

2017 CHANGES TO THE OCCUPATIONAL CODE

For the past couple of years, Michigan Realtors®' Public Policy Committee, with input from its Real Estate Licensing Task Force, has been working with the Department of Licensing and Regulatory Affairs ("LARA") and the Michigan Legislature to overhaul Article 25 of the Occupational Code. This effort finally came to fruition at the end of 2016 with the passage of Public Act No. 502 of 2016. As redrafted, Article 25 is better organized, uses more consistent terminology and is hopefully easier to understand.

Many of the changes to Article 25 were cleanup items; part of the Office of Regulatory Reinvention's charge to streamline the regulations for each occupational license. In addition, a number of provisions previously contained in the rules have now been incorporated into the Code itself. Many, if not most, of the changes to Article 25 do not change the substantive law but were aimed at eliminating inconsistencies and clarifying the existing provisions. In addition to a general cleanup, however, Public Act 502 contains several substantive changes aimed at addressing some of the problems that Realtors® and LARA have struggled with in recent years. This white paper will focus on those substantive changes.

First, the Code now provides that if a closing is conducted by a title company, an associate broker is no longer required to review and sign the closing statement. After the enactment of TRID, many Realtors® reported that it was becoming increasingly difficult to comply with this requirement as many lenders and title companies were refusing to allow the listing Realtor® to review the buyer's closing statement. Realtors® should keep in mind, however, that this rule change does not eliminate all responsibility over closings, nor does it eliminate the broker's responsibility to supervise its salespersons. Realtors® should continue to review those closing documents available to them to make certain that the transaction is being closed consistently with the terms of the purchase agreement.

Second, Public Act 502 raised the limit on the amount of broker's own funds that may be maintained in the broker's trust account. By raising this limit from \$500 to \$2,000, it is hoped that Realtors® can avoid bank fees on their trust accounts.

Third, Public Act 502 makes clear that 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. Direct supervision requires an associate broker must be "physically present on a regular basis to supervise and manage the business during regular business hours." This is not a new requirement and has always been the position of LARA. The new language was added to more clearly state that requirement.

Fourth, Article 25 now provides that any claim brought against a licensee under the Code or Rules must be brought within 18 months of the later of: (a) the date of the alleged violation; or (b) the date of closing. This limitation, similar to the one for claims against builders under Article 24, substantially shortens the statute of limitations for claims against real estate licensees brought under the Code.

Fifth, beginning on January 1, 2018, in any advertising, the individual licensee's name or team name cannot be larger than the broker's name. There had been many questions as to the appropriate interpretation of the prior rule, which required that the broker's name be "indicated affirmatively." This prior rule, similar to rules elsewhere that require the broker's name be "meaningful and prominent" or that prohibit advertising that "suggests that a team is an independent entity," provides little guidance as to the required prominence of the broker's name. The Task Force and Public Policy Committee viewed the matter from various perspectives and concluded that Michigan licensees are better served if the advertising requirement is objective rather than left to the subjective judgment of the investigators. As an aside, it is LARA's position that this rule only regulates relative type size (*i.e.*, points) and does not require similarity in type style, boldness or italics.

Sixth, the Occupational Code now includes a provision whereby licensees who are changing companies can continue to do business with only a pocket card so long as their transfer application has been filed with LARA and is pending. This grace period is limited to 45 days and the authority to do business is automatically revoked if LARA rejects the application or notifies the applicant that his or her application is incomplete. This provision codifies what had previously been LARA's unwritten policy.

Seventh, the Occupational Code now provides for a procedure whereby a licensee can authorize LARA to serve all notices and communications to the licensee via email rather than via U.S. mail. Realtors® can authorize email communications by updating their license profile at <http://www.michigan.gov/elicense>.

Eighth and finally, the Code now requires a licensee to report any name change or address change to LARA within 30 days after the change occurs. Again, this can be done by updating the licensee profile.

All of the changes discussed above are effective March 29, 2017 except for the changes to the advertising rule (which have a delayed effective date of January 1, 2018). Again, while the revamped Article 25 is not any shorter, hopefully the new definitions, reorganization and language clarifications will make it easier to understand. When reviewing the revised rules, keep in mind that most of the rules that have been "rescinded" actually have been incorporated into the Code itself.