

Supplements to 2021 CE

REAL ESTATE BROKERS AND SALESPERSONS - GENERAL RULES

R 339.22101 Definitions.

Rule 101. (1) As used in these rules:

(a) “Code” means the occupational code, 1980 PA 299, MCL 339.101 to 339.2677.

(b) “Department” means the department of licensing and regulatory affairs.

(c) “Disability” means a determinable physical or mental characteristic, which may result from disease, injury, congenital condition of birth, or functional disorder that prevents a broker from performing his or her duties under the code.

(d) “Instructor” means an individual who is approved to teach prelicensure classes pursuant to section 2504(4) of the code, MCL 339.2504.

(e) “Program coordinator” means the individual responsible for supervising the administration of approved courses. (f) “Real estate school” means an approved entity that represents to the public that any of its courses fulfill, in whole or in part, the requirements of section 2504(1) and (2) of the code, MCL 339.2504, for prelicensure education. (2) A term defined in the code has the same meaning when used in these rules.

R 339.22203 Prelicensure education broker license; prelicensure education equivalents for broker license; prelicensure education salesperson license.

Rule 203. (1) An applicant for a real estate broker’s license shall satisfy all requirements of the code including completing 90 hours of approved prelicensure classroom courses in real estate of which 9 clock hours must be on civil rights and fair housing law. The broker prelicensure education must be completed not more than 36 months before the date of application, unless the applicant held an active real estate salesperson license during that period.

(2) Approved prelicensure education for a real estate broker license must meet the criteria established by the department but may be reviewed and preapproved by a statewide real estate trade association for subject matter relevant to the practice of real estate. Not more than 1 broker course on the same subject will be accepted for credit.

(3) An applicant for a real estate broker license shall be given prelicensure classroom course credit for the following:

(a) Possession of a law degree is considered equivalent to 60 clock hours of real estate education including 6 clock hours of instruction on civil rights law and fair housing law.

(b) Possession of a master's degree in business administration or finance from a degree or certificate granting public or independent nonprofit college or university, junior college, or community college is considered equivalent to 60 clock hours of real estate education.

Supplements to 2021 CE

(c) Possession of 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 is considered equivalent to 30 clock hours of real estate education.

(4) An applicant for a salesperson license shall have completed 40 clock hours of qualifying prelicensure classroom courses of which 4 clock hours must be on civil rights law and fair housing law. The salesperson prelicensure education must be completed not more than 36 months before the date of application.

R 339.22217 Acceptable related experience for broker and associate broker applicants.

Rule 217. For purposes of calculating the time an applicant for a license as a broker or an associate broker has been engaged in the real estate business, as required by section 2505(7)(b)(viii) of the code, MCL 339.2505, both of the following apply:

(a) A person holding a real estate license in another state shall be given 1 year of credit for each year in which he or she closed 5 or more real estate transactions.

(b) An applicant shall be given 1 year of credit for managing at least 10 units, located in the state of Michigan, for 3 or more years.

PART 3. LAPSE OF BROKER'S LICENSE AND BROKER'S DEATH OR DISABILITY

R 339.22219 Lapse of broker's license.

Rule 219. (1) If a broker's license is lapsed, the licenses of all real estate salespersons and all affiliated associate real estate brokers employed by that real estate broker are automatically suspended until that real estate broker is relicensed pursuant to section 2502a(3) of the code, MCL 339.2502a, or until there is a change of employer and the issuance of a new license.

(2) If a real estate salesperson or affiliated associate real estate broker whose license was suspended pursuant to subrule (1) of this rule becomes employed by a different licensed broker, the department shall issue a new license to the salesperson or associate real estate broker without charge if the license is issued during the same term in which the original license was issued.

R 339.22221 Death or disability of broker.

Rule 221. (1) If a broker's sole principal associate broker dies or becomes disabled, the department shall allow all affiliated real estate licensees a reasonable time, not to exceed 1 year, to either wind up the business of the real estate broker or designate a new sole principal associate broker.

(2) The license of the deceased or disabled sole principal associate broker must not be used to enter into new business transactions.

Supplements to 2021 CE

(3) One year after the date of death or disability of a broker's sole associate principal broker, the licenses of all affiliated real estate salespersons and associate real estate brokers who are employed by the broker are automatically suspended, pending a replacement of the sole principal associate broker or change of employer and the issuance of a new license.

(4) If a real estate salesperson or affiliated real estate broker whose license was suspended pursuant to subrule (3) of this rule becomes employed by a different licensed broker, the department shall issue a new license to the real estate salesperson or associate real estate broker without charge if the license is issued during the same term in which the original license was issued.

PART 4. PRACTICE AND CONDUCT

R 339.22305 Service provision agreement

Rule 305. (1) In addition to complying with the provisions of the code, a broker or a licensee acting on behalf of the employing broker who enters into a service provision agreement with a party or parties shall provide, at the time of signing, a true executed copy of the agreement to the party or parties signing the agreement. Every agreement must be fully completed by the licensee before the party or parties sign it.

(2) A service provision agreement must include a definite expiration date and must not contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement upon or after the expiration date.

R 339.22307 Delivery of offer to purchase to buyer; delivery of written offers to seller; delivery of copies of acceptance to buyer and seller; inclusion of terms and conditions in offer to purchase.

Rule 307. (1) A licensee shall promptly deliver to the buyer a signed copy of the offer to purchase after it has been signed by the buyer.

(2) A licensee shall make certain that all terms and conditions of the real estate transaction are included in the offer to purchase.

(3) A licensee shall promptly deliver all written offers to purchase to the seller upon receipt. Delivery may be made through any method acceptable to the parties including in person, by mail, or through an electronic communication pursuant to the uniform electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849. The use of electronic records or digital signatures for any real estate transaction requires the prior agreement of the parties.

(4) Upon obtaining a proper acceptance of the offer to purchase, signed by the seller, the licensee shall promptly deliver true executed copies of the acceptance to the purchaser and seller.

(5) A licensee is not subject to disciplinary action for failing to submit to the seller any additional offers to purchase that are received after the seller has accepted an offer and the sales agreement

Supplements to 2021 CE

is fully executed, unless a service provision agreement requires that subsequent offers be presented.

R 339.22315 Prohibition of licensee becoming party to net service provision agreement.

Rule 315. A licensee shall not become a party to a net service provision agreement for an owner, seller, or buyer as a means of securing a real estate commission.

R 339.22321 Licensee commissions for other services; disclosure and consent of buyer and seller required.

Rule 321. (1) A licensee who is entitled to receive, either directly or indirectly, a real estate commission as a result of the sale of property, may not also receive a referral fee or other valuable consideration for placing a loan in connection with that transaction unless the licensee obtains the prior written consent of the buyer and seller in that transaction and the fee is not otherwise prohibited by the real estate settlement procedures act of 1974, 12 USC 2601 to 2617, or other applicable law.

(2) A licensee who is entitled to receive, either directly or indirectly, a real estate commission as a result of the sale of property, may not also receive a referral fee or other valuable consideration from an abstract, home warranty, title insurance, or other settlement service provider in connection with that transaction unless the licensee obtains the prior written consent of the party or parties with whom the licensee has an agency relationship and the fee is not otherwise prohibited by the real estate settlement procedures act of 1974, 12 USC 2601 to 2617, or other applicable law.

R 339.22333 Misrepresentation of material facts prohibited; disclosure of material facts.

Rule 333. (1) A licensee shall not, directly or indirectly, misrepresent material facts.

(2) A licensee's full disclosure to a buyer or seller of material facts within his or her knowledge about the condition of the real estate offered shall not be grounds for disciplinary action, despite a claim by the buyer or seller that the disclosure constituted disloyalty to the buyer or seller in violation of an agency relationship.

R 339.22630 Waiver of continuing education. Rule 630. A request for a waiver of continuing education pursuant to section 204(2) of the code, MCL 339.204, must be received by the department before the expiration date of the license.

R 339.22313 Trust or escrow accounts.

Rule 31:

(1) In addition to complying with the provisions of the code, a trust or escrow account must comply with all of the requirements of this rule.

Supplements to 2021 CE

(2) A trust or escrow account must be maintained in a demand account only. Checks drawn on a trust or escrow account must be signed by a broker or an associate broker. Cosignatories may be used; however, the signature of a broker or associate broker must accompany this signature.

(3) A broker shall deposit all funds received in a fiduciary capacity, including escrow funds and earnest money, in a non-interest-bearing demand trust account. The account must be maintained pursuant to the requirements of section 2512(1)(k) of the code, MCL 339.2512.

(4) A broker shall maintain a record of all funds received. At a minimum, the record must include all of the following information:

(a) The date that the funds were received and the date of deposit.

(b) The name of the party who provided the funds. (c) The amount of the funds received and deposited and the method of payment.

(5) A broker shall maintain a record of all funds disbursed. At a minimum, the record must include all of the following information:

(a) The name of the party to whom funds were disbursed.

(b) The date of the disbursement.

(c) The check number.

(d) The purpose of the disbursement.

(e) The amount of the disbursement.

(6) The broker's records must reflect the current account balance of each account maintained and must be made available to the department upon request.

(7) The broker's records must reflect the receipts and disbursements as they affect a single, particular transaction between a buyer and seller and must contain, at a minimum, all of the following information:

(a) For funds received, the record must include all of the following information: (i) The names of both parties to a transaction. (ii) The property address or brief legal description. (iii) The dates and amounts received.

(b) For funds disbursed, the record must include all of the following information: (i) The date of the disbursement. (ii) The name of the payee. (iii) The check number. (iv) The amount of the disbursement.

(8) All trust or escrow account records must be maintained for a period of not less than 3 years from the date of inception of the records.

(9) A broker or associate broker's disbursement of an earnest money deposit must be made at consummation or termination of the agreement pursuant to the agreement signed by the parties. However, any deposit in the trust account of the broker for which the buyer and seller have made claim must remain in the broker's trust account until a civil action has determined to whom the

Supplements to 2021 CE

deposit must be paid, or until the buyer and seller have agreed, in writing, to the disposition of the deposit. The broker may also commence a civil action to interplead the deposit with the proper court.

Courtesy of Michigan Administrative Rules History: 1991 AACRS; 2002 AACRS; 2018 AACRS; 2021 MR 6, Eff. Mar. 31, 2021.

Corporate Transparency Act (CTA)

Pursuant to new federal law small limited liability and other companies “**reporting companies**”, including many that own rental or commercial real estate as well as entities formed for estate brokerage or management firms, will soon have to disclose to the federal government details on the underlying “**beneficial ownership**” of the company, thanks to anti-money-laundering legislation in the 2021 national defense authorization act.

The CTA will require reporting not only at the time the entity is formed, but also any time that there is a change in the beneficial ownership of the entity.

A **reporting company** is defined as a corporation, limited liability company or other similar entity that is created by filing a document with the secretary of state (or an equivalent office) of any state, or formed under foreign law and registered to do business in the United States in a like manner. The Act exempts many categories of companies from the reporting requirement, specifically:

- Companies that are already subject to supervision or otherwise closely regulated by the federal government (*e.g.*, banks)
- Dormant companies
- Companies that employ more than 20 people, filed a tax return reporting gross receipts in excess of \$5 million, and have a physical presence in the United States
- Any entity owned by an entity otherwise exempt

A **beneficial owner** is defined as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise (i) exercises substantial control over an entity or (ii) owns or controls at least 25% of the ownership interests in an entity.

A few notable exceptions from the Act include:

- Minors, provided that information with respect to a parent is otherwise reported
- An individual acting as nominee, intermediary, custodian or agent on behalf of another individual
- Persons who control an entity solely because of their employment

Supplements to 2021 CE

- An individual whose only interest in a reporting company is through a right of inheritance

An *applicant* is defined broadly as an individual who files an application.

The law requires a tracing of ownership up to actual people, not just more companies. Those actual people will have to disclose their name, date of birth, address, and a government-issued identification number – driver’s license, passport, or a new identifier for this purpose.

Those forming new entities as well as owners of existing business entities should get ready for the new law. The list of inclusions and exclusions are complex and extensive and beyond the scope of this class. Licensees are encouraged to seek professional advice as to specifics.

Why? Historically, bad actors attempt to hide their identity via diluted entity ownership schemes such as LLC’s whose members are owned by other entities etc... To quote Congress:

“To ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.”

When? Reporting will not begin until Treasury has adopted regulations under the CTA, which are mandated by January 1, 2022. Companies formed on or after the date regulations are adopted will be required to report when formed. Companies formed before regulations are adopted will have a longer period after adoption of regulations to file their initial reports. Congress wants all these filings to be coordinated with state-by-state filings already required.

Report To Whom? The information will be reported and maintained by The Financial Crimes Enforcement Network (Fin Cen). The Financial Crimes Enforcement Network is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat domestic and international money laundering, terrorist financing, and other financial crimes. Reports are to be accessible only by the government for national security, law enforcement, and intelligence purposes. Already critics have expressed concerns for data security given the sensitivity of information that may be susceptible to hacking or unintended disclosure. There will be procedures that allow access to reports by other governmental agencies and foreign law enforcement. Through a consent procedure, financial institutions may be permitted to access reports, which

Supplements to 2021 CE

may take the place of *some* of the anti-money laundering (AML) and know-your-customer (KYC) disclosure procedures that financial institutions currently follow.

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When a third party (***applicant***) submits this information for a company, whoever submits it must provide the same information about themselves. One has to wonder if this includes registered agents which must be disclosed when forming an LLC in Michigan.

Penalties:

Failure to file accurate disclosures could result in substantial penalties, including fines of up to \$500 a day or two years in federal prison, with some exceptions for errors that are quickly corrected.

The legislation says the new disclosures will be used “only” for law enforcement, tax administration, and similar purposes, and must remain confidential.

Limited liability companies subject to the new law may soon need to provide copies of their federal disclosure filings in the real estate closings, and also copies of any updates after closing.

The dissolution LLCs and other Entities:

The Michigan Department of Licensing and Regulatory Affairs (LARA) has a reference guide for the dissolution of Entities. DISSOLUTION – Profit Corporations and Limited Liability Companies. The brochure contains 11 pages of information.

Given the upcoming requirements for reporting the beneficial ownership of entities it seems likely that there will be more interest in properly dissolving entity interests that are no longer needed.