOT INCLUDE**
21 **ANY ACTIVITY IN CONNECTION WITH THE NEGOTIATION OF A MORTGAGE LOAN**
22 **FOR WHICH A LICENSE IS REQUIRED UNDER THE MORTGAGE BROKERS,**
23 **LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173, MCL 445.1651 TO**
24 **445.1684.**

25 (F) ~~(d)~~-"Professional designation" means a certification from
26 a real estate professional association demonstrating ~~attainment of~~
27 **THAT AN INDIVIDUAL HAS ATTAINED** proven skills or education in a

1 real estate occupational area and may include the right to use a
2 title or letters after ~~the~~ **A** licensee's name that represent the
3 designation bestowed by the certifying entity.

4 (G) ~~(e)~~—"Property management" means ~~the~~ leasing or renting, or
5 ~~the~~ offering to lease or rent, ~~of~~ real property of others for a
6 fee, commission, compensation, or other valuable consideration,
7 pursuant to a property management employment contract. **THE TERM**
8 **INCLUDES RESIDENTIAL PROPERTY MANAGEMENT.**

9 (H) ~~(f)~~—"Property management account" means an interest-
10 bearing or noninterest-bearing account or instrument used in the
11 operation of property management.

12 (I) ~~(g)~~—"Property management employment contract" means ~~the~~ **A**
13 written agreement entered into between a real estate broker and
14 client concerning the real estate broker's employment as a property
15 manager for the client; ~~setting forth~~ **THAT DESCRIBES** the real
16 estate broker's duties, responsibilities, and activities as a
17 property manager; and ~~setting forth~~ **THAT DESCRIBES** the handling,
18 management, safekeeping, investment, disbursement, and use of
19 property management money, funds, and accounts.

20 (J) ~~(h)~~—"Real estate broker" means ~~an individual, sole~~
21 ~~proprietorship, partnership, association, corporation, common law~~
22 ~~trust, or a combination of those entities who~~ **A PERSON OR**
23 **COMBINATION OF PERSONS THAT**, with intent to collect or receive a
24 fee, compensation, or valuable consideration, sells or offers for
25 sale, buys or offers to buy, provides or offers to provide market
26 analyses **OF**, lists or offers or attempts to list, ~~or~~ negotiates the
27 purchase or sale or exchange ~~or~~ **OF, OR NEGOTIATES THE** mortgage of,

1 real estate; ~~or~~ **THAT** negotiates for the construction of a
 2 building on real estate; ~~who~~ **THAT** leases or offers or rents or
 3 offers for rent real estate or the improvements on the real estate
 4 for others, as a whole or partial vocation; ~~who~~ **THAT** engages in
 5 property management as a whole or partial vocation; ~~who~~ **THAT** sells
 6 or offers for sale, buys or offers to buy, leases or offers to
 7 lease, or negotiates the purchase or sale or exchange of a
 8 business, business opportunity, or the goodwill of an existing
 9 business for others; or ~~who~~ **THAT**, as owner or otherwise, engages
 10 in the sale of real estate as a principal vocation.

11 **(K) ~~(i)~~ "Real estate salesperson" means a person AN INDIVIDUAL**
 12 who for compensation or valuable consideration is employed either
 13 directly or indirectly by a licensed real estate broker to sell or
 14 offer to sell, ~~to~~ buy or offer to buy, ~~to~~ provide or offer to
 15 provide market analyses **OF**, ~~to~~ list or offer or attempt to list, ~~or~~
 16 ~~to~~ negotiate the purchase or sale or exchange ~~or~~ **OF, OR NEGOTIATE**
 17 **THE** mortgage of, real estate, or to negotiate for the construction
 18 of a building on real estate, or to lease or offer to lease ~~or~~ **OR**
 19 rent or offer for rent real estate; ~~who~~ is employed by a real
 20 estate broker to engage in property management; ~~or~~ who sells or
 21 offers for sale, buys or offers to buy, leases or offers to lease,
 22 or negotiates the purchase or sale or exchange of a business,
 23 business opportunity, or the goodwill of an existing business for
 24 others, as a whole or partial vocation.

25 **(I) "RESIDENTIAL PREMISES" MEANS THAT TERM AS DEFINED IN**
 26 **SECTION 2 OF THE TRUTH IN RENTING ACT, 1978 PA 454, MCL 554.632.**

27 **(M) "RESIDENTIAL PROPERTY MANAGEMENT" MEANS TO LEASE OR RENT,**

1 OR OFFER TO LEASE OR RENT, RESIDENTIAL PREMISES OWNED BY ANOTHER
 2 PERSON, FOR A FEE, COMMISSION, COMPENSATION, OR OTHER VALUABLE
 3 CONSIDERATION, PURSUANT TO A PROPERTY MANAGEMENT EMPLOYMENT
 4 CONTRACT.

5 (N) ~~(j)~~ "Service provision agreement" means a buyer agency
 6 agreement or listing agreement executed by a real estate broker and
 7 a client that establishes an agency relationship.

8 Sec. 2503. ~~(1)~~ This article ~~shall~~ **DOES** not apply to an
 9 individual, partnership, association, or corporation, who **ANY OF**
 10 **THE FOLLOWING:**

11 (A) **A PERSON THAT**, as owner, sells or offers for sale a
 12 detached, single family dwelling, duplex, triplex, or quadruplex ,
 13 ~~which THAT~~ has never been occupied and ~~which THAT~~ was built by the
 14 ~~individual, partnership, association, or corporation~~ **PERSON** while
 15 licensed under article 24. ~~This article does not apply to an~~
 16 ~~individual, partnership, association, or corporation, who~~

17 (B) **A PERSON THAT**, as owner or lessor or as attorney-in-fact,
 18 acting under a duly executed and recorded power of attorney from
 19 the owner or lessor, or ~~who THAT~~ has been appointed by a court,
 20 performs an act as a real estate broker or real estate salesperson
 21 with reference to property owned by it, **THE OWNER OF LESSOR**, unless
 22 performed as a principal vocation **AND** not through a licensed real
 23 estate broker.

24 (C) ~~(2)~~ This article shall not include the services **SERVICES**
 25 rendered by an attorney at law as an attorney at law. ~~nor shall~~
 26 ~~it include a~~

27 (D) **A** receiver, trustee in bankruptcy, administrator,

1 executor, ~~a person~~ selling real estate under order of a court, ~~nor~~
 2 ~~a~~ **OR** trustee selling under a deed of trust. This exemption of a
 3 trustee ~~shall~~ **DOES** not apply to repeated or successive sales of
 4 real estate by the trustee, unless the sale is made through a
 5 licensed real estate broker.

6 **(E)** ~~(3) This article does not apply to a~~ **A** person who ~~THAT~~ is
 7 regulated under the mortgage brokers, lenders, and servicers
 8 licensing act, ~~Act No. 173 of the Public Acts of 1987, being~~
 9 ~~sections 445.1651 to 445.1683 of the Michigan Compiled Laws, 1987~~
 10 **PA 173, MCL 445.1651 TO 445.1684**, and ~~who~~ **THAT** does not perform any
 11 other act requiring a license as a real estate broker, associate
 12 broker, or real estate salesperson.

13 **(F) AN INDIVIDUAL WHO FOR COMPENSATION OR OTHER VALUABLE**
 14 **CONSIDERATION IS EMPLOYED EITHER DIRECTLY OR INDIRECTLY BY A**
 15 **LICENSED REAL ESTATE BROKER TO ENGAGE IN RESIDENTIAL PROPERTY**
 16 **MANAGEMENT.**

17 **(G) AN AFFILIATED COMPANY OF AN OWNER OR LESSOR THAT PERFORMS**
 18 **RESIDENTIAL PROPERTY MANAGEMENT FOR THAT OWNER OR LESSOR.**

19 ~~—— (4) For the purposes of this article, "negotiate the mortgage~~
 20 ~~of real estate" as described in section 2501, means engaging in~~
 21 ~~activity not regulated under Act No. 173 of the Public Acts of~~
 22 ~~1987.~~

23 **Sec. 2505. (1) ~~An applicant for~~ A PERSON APPLYING FOR** a real
 24 estate broker's license shall file an application ~~setting forth~~
 25 **WITH THE DEPARTMENT. ALL OF THE FOLLOWING APPLY TO AN APPLICATION**
 26 **FOR A REAL ESTATE BROKER'S LICENSE:**

27 **(A) THE APPLICATION MUST INCLUDE** the applicant's ~~present~~

1 ~~address, both of business and~~ **CURRENT BUSINESS ADDRESS; IF THE**
 2 **APPLICANT IS AN INDIVIDUAL, THE ADDRESS OF HIS OR HER** residence;
 3 **AND** the complete address of each former place where the applicant
 4 ~~has resided or been~~ **WAS** engaged in business, or acted as a real
 5 estate salesperson, for a period of 60 days or more, during the 5
 6 years immediately preceding the date of application. ~~An applicant~~
 7 ~~for a real estate broker's license shall state~~

8 **(B) THE APPLICATION MUST INCLUDE** the name of the ~~individual,~~
 9 ~~sole proprietorship, partnership, association, corporation, limited~~
 10 ~~liability company, common law trust, or a combination of those~~
 11 ~~entities and~~ **PERSON THAT IS THE PROPOSED LICENSEE,** the location of
 12 the place for which the license is desired, **SOUGHT,** and set forth
 13 the period of time **IN** which the applicant has been engaged in the
 14 business. ~~The application shall be executed by the person,~~

15 **(C) THE APPLICATION MUST BE SUBMITTED ON A FORM PROVIDED BY**
 16 **THE DEPARTMENT UNDER SECTION 202 OR 204 AND EXECUTED BY THE**
 17 **APPLICANT, IF THE APPLICANT IS AN INDIVIDUAL,** or by an officer or
 18 member of the applicant **IF THE APPLICANT IS NOT AN INDIVIDUAL.** ~~An~~
 19 ~~applicant for a real estate broker's license which is a~~
 20 ~~partnership, association, corporation, limited liability company,~~
 21 ~~common law trust, or a combination of those entities~~

22 **(D) IF THE APPLICANT IS NOT AN INDIVIDUAL, THE APPLICATION**
 23 shall designate which individuals who are officers or members of
 24 the ~~partnership, association, limited liability company, or~~
 25 ~~corporation~~ **APPLICANT** will be performing acts regulated by this
 26 article as **ITS** principals.

27 (2) The department shall not issue a real estate broker's

1 license to a new applicant ~~who~~ **THAT** has been convicted of
 2 embezzlement or misappropriation of funds.

3 (3) A real estate broker shall maintain a place of business in
 4 this state. ~~If~~ **ALL OF THE FOLLOWING APPLY IF** a real estate broker
 5 maintains more than 1 place of business ~~within the state,~~ **IN THIS**
 6 **STATE:**

7 (A) **THE REAL ESTATE BROKER SHALL OBTAIN** a branch office
 8 license ~~shall be secured by the real estate broker for~~ each branch
 9 office maintained **BY THE BROKER. AS USED IN THIS SUBDIVISION,**
 10 **"BRANCH OFFICE" DOES NOT INCLUDE AN OFFICE IN WHICH THE BROKER IS**
 11 **ENGAGED SOLELY IN RESIDENTIAL PROPERTY MANAGEMENT.**

12 (B) A branch office ~~maintained in excess of~~ **LOCATED MORE THAN**
 13 25 miles from the city limits in which the broker maintains a main
 14 office shall be under the personal, direct supervision of an
 15 associate broker.

16 (4) An ~~applicant~~ **APPLICATION** for a salesperson's license shall
 17 ~~set forth~~ **STATE** the period of time during which the individual has
 18 been engaged in the business ~~, stating~~ **AND STATE** the name of the
 19 applicant's last employer and the name and the place of business of
 20 the ~~individual, partnership, association, limited liability~~
 21 ~~company, corporation, common law trust, or combination of those~~
 22 ~~entities then employing~~ **PERSON THAT EMPLOYS OR WILL EMPLOY** the
 23 applicant. ~~or in whose employ the applicant is to enter.~~ The
 24 application shall be signed by the real estate broker ~~in whose~~ **THAT**
 25 **WILL** employ the applicant. ~~is to enter.~~

26 (5) Before issuing a license, the department may require and
 27 procure satisfactory proof of the business experience, competence,

1 and good moral character of an applicant for a real estate broker's
2 or salesperson's license, or of an officer or member of an
3 applicant **IF THE APPLICANT IS NOT AN INDIVIDUAL**. The department
4 shall require **THAT** an applicant for a broker's or salesperson's
5 license ~~to pass~~ an examination developed by the department or
6 contracted for with a recognized outside testing agency
7 ~~establishing~~, **THAT ESTABLISHES**, in a manner satisfactory to the
8 department, that the applicant has a fair knowledge of the English
9 language, including reading, writing, spelling, and elementary
10 arithmetic; a satisfactory understanding of the fundamentals of
11 real estate practice and of the laws and principles of real estate
12 conveyancing, deeds, mortgages, land contracts, and leases; the
13 obligations of a broker to the public and a principal **OF THE**
14 **BROKER**; and the law defining, regulating, and licensing real estate
15 brokers and salespersons.

16 (6) The department may require written examination or written
17 reexamination of a broker, or **AN OFFICER OR MEMBER OF THE BROKER IF**
18 **THE BROKER IS NOT AN INDIVIDUAL, OR OF A** salesperson, and ~~in that~~
19 ~~case~~ **IF THE DEPARTMENT DOES REQUIRE A WRITTEN EXAMINATION OR**
20 **REEXAMINATION UNDER THIS SUBSECTION, THE DEPARTMENT SHALL NOT**
21 **RELICENSE THE BROKER OR SALESPERSON UNLESS THE INDIVIDUAL TAKING**
22 **THE EXAMINATION OR REEXAMINATION ACHIEVES** a passing score
23 satisfactory to the department. ~~is required as a condition~~
24 ~~precedent to relicensure of a broker or salesperson.~~

25 (7) The department shall require proof that each applicant for
26 a real estate broker's license has the equivalent of 3 years of
27 full-time experience in the business of real estate or in a field

- 1 that is determined by the department to be relevant and related to
- 2 the business of real estate.