

# HOUSE BILL No. 4850

May 31, 2005, Introduced by Reps. Green, Schuitmaker, Jones, Gaffney, McDowell, Wojno, Alma Smith, Lemmons, Jr., Sheltroun, Palsrok and Lemmons, III and referred to the Committee on Regulatory Reform.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2517. (1) A licensee shall disclose to a potential  
2 buyer or seller in a real estate transaction all types of agency  
3 relationships available and the licensee's duties that each  
4 agency relationship creates before the disclosure by the  
5 potential buyer or seller to the licensee of any confidential  
6 information specific to that potential buyer or seller.

7       (2) The disclosure of the type of agency relationship shall

1 be in writing and substantially conform to the following:

2 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

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

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

18 Seller's Agents

19 A seller's agent, under a listing agreement with the seller,  
20 acts solely on behalf of the seller. A seller can authorize a  
21 seller's agent to work with subagents, buyer's agents and/or  
22 transaction coordinators. A subagent is one who has agreed to  
23 work with the listing agent, and who, like the listing agent,  
24 acts solely on behalf of the seller. Seller's agents and  
25 subagents will disclose to the seller known information about the  
26 buyer which may be used to the benefit of the seller. **A SELLER'S**  
27 **AGENT PROVIDING SERVICES UNDER AN EXCLUSIVE SERVICE PROVISION**

1 AGREEMENT OWES THE FOLLOWING DUTIES TO THE CLIENT: (1) MARKETING  
2 OF THE CLIENT'S PROPERTY IN THE MANNER AGREED UPON IN THE  
3 AGREEMENT; (2) ACCEPTANCE OF DELIVERY AND PRESENTATION OF OFFERS  
4 AND COUNTEROFFERS TO BUY, SELL, OR LEASE THE CLIENT'S PROPERTY;  
5 (3) ASSISTANCE IN DEVELOPING, COMMUNICATING, NEGOTIATING, AND  
6 PRESENTING OFFERS, COUNTEROFFERS, AND RELATED NOTICES OR  
7 DOCUMENTS UNTIL A PURCHASE OR LEASE AGREEMENT IS EXECUTED BY ALL  
8 PARTIES AND ALL CONTINGENCIES ARE SATISFIED OR WAIVED; (4) AFTER  
9 EXECUTION OF A PURCHASE AGREEMENT, ASSISTANCE AS NECESSARY TO  
10 COMPLETE THE TRANSACTION UNDER THE TERMS SPECIFIED IN THE  
11 PURCHASE AGREEMENT; (5) FURNISHING, OR CAUSING TO BE FURNISHED, A  
12 COMPLETE AND DETAILED CLOSING STATEMENT.

13 Buyer's Agents

14 A buyer's agent, under a buyer's agency agreement with the  
15 buyer, acts solely on behalf of the buyer. Buyer's agents and  
16 subagents will disclose to the buyer known information about the  
17 seller which may be used to benefit the buyer.

18 Dual Agents

19 A real estate licensee can be the agent of both the seller  
20 and the buyer in a transaction, but only with the knowledge and  
21 informed consent, in writing, of both the seller and the buyer.

22 In such a dual agency situation, the licensee will not be  
23 able to disclose all known information to either the seller or  
24 the buyer.

25 The obligations of a dual agent are subject to any specific  
26 provisions set forth in any agreement between the dual agent, the  
27 seller, and the buyer.

1 Licensee Disclosure (check one)

2 I hereby disclose that the agency status of the licensee  
3 named below is:

4 \_\_\_\_\_ Seller's Agent

5 \_\_\_\_\_ Buyer's Agent

6 \_\_\_\_\_ Dual Agent

7 \_\_\_\_\_ None of the above

8 Affiliated Licensee Disclosure (check one)

9 \_\_\_\_\_ Only the licensee's broker and a named supervisory  
10 broker have the same agency relationship as the licensee named  
11 below. If the other party in a transaction is represented by an  
12 affiliated licensee, then the licensee's broker and all named  
13 supervisory brokers shall be considered disclosed consensual dual  
14 agents.

15 \_\_\_\_\_ All affiliated licensees have the same agency  
16 relationship as the licensee named below.

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

19 \_\_\_\_\_  
20 Licensee Date

21 \_\_\_\_\_  
22 Licensee Date

23 Acknowledgment

24 By signing below, the parties confirm that they have  
25 received and read the information in this agency disclosure  
26 statement and that this form was provided to them before the  
27 disclosure of any confidential information specific to the

1 potential sellers or buyers.

2 \_\_\_\_\_  
 3 Potential Buyer/Seller (circle one) Date  
 4 \_\_\_\_\_  
 5 Potential Buyer/Seller (circle one) Date

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

9 (4) A broker and a client may enter into a designated agency  
 10 agreement. In the absence of a written designated agency  
 11 agreement, a client is considered to have an agency relationship  
 12 with the broker and all affiliated licensees.

13 (5) A designated agency agreement shall contain the name of  
 14 all associate brokers who are authorized to act as supervisory  
 15 brokers. If designated agents who are affiliated licensees  
 16 represent different parties in the same real estate transaction,  
 17 the broker and all supervisory brokers are considered disclosed  
 18 consensual dual agents for that real estate transaction.  
 19 Designated agents who are affiliated licensees representing  
 20 different parties in the same transaction shall notify their  
 21 clients that their broker represents both buyer and seller before  
 22 an offer to purchase is made or presented.

23 (6) Except as otherwise provided in subsection (5), a client  
 24 with a designated agency agreement is not considered to have an  
 25 agency relationship with any affiliated licensees of the  
 26 designated agent. Two designated agents who are affiliated

1 licensees may each represent a different party in the same  
2 transaction and shall not be considered dual agents. The  
3 designated agent's knowledge of confidential information of a  
4 client is not imputed to any affiliated licensee not having an  
5 agency relationship with that client.

6 (7) A designated agent shall not disclose confidential  
7 information of a client to any licensee, whether or not an  
8 affiliated licensee, except that a designated agent may disclose  
9 to any supervisory broker confidential information of a client  
10 for purposes of seeking advice or assistance for the benefit of  
11 the client. A licensee who represents a client in an agency  
12 capacity does not breach any duty or obligation owed to that  
13 client by failing to disclose to that client information obtained  
14 through a present or prior agency relationship.

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

19 (9) As used in this section:

20 (a) "Affiliated licensees" means individuals licensed as  
21 salespersons or associate brokers who are employed by the same  
22 broker.

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

25 (c) "Buyer's agent" means a licensee acting on behalf of the  
26 buyer in a real estate transaction who undertakes to accept the  
27 responsibility of serving the buyer consistent with those

1 fiduciary duties existing under common law.

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

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

9 (f) "Dual agent" means a licensee who is acting as the agent  
10 of both the buyer and the seller and provides services to  
11 complete a real estate transaction without the full range of  
12 fiduciary duties owed by a buyer's agent and a seller's agent.

13 (g) "Real estate transaction" means the sale or lease of any  
14 legal or equitable interest in real estate where the interest in  
15 real estate consists of not less than 1 or not more than 4  
16 residential dwelling units or consists of a building site for a  
17 residential unit on either a lot as defined in section 102 of the  
18 land division act, 1967 PA 288, MCL 560.102, or a condominium  
19 unit as defined in section 4 of the condominium act, 1978 PA 59,  
20 MCL 559.104.

21 (h) "Seller" means the equitable or legal owner of real  
22 estate.

23 (i) "Seller's agent" means a licensee acting on behalf of  
24 the seller in a real estate transaction who undertakes to accept  
25 the responsibility of serving the seller consistent with those  
26 fiduciary duties existing under common law.

27 (j) "Supervisory broker" means an associate broker

1 designated in a written agency agreement to act in a supervisory  
2 role in an agency relationship.

3 (k) "Transaction coordinator" means a licensee who is not  
4 acting as the agent of either the buyer or the seller.

5 Enacting section 1. This amendatory act does not take  
6 effect unless Senate Bill No.\_\_\_\_ or House Bill No. 4849(request  
7 no. 03308'05) of the 93rd Legislature is enacted into law.