

Act No. 502
Public Acts of 2016
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Senator Kowall

ENROLLED SENATE BILL No. 26

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 105, 204, 2501, 2502a, 2503, 2504, 2504a, 2505, 2506, 2507, 2509, 2510, 2512, and 2512d (MCL 339.105, 339.204, 339.2501, 339.2502a, 339.2503, 339.2504, 339.2504a, 339.2505, 339.2506, 339.2507, 339.2509, 339.2510, 339.2512, and 339.2512d), sections 105, 204, and 2507 as amended by 1988 PA 463, sections 2501 and 2512 as amended and section 2512d as added by 2008 PA 90, sections 2502a and 2504 as amended and section 2504a as added by 2014 PA 106, section 2503 as amended by 1990 PA 269, section 2505 as amended by 2003 PA 196, section 2506 as amended by 2011 PA 33, and section 2509 as amended by 1988 PA 16, and by adding sections 2502b, 2512e, 2512f, 2516, 2516a, and 2516b.

The People of the State of Michigan enact:

Sec. 105. (1) “License” means the document issued to a person under this act that enables the person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act. License includes a document issued by the department that permits a school, institution, or person to offer training or education in an occupation or that permits the operation of a facility, establishment, or institution in which an occupation is practiced. License includes a permit or approval.

(2) “Licensee” means any of the following, as applicable:

(a) In articles 1 to 6, a person that is licensed or required to be licensed under this act.

(b) In a specific article of this act, a person that is licensed or required to be licensed under that article.

(3) “Limitation” means a condition, stricture, constraint, restriction, or probation attached to a license or registration relative to the scope of practice, including the following:

(a) A requirement that the licensee or registrant perform only specified functions of the licensee’s or registrant’s occupation.

(b) A requirement that the licensee or registrant perform the licensee’s or registrant’s occupation only for a specified period of time.

(c) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only within a specified geographical area.

(d) A requirement that restitution be made or certain work be performed before a license or registration is issued, renewed, or reinstated.

(e) A requirement that a financial statement certified by an individual who is licensed as a certified public accountant be filed with the department at regular intervals.

(f) A requirement that reasonably assures a licensee's or registrant's competence to perform the licensee's or registrant's occupation.

(g) A requirement that an attorney review all contracts of a licensee or registrant.

(h) A requirement that a licensee or registrant have on file with the department a bond that is issued by a surety insurer approved by the department or cash in an amount determined by the department.

(i) A requirement that a licensee or registrant deposit money received in an escrow account which can be disbursed only under certain conditions as determined by the licensee or registrant and another party.

(j) A requirement that a licensee or registrant file reports with the department at intervals determined by the department.

(4) "Occupation" means a field of endeavor regulated under this act.

(5) "Person" means any of the following:

(a) An individual.

(b) A sole proprietorship, partnership, association, corporation, limited liability company, or common law trust.

(c) A combination of persons described in subdivision (a) or (b).

(d) A department, board, school, institution, establishment, or governmental entity.

(6) "Physical dominion" means control and possession.

(7) "Physician" means that term as defined in sections 17001 and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and 333.17501.

(8) "Probation" means a sanction that permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated under this act.

(9) "Public access" means the right of a person to view and copy files under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) "Registrant" means a person that is registered under this act.

(11) "Registration" means the document issued to a person under this act that enables the person to use a designated title, which use would be otherwise prohibited by this act.

(12) "Rule" means a rule promulgated under this act and under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(13) "State" means the District of Columbia or a commonwealth, state, or territory of the United States.

Sec. 204. (1) Unless otherwise provided in this act and subject to the limitations under this section, the department shall renew the license or registration of a person that does all of the following:

(a) Applies to the department on a form provided by the department for renewal of a license or registration. The applicant must deliver the application for renewal to the department on or before the expiration date of the person's current license or registration.

(b) Pays the appropriate fees under article 4.

(c) Meets the renewal requirements set forth in a specific article or a rule or order issued under this act.

(2) Except as otherwise provided in this act, a board that requires evidence of attendance in a continuing education program as a condition to license renewal may waive that requirement if, after receiving a written application, the board finds the failure of the licensee to attend was due to the licensee's disability, military service, or absence from the continental United States or due to circumstances beyond the control of the licensee that the board considers sufficient cause to waive the requirement.

(3) Except as otherwise provided in article 7, the department may renew a license or registration under this act with a limitation. The department shall notify the appropriate board of the department's intent to impose a limitation on the renewal of a license of a person seeking license renewal in the occupation for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 30 days after receipt of the notification by the department, does not approve or disapprove the imposition of a limitation, the department may impose the limitation. A person that receives a license or registration renewed with a limitation may receive a review of that limitation under section 519.

(4) It is the responsibility of the licensee or registrant to renew a license or registration. The department shall send a renewal application to the last known address of a licensee or registrant on file with the department. The failure of a licensee or registrant to notify the department of a change of address does not extend the expiration date of a license or registration and may result in disciplinary action.

(5) A licensee or registrant shall report to the department a change in name or mailing address, or a change of electronic mail address if the licensee or registrant has provided an electronic mail address under subsection (6), not later than 30 days after the change occurs.

(6) If the department is required or permitted under this act to deliver or serve a notice or other communication to a licensee or registrant by mail, the department may deliver or serve the notice or communication by electronic mail rather than by first-class mail if the licensee or registrant has provided an electronic mail address to the department, authorized the department in writing to deliver or serve notices and communications to the licensee or registrant at the electronic mail address, and agreed in writing that the licensee or registrant consents to the service of any notice or communication sent to the electronic mail address that the department would otherwise serve by mail.

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 pocket card that contains information about the 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) “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.

(x) “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. 2502a. (1) The department by rule shall establish the term of the license cycle for a license for a real estate broker, associate real estate broker, and real estate salesperson granted under this article. The department shall not issue a license to an individual who is under the age of 18 years.

(2) The department shall renew a license for a real estate broker, associate real estate broker, or real estate salesperson if the department receives an application for renewal on a form prescribed by the department, and payment of the appropriate fees, within the time period described in section 411(1) or (2), and the applicable requirements of section 2504a are met.

(3) The department may relicense a business entity that fails to renew a real estate broker’s license issued under this article within the time period described in subsection (2) if the business entity pays an application processing fee, the late renewal fee, and the per-year license fee for the upcoming license period and designates a principal under section 2505(1)(d).

(4) The department may relicense without examination an individual who fails to renew a license issued under this article within the time period described in subsection (2) if all of the following are met:

(a) The individual applies within 3 years after the expiration date of the person’s last license.

(b) The individual pays an application processing fee, the late renewal fee, and the per-year license fee for the upcoming licensure period.

(c) The individual completes 6 clock hours of continuing education for each year and partial year that have elapsed since the expiration of his or her last license, on the topics described in section 2504a(1).

(5) The department may relicense an individual who failed to renew a real estate broker or associate broker license within 3 years after the expiration date of his or her last real estate broker or associate broker license if he or she pays an application processing fee, the late renewal fee, and the per-year license fee for the upcoming licensure period and submits proof that he or she meets any of the following:

(a) Has completed a total of 6 clock hours of continuing education for each year and partial year that have elapsed since the expiration of his or her last real estate broker or associate real estate broker license, on the topics described in section 2504a(1).

(b) Has completed 90 clock hours of precensure courses described in section 2504(3) in the 12-month period preceding the date of the application.

(c) Has passed the examination required for a real estate broker license under section 2505(5).

(6) The department may relicense an individual who failed to renew a real estate salesperson license within 3 years after the expiration date of his or her last license if he or she pays an application processing fee, the late renewal fee, and the per-year license fee for the upcoming licensure period and submits proof that he or she meets any of the following:

(a) Has completed a total of 6 clock hours of continuing education for each year and partial year that have elapsed since the expiration of his or her last license, on the topics described in section 2504a(1).

(b) Has completed 40 clock hours of precensure courses described in section 2504(3) in the 12-month period preceding the date of the application.

(c) Has passed the examination required for a real estate salesperson license under section 2505(5).

(7) An individual whose license is revoked shall not apply for a new license for at least 3 years after the service of the final order of the revocation. To be considered for a license following a revocation, an applicant shall meet all educational and examination requirements in effect at the time of application, and the applicant shall not receive credit for education or experience acquired, or examinations passed, before the revocation.

Sec. 2502b. (1) Unless the owner engages the services of a real estate broker in connection with those sales, an individual who is the owner of real estate must obtain a license as a real estate broker to engage in the sale of that real estate as a principal vocation. For purposes of this subsection, each of the following is considered engaging in the sale of real estate as a principal vocation:

(a) Engaging in more than 5 real estate sales in any 12-month period.

(b) Representing to the public that he or she is principally engaged in the sale of real estate.

(c) Devoting over 50% of his or her working time, or more than 15 hours per week in any 6-month period, to the sale of real estate.

(d) If he or she is a real estate salesperson, a sale of real estate other than his or her principal residence.

(2) A sale of real estate that is owned by, or under option to, a real estate broker or associate real estate broker is subject to the provisions of this article.

(3) If a licensee is selling property that is owned by the licensee or in which the licensee has an interest, the licensee shall reveal the facts of the licensee's ownership or interest and the licensee's licensure to the purchaser, in writing, before an offer to purchase is signed. A licensee shall provide written proof of this disclosure that is satisfactory to the department on request by the department.

Sec. 2503. (1) This article does not apply to a person that, as owner, sells or offers for sale a detached, single family dwelling, duplex, triplex, or quadruplex, that has never been occupied and that was built by the person while licensed under article 24. This article does not apply to an owner or lessor, an attorney-in-fact acting under a duly executed and recorded power of attorney from the owner or lessor, or a person appointed by a court, that performs an act as a real estate broker or real estate salesperson with reference to property owned by it, unless performed as a principal vocation not through a licensed real estate broker.

(2) This article does not apply to an attorney-at-law who is rendering services as an attorney-at-law; to a receiver, trustee in bankruptcy, administrator, executor, a person selling real estate under order of a court; or to a trustee selling under a deed of trust, unless the trustee makes repeated or successive sales of real estate not through a licensed real estate broker.

(3) This article does not apply to a person that is regulated under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that does not perform any other act requiring a license as a real estate broker, associate broker, or real estate salesperson.

Sec. 2504. (1) Both of the following must be met before an applicant receives a real estate broker's license under this article:

(a) The applicant must submit an application under section 2505.

(b) The applicant, if the applicant is an individual, or the individual designated as the principal of the applicant under section 2505 if the applicant is a business entity, must successfully complete at least 90 clock hours of approved prelicensure classroom courses in real estate. All of the following apply to these 90 hours of instruction:

(i) At least 9 clock hours must be instruction on civil rights law and fair housing law.

(ii) The 90 hours are in addition to the hours required to obtain a real estate salesperson's license.

(iii) The applicant must complete the 90 hours within the 36-month period preceding the date of the application unless the applicant has held an active license as a real estate salesperson for that period.

(iv) The department by rule may determine that possession of 1 or more of the following credentials is the equivalent to completing prelicensure classroom courses described in this subdivision, and the appropriate number of clock hours of credit that an applicant or principal of an applicant, as applicable, receives for possessing each credential:

(A) A law degree.

(B) A bachelor's degree in business or finance from a degree- or certificate-granting public or independent nonprofit college or university, junior college, or community college.

(C) A master's degree in business or finance from a degree- or certificate-granting public or independent nonprofit college or university, junior college, or community college.

(D) Any other educational credential that the department, in consultation with the board, determines is the equivalent to completing prelicensure classroom courses described in this subdivision.

(2) Before he or she is permitted to take the real estate salesperson's examination, an applicant must show proof that he or she has successfully completed at least 40 clock hours of approved prelicensure classroom courses in principles of real estate, including at least 4 clock hours of instruction on civil rights law and equal opportunity in housing. The applicant must complete the 40 hours of prelicensure education within the 36-month period preceding the date of the application.

(3) For purposes of subsections (1) and (2), an approved prelicensure course is a classroom course that meets all of the following:

(a) Meets criteria established by the department. The department may promulgate rules to establish these criteria.

(b) Covers 1 or more of the following topics:

(i) Real estate license law and related regulatory laws.

(ii) Real property law, including property interests and restrictions.

(iii) Federal, state, and local tax laws affecting real property.

(iv) Conveyances, including contracts, deeds, and leases.

(v) Financing, including mortgages, land contracts, foreclosure, and limits on lending procedures and interest rates.

(vi) Appraisal of real property.

(vii) Design and construction.

(viii) Marketing, exchanging, and counseling.

(ix) The law of agency.

(x) Sales and office management, including listing and selling techniques.

(xi) Real estate securities and syndications.

(xii) Investments, including property management.

(4) A person that offers or conducts a prelicensure course or courses of study that are represented to meet the educational requirements of this section shall first obtain approval from the department and shall comply with the rules of the department concerning curriculum, instructor qualification, grading system, and other related matters. A course shall be designed to be taught for at least 1 clock hour, not including time spent on breaks, meals, or other unrelated activities. The department may suspend or revoke the approval of a person approved under this subsection for a violation of this article or of the rules promulgated under this article. A person that offers or conducts a course shall not represent that its students are assured of passing an examination required by the department. A person shall not represent that the issuance of departmental approval under this subsection is a recommendation or endorsement of the

person to which it is issued or of a course of instruction given by it. A prelicensure course approved under this section shall be conducted by 1 of the following:

- (a) A local public school district.
- (b) A community college.
- (c) An institution of higher education authorized to grant degrees.

(d) Any other education provider approved by the department under this subsection, if that provider meets any requirements for prelicensure education providers established by the department by rule, in consultation with the board.

(5) A person that violates subsection (4) in operating a school that provides 1 or more courses described in this section is subject to the penalties set forth in article 6.

(6) The department may conduct, hold, or assist in conducting or holding, a real estate clinic, meeting, course, or institute, which shall be open to a person licensed under this article, and may incur the necessary expenses in connection with the clinic, meeting, course, or institute. The department, in the public interest, may assist educational institutions in this state in sponsoring studies, research, and programs for the purpose of raising the standards of professional practice in real estate and the competence of a licensee.

(7) For purposes of subsection (3)(b), the department may contract under section 210 with a statewide real estate association that has a membership representing more than 18,000 licensees to do any of the following:

(a) Review prelicensure courses and make recommendations to the department of whether the department should approve a prelicensure course, based on criteria established by the department.

(b) Review prelicensure courses to determine whether the subject matter of the courses is relevant to the practice of real estate.

Sec. 2504a. (1) In each year of a license cycle, subject to subsection (7), a licensee shall successfully complete at least 6 clock hours of eligible continuing education courses.

(2) All of the following apply to the continuing education requirement described in subsection (1):

(a) In completing the appropriate number of eligible continuing education courses, a licensee may select education courses in his or her area of expertise, but at least 2 hours of the education courses in each year of a license cycle must involve law, rules, and court cases regarding real estate.

(b) At the time he or she attends an eligible continuing education course, a licensee shall do both of the following to confirm his or her identity:

(i) Present his or her pocket card, or provide his or her license identification number, from the department to the course provider.

(ii) Present his or her operator's license or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or other government-issued photo identification to the course provider.

(c) Any education course that the licensee successfully completes to obtain a professional designation is counted toward the total continuing education credits required in a license cycle.

(d) If a licensee successfully completes an eligible continuing education course, he or she does not earn additional hours toward the requirements of this section if he or she repeats that course.

(3) An applicant for license renewal under section 2502a shall certify compliance with subsections (1) and (2) to the department. A licensee shall retain evidence acceptable to the department that demonstrates he or she has met the continuing education requirements under this section, for at least 4 years after the date of that certification, and shall produce the following information at the request of the department:

(a) The name and contact information of the continuing professional education program sponsor.

(b) The participant's name.

(c) The course title and course field of study.

(d) The date the course was offered or completed.

(e) If applicable, the location of the course.

(f) Verification by a representative of the continuing professional education program sponsor of the participant's completion of the course.

(g) A time statement from the continuing professional education program sponsor that states that continuing professional education credits for the course were granted on a 50-minute hour.

(4) An applicant for license renewal under section 2502a is subject to audit by the department for compliance with subsections (1) and (2), or (7), and may be required to submit the documentation described in subsection (3) to the department on request.

(5) If the department finds as the result of an audit under subsection (4) that an applicant for license renewal under section 2502a did not complete sufficient hours of eligible continuing education courses to renew his or her license, any penalty imposed by the department shall include a requirement that the licensee must complete both of the following, if applicable:

(a) A sufficient number of additional hours of continuing education to fulfill the requirements for the period determined by audit to be deficient.

(b) If the period determined by the audit to be deficient is at least 60 days, additional hours of continuing education in 1 of the following amounts:

(i) If the deficiency period is at least 60 days and less than 120 days, 4 hours.

(ii) If the deficiency period is 120 days or more, 8 hours.

(6) Hours of additional continuing education required under subsection (5)(b) do not apply toward continuing education required in each year of a license cycle. The department may waive the requirement for additional hours under subsection (5)(b) if the applicant demonstrates to the department that the additional hours would present an undue hardship on the applicant.

(7) If a real estate broker, associate real estate broker, or salesperson receives a license that is issued after the beginning of the current license cycle for that license, the department may prorate the number of hours of eligible continuing education that licensee is required to complete under subsections (1) and (2) for the year of the license cycle in which the license is issued.

(8) Course credits used to meet continuing education requirements under this section do not apply toward the real estate broker's license precursory education requirements under section 2504, and course credits successfully completed under real estate broker's license precursory education requirements under section 2504 do not apply toward the continuing education requirements of this section.

(9) As used in this section, "eligible continuing education course" means a continuing education course that meets the standards established by the department by rule under subsection (1) and, if successfully completed by a licensee, is counted toward the licensee's continuing education requirements under this section.

Sec. 2505. (1) An individual or business entity that is applying for a real estate broker's license shall file an application with the department. All of the following apply to an application for a real estate broker's license:

(a) The application must include the applicant's current business address; if the applicant is an individual, the address of his or her residence; and the complete address of each former place where the applicant resided or was engaged in business, or acted as a real estate salesperson, for a period of 60 days or more, during the 5 years immediately preceding the date of application.

(b) The application must include the name of the individual or business entity that is the proposed licensee; the location of the place for which the license is sought; and the period of time in which the applicant has been engaged in the business.

(c) The application must be executed by the applicant, if the applicant is an individual, or by a principal of the applicant if the applicant is a business entity.

(d) If the applicant is a business entity, the application shall designate which individuals who are control persons of the entity will be performing acts regulated by this article as principals. An applicant shall not designate a control person as a principal unless that control person is licensed as an associate real estate broker under this article.

(2) The department shall not issue a real estate broker's license to an individual who has been convicted of embezzlement or misappropriation of funds.

(3) A real estate broker shall maintain a place of business in this state. If a real estate broker maintains more than 1 place of business in this state, the real estate broker must obtain a branch office license for each of those additional places of business. If a branch office is located more than 25 miles from the nearest boundary of the municipality in which the main office of the real estate broker is located, the broker shall ensure that the branch office is under the direct supervision of an associate broker. As used in this subsection, "direct supervision" means that an associate broker is physically present at the branch office on a regular basis to supervise and manage the business during ordinary business hours.

(4) An application for a real estate salesperson's license shall be signed by the real estate broker that will employ the applicant. The department shall only issue a real estate salesperson's license to an individual.

(5) Before issuing a license, the department may require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a license under this article if the applicant is an individual or of each principal if the applicant is a business entity. Subject to subsection (6), the department shall require that each of those individuals pass an examination developed by the department or contracted for with a recognized outside testing agency that establishes, in a manner satisfactory to the department, that he or she has a fair knowledge of the English language, including reading, writing, spelling, and elementary arithmetic; a satisfactory understanding of the

fundamentals of real estate practice and of the laws and principles of real estate conveyancing, deeds, mortgages, land contracts, and leases; the obligations of a broker to the public and a principal; and the law defining, regulating, and licensing real estate brokers and salespersons. The department may require written examination or written reexamination of an individual described in this subsection, and if the department does require a written examination or reexamination under this subsection, the department shall not issue a license unless the individual taking the examination or reexamination achieves a passing score satisfactory to the department.

(6) All of the following apply to the written examination requirement described in subsection (5):

(a) The department may relicense without examination an individual who is applying for a real estate broker's or associate real estate broker's license; has previously held a real estate broker's or associate real estate broker's license that has lapsed; and has been continuously licensed as a real estate salesperson since the lapse of the previous license.

(b) A passing score on an examination, or on a portion of an examination if the examination is given in separate parts, is valid for 1 year from the date of the examination.

(7) The department shall require proof that each applicant for a real estate broker's license, if the applicant is an individual, or each principal if the applicant is a business entity, has the equivalent of 3 years of full-time experience in the business of real estate. All of the following apply in determining whether an individual meets this experience requirement:

(a) If state law requires that a person hold a license to be licensed to perform an activity that is considered the business of real estate, an individual shall not receive credit for experience performing that activity without proper licensure.

(b) For purposes of calculating whether an individual has the equivalent of 3 years of experience, the department shall grant the following credit or credits toward that 3-year requirement:

(i) If the individual is a real estate salesperson, 1 year of credit for each 12-month period of licensure in which he or she closed 5 or more real estate transactions.

(ii) If the individual is a builder, 1 year of credit for each 12-month period in which he or she built and personally sold or leased at least 5 residential units, commercial units, or industrial units or a combination of those types of units.

(iii) If the individual is a real estate investor, 6 months of credit for each 5 real property transactions personally negotiated for a purchase or sale by the individual for his or her own account, with a maximum of 1 year of credit allowed. However, an individual shall not receive credit under this subdivision if he or she engaged in more than 5 sales in any 12-month period in violation of section 2502b.

(iv) If the individual is a land or condominium developer, 1 year of credit for each 2 developments or subdivisions that contain at least 10 units or parcels that he or she bought, subdivided, and improved for sale as lots or dwellings.

(v) If the individual is an attorney, 1 year of credit for each year in which he or she acted as the attorney for at least 6 real estate transactions.

(vi) If the individual is a real estate appraiser who is licensed under article 26, 1 year of credit for each period equivalent to at least 40 hours per week, and at least 48 weeks per year, in which he or she acted as a real estate appraiser.

(vii) One year of credit for each period equivalent to at least 40 hours per week, and at least 48 weeks per year, in which the individual worked in a capacity directly related to the acquisition, financing, or conveyance of real estate, or in a position in which the individual was directly involved in a real estate business, including serving as the decision-making authority in any of the following positions:

(A) A loan or trust officer of a federal or state-regulated depository institution.

(B) A loan or trust officer of a mortgage company.

(C) A real estate officer of a corporation, and who is not a licensed real estate broker.

(D) A title insurance company officer engaged in the closing of escrow accounts and real estate closings.

(viii) Credit for any other experience that is approved by the department by rule, in consultation with the board, as equivalent to the experience described in this subsection.

Sec. 2506. (1) Except as provided in subsection (5), an individual shall not act as a real estate broker, associate real estate broker, or real estate salesperson if he or she has not received from the department his or her license and pocket card or received a temporary license. An individual licensed under this article shall not act as a real estate broker, associate real estate broker, or real estate salesperson if he or she does not have, on his or her person, his or her pocket card or temporary license or a photocopy or digital image of that pocket card or temporary license.

(2) The department shall deliver or mail the license of a real estate salesperson to the real estate broker that employs the real estate salesperson, and the broker shall retain custody and control of the salesperson's certificate of license and deliver the pocket card for that license to the salesperson.

(3) A licensee shall give written notice to the department of any change of either a principal or branch business location.

(4) If he or she receives notice that his or her license is suspended or revoked, a real estate salesperson, or an associate real estate broker that is not the sole associate real estate broker for a real estate broker that is a business entity, shall immediately forward his or her pocket card to the department and the real estate broker to which the individual was licensed shall immediately forward the salesperson's or associate real estate broker's license to the department. If he or she receives notice that his or her license is suspended or revoked, a real estate broker who is an individual, or an associate real estate broker who is the sole associate real estate broker for a real estate broker that is a business entity, shall immediately forward to the department his or her license and pocket card, the licenses and pocket cards of all real estate salespersons and nonprincipal associate real estate brokers issued under the real estate broker, and all of the real estate broker's branch office licenses.

(5) If the department receives a completed application under section 2507 or 2508 for transfer of a real estate salesperson's license or an associate real estate broker's license to a new real estate broker and the applicable fees, the department shall consider the pocket card as proper evidence of licensing for 45 days from the latest date written on the back of the card. If the real estate salesperson or associate real estate broker who is applying for the license transfer is notified that the application is incomplete, or the real estate broker to which he or she is transferring his or her license is not licensed, his or her pocket card is no longer valid and the applicant must wait until the new broker receives his or her wall license and pocket card before engaging in activities that are regulated under this article.

Sec. 2507. (1) If a real estate salesperson is discharged or terminates employment with a real estate broker by giving the employer a written notice of the termination, the real estate broker shall deliver or mail by certified mail to the department, within 5 days, the real estate salesperson's license. If a written notice of termination of employment is not served on the real estate broker by the real estate salesperson, the department shall notify the real estate broker in writing that it has received an application for a transfer of license by the real estate salesperson. As of the date of the notification, the notification shall operate as if a written notice were served by the real estate salesperson or the real estate broker.

(2) A real estate broker, at the time it delivers or mails a real estate salesperson's license to the department under subsection (1), shall notify the real estate salesperson in writing, delivered or mailed to the last known residence address of the real estate salesperson, that advises the real estate salesperson that the real estate broker has delivered or mailed the license to the department. A copy of the communication to the real estate salesperson shall accompany the license when the license is mailed or delivered to the department.

(3) Except as provided in section 2506(5), a real estate salesperson shall not perform an act regulated by this article either directly or indirectly under authority of the license after the date of his or her termination from a real estate broker under this section.

(4) The department shall not issue more than 1 license to a real estate salesperson for the same period of time.

Sec. 2509. (1) The department may issue more than 1 associate real estate broker's license to principals of a real estate broker.

(2) An individual shall not hold more than 1 associate real estate broker's license as a nonprincipal, but an individual may hold 1 or more associate real estate broker's licenses as a principal.

Sec. 2510. (1) A real estate salesperson shall not accept a commission or valuable consideration for the performance of an act specified in this article from any person other than the real estate broker that employs the salesperson.

(2) If an individual earned commissions or other income while employed by a real estate broker, it is not grounds for disciplinary action under section 2512 for that broker to pay those commissions or income to that individual, regardless of whether that individual is now employed by another real estate broker or is no longer licensed.

Sec. 2512. (1) A licensee that commits 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) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in 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 his or her employer without the express knowledge and consent of the employer.

(d) Fails to account for or to 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, fails to 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) Fails to 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, fails to deposit money in its 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, within 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 within 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties.

(2) A complaint that seeks a penalty under article 5 for a violation of this section must be filed within 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. 2512d. (1) A licensee that is acting under the terms of a service provision agreement shall perform the duties described in subsection (2). A real estate broker may authorize a designated agent to represent the client, if that authorization is in writing.

(2) A licensee that is acting under the terms of a service provision agreement owes, at a minimum, the following duties to a client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

(c) Loyalty to the interest of the client.

(d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.

(e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the broker.

(f) An accounting in a timely manner of all money and property received by the broker in which the client has or may have an interest.

(g) 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 is not an agent of the client.

(3) A licensee that is acting under the terms of a service provision agreement shall provide the following services to a client:

(a) If the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed on in the service provision agreement.

(b) 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. At the time of execution of an offer to purchase, a licensee shall recommend to the purchaser that the purchaser require that the seller provide a fee title policy in the amount of the purchase price to the purchaser, issued or certified to the approximate date of closing of the real estate transaction.

(c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

(d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement. Without written approval of the buyer and seller, a licensee shall not close a transaction on any terms or conditions that are contrary to the terms or conditions of an executed purchase agreement.

(e) For a real estate broker or associate real estate broker that is involved at the closing of a real estate or business opportunity transaction, furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate real estate broker showing each party all receipts and disbursements affecting that party. However, this subdivision does not apply if the closing is conducted by a title insurance company, or a person designated to act as the agent of a title insurance company, that is licensed or authorized to do business in this state.

(4) A real estate broker or real estate salesperson that is representing a seller under a service provision agreement shall not advertise the property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker.

(5) The services described in subsection (3)(b), (c), and (d) may be waived in a limited service agreement.

Sec. 2512e. (1) Except as provided in subsection (2), any advertisement to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity by a real estate broker shall include the broker's name or the name under which the broker is conducting business; shall include the broker's telephone number or street address; and shall state that the person doing the advertising is a real estate broker.

(2) An individual who is licensed as a real estate broker or associate real estate broker may advertise real property that he or she personally owns for sale or for lease in his or her own name, and is not required to include the name of the real estate broker, or the name of the real estate broker that employs the associate real estate broker, as the sales or leasing agent for the property in the advertisement. However, the advertising shall indicate affirmatively that the individual who is selling or leasing the real property is a licensed real estate broker or associate real estate broker.

(3) Except as provided in subsection (2) or (4), a real estate salesperson or an associate broker shall only advertise to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity under the supervision of, and in the business name of, his or her employing broker. Any advertising displayed or published on or after January 1, 2018, that includes the name of an associate broker, a salesperson, or a cooperating group of associate brokers or salespersons employed by the same real estate broker, shall include all of the following:

(a) The telephone number or street address of the employing broker.

(b) The business name of the employing broker, in equal or greater type size than the name of the associate broker, salesperson, or cooperating group.

(4) A real estate salesperson shall not advertise to sell real property under his or her own name unless the property is the principal residence of the salesperson. A real estate salesperson shall not advertise real property for rent or lease under his or her own name unless the salesperson is the owner of the property.

(5) A real estate broker shall not conduct business or advertise under a name other than that in which the broker's license is issued or under an assumed name that is authorized by law. A real estate broker shall notify the department of its adoption of an assumed name with its license application, or within 30 days after it adopts an assumed name, whichever is earlier.

Sec. 2512f. (1) A real estate broker or associate real estate broker shall supervise the work of a real estate salesperson. For purposes of this subsection, supervision of a real estate salesperson includes at least all of the following:

- (a) Direct communication in person or by radio, telephone, or electronic communication, on a regular basis.
- (b) Review of the practice of the salesperson.
- (c) Review of the salesperson's reports.
- (d) Analyses and guidance of the salesperson's performance in regulated activities.
- (e) Providing written operating policies and procedures to the salesperson.

(2) A real estate broker shall not contract with an individual real estate salesperson or nonprincipal associate real estate broker who is employed by the real estate broker in a manner that limits the broker's authority to supervise the salesperson under subsection (1).

Sec. 2516. (1) If a licensee buys or otherwise acquires, directly or indirectly, an interest in real property, the licensee shall disclose to the owner of the property that the licensee is licensed under this part before the owner is asked to sign the purchase agreement.

(2) If a licensee acquires, directly or indirectly, an option to purchase real property from an owner that requested the licensee's services as a real estate licensee in connection with that property, the licensee shall disclose to the owner of the property that the licensee is licensed under this part before the owner is asked to sign the option agreement.

(3) A licensee that buys or otherwise acquires an interest in real property, directly or indirectly, and that is owed a commission, fee, or other valuable consideration as a result of the sale, shall disclose that the licensee is licensed under this part to the seller or owner to receive the specified consideration.

(4) On request of the department, a licensee shall provide written proof of any disclosures and consents required under this section to the department.

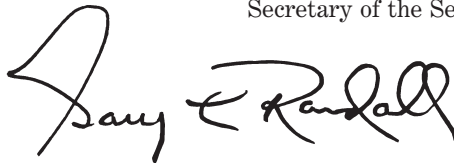
Sec. 2516a. During normal business hours, a licensee shall allow any authorized representative of the department to enter any of its places of business in this state and inspect any document or record that the department determines is reasonably necessary for an investigation of the licensee or a review of the business activities of the licensee, the administration of this act, or the administrative rules promulgated under this article.

Sec. 2516b. R 339.22205 to R 339.22301, R 339.22309 to R 339.22311, R 339.22317 to R 339.22319, R 339.22323 to R 339.22329, and R 339.22339 to R 339.22405 of the Michigan Administrative Code are rescinded.

Enacting section 1. This amendatory act takes effect January 1, 2017.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor