

Act No. 122
Public Acts of 2024
Approved by the Governor
July 25, 2024
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2024**

Introduced by Senator Hertel

ENROLLED SENATE BILL No. 602

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations and to regulate certain persons and activities relative to those 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 provide immunity from certain civil liability for certain entities and certain related occupations under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 2501 and 2512 (MCL 339.2501 and 339.2512), as amended by 2016 PA 502, and by adding section 2512g.

The People of the State of Michigan enact:

Sec. 2501. As used in this article:

(a) "Associate broker" or "associate real estate broker" means an individual who meets the requirements for licensure as a real estate broker under this article and who is licensed as an associate real estate broker under section 2505 to provide real estate brokerage services as an employee or independent contractor of a real estate broker.

(b) "Business entity" means a person described in section 105(5)(b) or (c), except a sole proprietorship.

(c) "Classroom course" means an educational course of instruction that is provided at either of the following:

(i) A physical location where instruction is offered and students and an instructor are present.

(ii) A location where a student receives instruction provided by distance learning.

(d) "Clock hour" means either of the following:

(i) For a classroom course at a location described in subdivision (c)(i), a period of 50 to 60 minutes of actual classroom instruction, not including outside assignments and reading.

(ii) For a classroom course at a location described in subdivision (c)(ii), the period required for a student to process the amount of material provided in 50 minutes of distance learning instruction.

(e) "Control person" means an individual who is a sole proprietor, is a partner in a partnership or limited partnership, is an officer, director, or shareholder in a corporation, is a member or manager in a limited liability company, or holds a responsible position in any

other form of business entity authorized under the laws of this state or the state in which the entity is organized or formed.

(f) **Distance learning** means the technology and educational process used to provide instruction to a student when the student and the instructor are not necessarily physically present at the same time or place. The term includes, but is not limited to, instruction provided through an interactive classroom, computer conferencing, or an interactive computer system.

(g) **Employ** or **employment** means the relationship between a real estate broker and an associate real estate 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 does not relieve the real estate broker of the responsibility to supervise acts of the licensee that are regulated under this article.

(h) **Independent contractor relationship** means a relationship between a real estate broker and an associate real estate 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 real estate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) At least 75% of the annual compensation paid by the real estate broker to the associate real estate broker or real estate salesperson is from commissions from the sale of real estate.

(i) **License cycle** means the term of a license issued under this article.

(j) **Limited service agreement** means a written service provision agreement by which a real estate broker and client establish an agency relationship in which certain enumerated services, as set forth in section 2512d(3)(b), (c), and (d), are knowingly waived in whole or part by the client.

(k) **Negotiate the mortgage of real estate** means engaging in activity in connection with a mortgage that is not regulated under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to MCL 493.81, or the mortgage loan originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

(l) A **nonprincipal** of a real estate broker means a control person who is licensed as an associate real estate broker under this article, but is not designated as a principal under section 2505(1).

(m) **Place of business** means a physical location that a real estate broker, by advertisement, signage, or otherwise, represents to the public is a place where clients and customers may consult or do business with a licensee.

(n) **Pocket card** means the card that contains information about a licensee's license that the department provides under section 2506 when it issues a license under this article.

(o) **Prelicensure course** means a course that is represented to the public as fulfilling, in whole or in part, the requirements of section 2504.

(p) A **principal** of a real estate broker means a control person who is licensed as an associate real estate broker and is designated as a principal under section 2505(1).

(q) **Professional designation** means a certification from a real estate professional association that demonstrates that an individual has attained proven skills or education in a real estate occupational area and may include the right to use a title or letters after the licensee's name that represent the designation awarded by the certifying entity.

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

(s) **Property management account** means an interest-bearing or noninterest-bearing account or instrument used in the operation of property management.

(t) **Property management employment contract** means a written agreement that is entered into between a real estate broker and client concerning the real estate broker's employment as a property manager for the client; that describes the real estate broker's duties, responsibilities, and activities as a property manager; and that describes the handling, management, safekeeping, investment, disbursement, and use of property management money, funds, and accounts.

(u) **Real estate broker** means an individual or business entity that, 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 of, lists or offers or attempts to list, or negotiates the purchase, sale, or exchange of real estate; that negotiates the mortgage of real estate; that negotiates for the construction of a building on real estate; that 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; that engages in property management as a whole or partial vocation; that 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 that, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(v) **Real estate salesperson** means an individual who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, buy or offer to buy, provide or offer to provide market analyses of, list or offer or attempt to list, or negotiate the purchase, sale, or exchange of real estate; to negotiate the mortgage of real estate; to negotiate for the construction of a building on real estate, or to lease or offer to lease, or 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.

(w) **Right-to-list home sale agreement** means an agreement between an owner of residential real estate and a real estate broker that obligates the owner to list the residential real estate for sale with the real estate broker at a future date in exchange for consideration. As used in this subdivision, **residential real estate** means the type of real estate described in section 2517(3). Right-to-list home sale agreement does not include a service provision agreement.

(x) **Service provision agreement** means a buyer agency agreement or listing agreement that is executed by a real estate broker and a client and establishes an agency relationship.

(y) **Sponsor** means a person that represents to the public that the courses it conducts for purposes of this article fulfill the requirements of section 2504a for continuing education.

Sec. 2512. (1) A licensee that does 1 or more of the following is subject to the penalties set forth in article 6:

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

(b) Does not provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as required under section 2517.

(c) If the licensee is an associate real estate broker or real estate salesperson, represents or attempts to represent a real estate broker other than the licensee's employer without the express knowledge and consent of the employer.

(d) Does not account for or does not remit money that comes into the licensee's possession that belongs to others.

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

(f) If the licensee is a real estate broker, does not return a real estate salesperson's license within 5 days under section 2507.

(g) If the licensee engaged in property management, violates section 2512c(2), (5), or (6).

(h) Except as provided in section 2510(2), shares or pays a fee, commission, or other valuable consideration to a person that is not licensed under this article, including payment to any person that provides the name of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of a commercially prepared list of names. However, a licensed real estate broker may pay a commission to a real estate broker that is licensed by another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.

(i) Conducts or develops a market analysis that does not comply with section 2601(a)(ii).

(j) Does not provide the minimum services specified under section 2512d(3) when providing services under a service provision agreement unless expressly waived in writing by the client under section 2517(2).

(k) Except in connection with a property management account, does not deposit money in the licensee's possession that belongs to another person in a custodial trust or escrow account that is maintained by the real estate broker, in a manner that complies with all of the following:

(i) A real estate broker shall retain a deposit or other money made payable to a person that holds a real estate broker's license under this article pending consummation or termination of the transaction involved and shall account for the full amount of the money at the time of the consummation or termination of the transaction.

(ii) A real estate salesperson shall pay or deliver to the real estate broker, on receipt, a deposit or other money paid in connection with a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.

(iii) A real estate broker shall not deposit or permit the deposit of an advance payment of money that belongs to others in the real estate broker's business or personal account or commingle or permit the commingling of that money with funds on deposit that belong to the real estate broker.

(iv) A real estate broker may maintain more than 1 trust account. A real estate broker may deposit not more than \$2,000.00 of its own money in each trust account to cover bank service charges and bank minimum balance requirements or to avoid the closing of the account because there is no money in the account. The real estate broker shall account for any of its own money in a trust account in the records described in subparagraph (vi).

(v) A real estate broker shall deposit, not later than 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money that belongs to others and is made payable to the real estate broker into 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.

(vi) A real estate broker shall keep records of money deposited in its custodial trust or escrow account, and indicate clearly in those records 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 are subject to inspection by the department. A real estate broker's 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 article and the rules promulgated under this article do not prohibit the deposit of money accepted under this section in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.

(vii) If a purchase agreement signed by a seller and purchaser provides that an escrowee other than a real estate broker shall hold a deposit, a licensee in possession of that deposit shall cause the deposit to be delivered to the named escrowee not later than 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties.

(l) Enters into a void and unenforceable right-to-list home sale agreement as described in section 2512g.

(2) A complaint that seeks a penalty under article 5 for a violation of this section must be filed not later than 18 months after 1 of the following dates, whichever occurs later:

- (a) The date of the alleged violation.
- (b) If the alleged violation occurs in connection with a real estate transaction, the date the transaction is completed.

Sec. 2512g. (1) A right-to-list home sale agreement is void and unenforceable if any of the following apply to the agreement:

- (a) It is not in writing.
- (b) It is not signed by all persons that have an ownership interest in the residential real estate considered in the agreement.
- (c) It is for a period of more than 2 years.
- (d) It does not include both of the following:

(i) An option for the owner to terminate the agreement before its expiration date for an amount of consideration payable to the real estate broker that is not more than the initial consideration the broker paid to the owner with interest of 6% per annum that starts from the date the broker provided the initial consideration through the date that the owner terminated the agreement.

(ii) The period of time that the agreement is effective and an explanation of the early termination option on the first page of the agreement in a conspicuous manner.

(2) This section applies to a right-to-list home sale agreement that is entered into, extended, or renewed on or after the effective date of the amendatory act that added this section.

This act is ordered to take immediate effect.



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Secretary of the Senate

Clerk of the House of Representatives

Approved _____

Governor