

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

REAL ESTATE BROKERS AND SALESPERSONS - GENERAL RULES

Filed with the secretary of state on March 31, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 205, 308, 2504, 2504a, 2505, 2512, and 2516a, of the occupational code, 1980 PA 299, MCL 339.205, 339.308, 339.2504, 339.2504a, 339.2505, 339.2512, and 339.2516a and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 339.22101, R 339.22203, R 339.22217, R 339.22219, R 339.22221, R 339.22305, R 339.22307, R 339.22313, 339.22321, R 339.22618, R 339.22619, R 339.22620, R 339.22621, R 339.22624, R 339.22625, R 339.22626, R 339.22629, R 339.22630, and R 339.22632 of the Michigan Administrative Code are amended as follows:

PART 1. GENERAL PROVISIONS

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.

PART 2. LICENSING

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.

(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.

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

R 339.22313 Trust or escrow accounts.

Rule 313. (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.

(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 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.

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.

PART 5. REAL ESTATE EDUCATION

SUBPART 1. PRELICENSURE EDUCATION

R 339.22618 Application for approval to offer prelicensure courses; forms; required information.

Rule 618. (1) A real estate school shall submit a prelicensure course approval application on the form approved by the department. The application must include, but is not limited to, all of the following information:

(a) The school name, business address, telephone number, facsimile number, website address, and e-mail address, if applicable.

(b) The course title.

(c) The names, addresses, telephone numbers, and qualifications of instructors.

(d) The name of the program coordinator.

(e) A summary of topics completed for each prelicensure course to be taught, including the number of hours allocated to each topic.

(f) A sample certificate of completion that contains all of the following information:

(i) The date of course completion.

(ii) Identification of the course including the name of the course as approved by the department.

(iii) The name and approval number of the school.

(iv) The name of the student.

(v) The number of clock hours completed by the student.

(g) Methodology for verifying and monitoring attendance and the make-up policy.

(h) An enrollment application to be completed by prospective students that contains a statement disclosing the percentage of students who successfully completed the program in the past calendar year. The enrollment application must be updated no later than February 1 of each calendar year.

(2) A real estate school shall report to the department any change in the information on the application form within 30 days. The department shall accept or reject a change within 60 days of notification of the change.

(3) A real estate school shall apply for and obtain approval as determined by the department for real estate education courses before the courses are offered to the public.

(4) The department shall issue a certificate or letter of course approval or a notice of denial to the school within 60 days after the application is received. Denials must be based on substantive deficiencies and specify the reasons for the denial.

(5) The department shall accept courses for approval that meet the criteria established by these rules and section 2504 of the code, MCL 339.2504.

R 339.22619 Expiration date for prelicensure courses; renewal.

Rule 619. (1) Approval of prelicensure courses issued by the department to a real estate school expires 1 year from the date the course was approved.

(2) A proprietary real estate school licensed under the proprietary schools act, 1943 PA 148, MCL 395.101 to 395.103, must remain compliant with the act to maintain approval as a real estate prelicensure school under this subpart.

(3) To maintain course approval, a proprietary real estate school shall submit to the department a renewal application on the form approved by the department at least 60 days before the expiration date of the course approval.

R 339.22620 Program coordinator.

Rule 620. Each real estate school shall designate at least 1 individual as program coordinator. The program coordinator is responsible for supervising the program of courses and ensuring compliance with the code and these rules.

R 339.22621 Instructors.

Rule 621. (1) The department shall approve each instructor before he or she teaches any real estate course. An instructor must possess at least 1 of the following minimum qualifications:

(a) Teaches or has taught real estate courses at an accredited institution of higher learning.

(b) Is licensed or certified by the department or other governmental agency to engage in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects.

(2) An instructor is responsible for all of the following:

- (a) Complying with all laws and rules relating to real estate education.
- (b) Providing students with current and accurate information.
- (c) Maintaining an environment conducive to learning.
- (d) Assuring and certifying accurate attendance of students enrolled in courses.
- (e) Providing assistance to students and responding to questions relating to course materials.

(3) The real estate school shall submit to the department the qualifications of each instructor teaching an approved course with the prelicensure course approval application. The real estate school shall submit the qualifications to the department at least 60 days before the instructor is scheduled to begin instruction.

R 339.22624 Student records; content; inspection; certificate of completion; reporting.

Rule 624. (1) A real estate school shall establish and permanently maintain a record for each student.

(2) Student records must contain all of the following information:

- (a) The student's name and address.
- (b) The number of clock hours attended.
- (c) The student's grade, if an examination is required to determine successful completion of the course.

(d) The date of course completion.

(e) The last 4 digits of the student's social security number.

(f) The student's date of birth.

(g) The student's real estate license identification number, if applicable.

(3) All records must be available for inspection during normal business hours by an authorized representative of the department.

(4) A real estate school shall issue a certificate of completion to a student who successfully completes an approved real estate course. The certificate must include all of the criteria set forth in R 339.22618(1)(f).

(5) A student completing a prelicensure course shall present a state-issued photo identification or acceptable alternative form of photo identification to the school before receiving the certificate of completion. Both of the following apply:

(a) For courses conducted in a traditional classroom setting, a student or a licensee shall present a state-issued photo identification or other acceptable alternative form of identification that verifies, to the satisfaction of the school, the identification of the student or licensee.

(b) For courses conducted through distance learning, the school shall ensure that the student or licensee whose attendance is reported to the department is the same person who completed the distance learning course. The school shall take appropriate measures to ensure accurate verification of the identity of each student or licensee before reporting course completion to the department.

(6) At least 30 days before courses are held, a real estate school shall submit to the department a schedule and geographic location for each course.

(7) Within 5 business days of the conclusion of the last course, a real estate school shall submit, in a format required by the department, the names of students who have successfully completed an approved course.

R 339.22625 Denial, suspension, or rescission of approval to offer courses; violation of code or rules.

Rule 625. A real estate school or instructor may be subject to the penalties of section 602 of the code, MCL 339.602, for any of the following reasons:

- (a) Failure to comply with the provisions of the code or these rules.
- (b) Revealing or attempting to discover, or soliciting, encouraging, or inducing a person to reveal, the questions on a real estate license examination administered by or on behalf of the department.
- (c) Making a substantial misrepresentation or inducement regarding a real estate school or course of study.
- (d) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise.

R 339.22626 Distance learning.

Rule 626. (1) Real estate education courses represented as fulfilling the requirements of section 2504 of the code, MCL 339.2504, and delivered through distance learning shall be approved by the department before being offered to the public.

(2) A distance learning course must contain all of the following:

- (a) All requirements listed R 339.22618 for approval of a prelicensure course.
- (b) The individual modules of instruction offered on a computer or other interactive program.
- (c) A list of at least 1 learning objective for each module of instruction. The learning objective must ensure that if all the objectives are met, the entire content of the course is understood.
- (d) A structured learning method to enable the student to attain each learning objective.
- (e) A method of assessment of the student's performance during each module of instruction.
- (f) A remediation for any student who is deficient in the assessment to repeat the module until the student understands the course content material.

(3) Delivery systems that meet the distance education criteria for current certification by the Association of Real Estate License Law Officials (ARELLO) are acceptable to the department, as follows:

- (a) Proof of ARELLO certification as a primary or secondary provider, including the summary sheet and certificate, are provided with the application for course approval.
- (b) Upon withdrawal or expiration of ARELLO certification, the approval to offer distance learning courses is suspended until ARELLO certification is reinstated or the real estate school has applied for and received approval from the department according to subrule (4) of this rule.
- (4) Equivalent delivery systems may be used if they are approved by the department.
- (5) The real estate school shall describe in detail on its application how it will remedy hardware and software failures.

SUBPART 2. CONTINUING EDUCATION

R 339.22629 Continuing education requirements for licensees.

Rule 629. (1) A licensee shall complete 18 hours of continuing education in each license cycle as follows:

(a) A minimum of 2 hours of legal education courses involving statutes, rules, and court cases must be completed during each year of a license cycle pursuant to section 2504a(2)(a) of the code, MCL 339.2504a, for a total of 6 or more hours of legal education per license cycle.

(b) The remaining 12 hours of continuing education required for renewal may be completed at any time during the license cycle.

(2) Submission of an application for renewal constitutes the applicant's certification of compliance with the requirements of this rule.

(3) An applicant shall retain for a minimum of 4 years evidence acceptable to the department that he or she has met the continuing education requirements for renewal, and upon request, produce this evidence to the department pursuant to section 2504a(3) of the code, MCL 339.2504a.

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 339.22632 Eligible continuing education program.

Rule 632 (1) As used in this rule, "eligible continuing education course" means a course that is reviewed and certified by a statewide real estate association that has a membership representing more than 18,000 licensees.

(2) An association that reviews continuing education courses pursuant to subrule (1) of this rule shall comply with all of the following:

(a) Ensure that all continuing education courses that are offered to licensees are compliant with section 2504a of the code, MCL 339.2504a, and involve subjects that are relevant to the management, operation and practice of real estate or otherwise contribute to the professional competence of the licensee.

(b) Provide a system for monitoring a licensee's compliance with section 2504a of the code, MCL 339.2504a.

(c) Maintain a list of approved courses and ensure the list is available to licensees.

(3) A school, institution, program, or other person that has been denied certification as an eligible continuing education course by a statewide real estate association that has a membership representing more than 18,000 licensees may petition the department to review the association's decision pursuant to sections 520 and 521 of the code, MCL 339.520 and 339.521.

(4) If a statewide real estate association that has a membership representing more than 18,000 licensees does not exist, then continuing education courses must be approved by the board.