

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Professional Licensing

Name of person filling out RIS:

Dena Marks

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Rule Set Information:

ARD assigned rule set number:

2019-80 LR

Title of proposed rule set:

Real Estate Brokers and Salespersons – General Rules

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Each state establishes its own requirements with respect to the licensure of real estate brokers and salespersons, so there are no federal rules or standards set by a national or state agency that the proposed rules can be compared to.

A. Are these rules required by state law or federal mandate?

The department is required to promulgate rules necessary and appropriate to enable it to fulfill its role pursuant to MCL 339.205. The board is required to promulgate rules necessary and appropriate to fulfill its role pursuant to MCL 339.308. There is no applicable federal mandate.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are consistent with the standards required in the Michigan Occupational Code, and the rules are largely consistent with the requirements of other states in the Great Lakes region. Every state in the Great Lakes region provides for the licensure of real estate professionals.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The standards for prelicensure education and continuing education for real estate professionals differ from state to state. Some states require the licensee to complete post-licensure education. Overall, the standards in the proposed rules do not exceed those of the other states in the Great Lakes region.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no other laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No coordination is needed because there are no other applicable laws that regulate the areas addressed in the proposed rule.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(9) does not apply.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Part 1 General Provisions: This part of the rules provides definitions for terms used in the rule set. The proposed rules add and amend definitions to ensure that a reader understands and complies with the rules.

Part 2 Licensing: The rules in this part set out the educational and experience requirements for licensure as a real estate broker or salesperson. The proposed rules add information to inform and assist an applicant in obtaining the required prelicensure education and experience. The proposed rules also amend current rules for clarity to assist an applicant in obtaining a license.

Part 3 Lapse of Broker's license and Broker's Death or Disability: This part of the rules advises a real estate salesperson and an associate real estate broker how the lapse of an affiliated broker's license and the death or disability of an affiliated broker impacts the salesperson's or associate real estate broker's license. The rules have been amended for clarity to ensure compliance with the rules.

Part 4 Practice and Conduct: This part of the rule set pertains to a service provision agreement, delivery of an offer or acceptance, trust and escrow accounts, and licensee commissions. The proposed rules clarify the licensee's duties to ensure compliance with the rules.

Part 5 Real Estate Education: This part of the rule set provides for the prelicensure and continuing education for real estate brokers and salespersons. The proposed rules clarify the requirements for greater compliance by a real estate school or an applicant for license renewal.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The frequency of use is not expected to change.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Part 1 General Provisions: The current rules lack definitions for some terms used in the rule set. The proposed rules provide definitions for terms to ensure that a reader understands and complies with the rules.

Part 2 Licensing: The current rules lack clarity and information regarding the educational and experience requirements for licensure as a real estate broker or salesperson. The proposed rules will assist an applicant in obtaining the required prelicensure education and experience to become licensed.

Part 3 Lapse of Broker's license and Broker's Death or Disability: The current rules lack clarity and information regarding the impact on a salesperson or associate real estate broker if his or her affiliated broker's license lapses or if the broker dies or becomes disabled. The rules proposed rules will provide clarity and assist the salesperson or associate real estate broker in determining if he or she can continue his or her professional practice if these events occur.

Part 4 Practice and Conduct: The current rules lack clarity regarding the licensee's duties in practice. The proposed rules provide clarity to ensure licensee compliance.

Part 5 Real Estate Education: The current rules lack clarity regarding the requirements for a real estate school offering prelicensure courses and for a renewal applicant to meet continuing education requirements. The proposed rules provide additional information and clarity for greater compliance with the rules.

C. What is the desired outcome?

Part 1 General Provisions: The proposed changes to the rule are intended to assist a reader in understanding the meaning of terms used in the rule set.

Part 2 Licensing: The proposed changes to the rule are intended to clarify the prelicensure education requirements for a broker or salesperson. They will also clarify for an applicant for a broker or associate broker license how he or she can satisfy the experience requirement for licensure.

Part 3 Lapse of Broker's License and Broker's Death or Disability: The proposed changes to the rule are intended to clarify for a real estate salesperson or associate real estate broker the effect on his or her license if his or her affiliated broker's license lapses. They will also clarify for a real estate salesperson or associate real estate broker the effect on his or her license if his or her affiliated broker dies or becomes disabled and how he or she may resume practice if this occurs.

Part 4 Practice and Conduct: The proposed changes to the rule are intended to advise and clarify rules pertaining to a licensee's duties related to a service provision agreement, an offer or acceptance to buy or sell real property, handling trust or escrow accounts, commissions, and disclosures.

Part 5 Real Estate Education: The proposed changes were made for clarity and to provide consistency in the rule set, and correct typographical errors. The proposed changes also clarify the duties of a real estate school and a licensee's continuing education requirements to assist in compliance. The information is also reorganized into a more user-friendly format.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Part 1 General Provisions: The harm that may result from the current rules is that a reader may not understand terms used in the rules set. The proposed changes are intended to assist a reader in understanding the meaning of terms used in the rule set.

Part 2 Licensing: The harm that may result from the current rules is that an applicant may fail to obtain the required training, experience, or both, required for licensure. The proposed changes to the rule are intended to clarify the precensure education requirements for a broker or salesperson. They will also clarify for an applicant for a broker or associate broker license how he or she can satisfy the experience requirement for licensure.

Part 3 Lapse of Broker's License and Broker's Death or Disability: The harm that may result from the current rules is that a salesperson or associate real estate broker may not understand the effect on his or her license if his or her affiliated broker's license lapses or if the affiliated broker dies or becomes disabled. The proposed changes to the rule are intended to clarify for a real estate salesperson or associate real estate broker the effect on his or her license if his or her affiliated broker's license lapses or if his or her affiliated broker dies or becomes disabled and how he or she may resume practice if this occurs.

Part 4 Practice and Conduct: The harm that may result from the current rules is that a licensee may not understand his or her duties pertaining to a service provision agreement, an offer or acceptance to buy or sell real property, or the handling of funds in a trust or escrow account. The proposed changes to the rule are intended to advise and clarify rules pertaining to these duties.

Part 5 Real Estate Education: The harm that may result from the current rules is non-compliance with the requirements pertaining to a real estate school and licensee continuing education. The proposed changes will provide clarity, consistency within the rule set, and correct typographical errors. The proposed changes also clarify the duties of a real estate school and the licensee's continuing education requirements to assist in compliance.

A. What is the rationale for changing the rules instead of leaving them as currently written?

Part 1 General Provisions: The current rules lack definitions for some terms used in the rule set. To ensure that the reader understands the terms used in the rule set, additional definitions must be provided.

Part 2 Licensing: The current rules lack clarity and information regarding the educational and experience requirements for licensure as a real estate broker or salesperson. The proposed rules will assist an applicant in obtaining the required precensure education and experience to become licensed.

Part 3 Lapse of Broker's license and Broker's Death or Disability: The current rules lack clarity and information regarding the impact on a salesperson or associate real estate broker if his or her affiliated broker's license lapses or if the affiliated broker dies or becomes disabled. The proposed rules will provide clarity and assist the salesperson or associate real estate broker in determining their ability to practice if these events occur.

Part 4 Practice and Conduct: The current rules lack clarity regarding duties related to a licensee's practice. The proposed rules clarify the licensee's duties to ensure compliance and protect Michigan citizens.

Part 5 Real Estate Education: The current rules lack clarity regarding the requirements for a real estate school offering precensure courses and for a renewal applicant to meet continuing education requirements. The proposed rules provide additional information and clarity for greater compliance with the rules.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Licensing: The proposed rules provide greater clarity and additional information regarding the educational and experience requirements for licensure as a real estate broker or salesperson. The proposed rules will protect public welfare by ensuring that an applicant has the requisite training and experience to qualify for licensure.

Lapse of Broker's license and Broker's Death or Disability: The proposed rules will clarify the impact on a salesperson or associate real estate broker if his or her affiliated broker's license lapses or if the broker dies or becomes disabled. The proposed rules will protect the welfare of Michigan's citizens by preventing real estate licensees from practicing without an affiliation with a licensed broker with an active license.

Practice and Conduct: The proposed rules clarify the licensee's duties related to practice and will protect the welfare of Michigan's citizens entering into a service agreement, paying or receiving funds kept in a trust or escrow account, and when making or accepting an offer to buy or sell real property.

Real Estate Education: The proposed rules provide greater clarity regarding the requirements for a real estate school offering prelicensure courses and for a renewal applicant to meet continuing education requirements. The proposed rules will protect the welfare of Michigan's citizens by ensuring that the training and continuing education acquired by an applicant or a licensee is appropriate and up-to-date.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no rules that are obsolete or unnecessary and can be rescinded.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rules are not expected to have a fiscal impact on the agency.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made or a funding source provided because there are no expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

Part 1 General Provisions: The proposed rules will assist a reader in understanding the terms used in the rule set. The proposed rules do not place any burden on an individual.

Part 2 Licensing: The proposed rules will assist an applicant in obtaining the required prelicensure education and experience to become licensed by clarifying the requirements, but they do not impose any new burden on an individual.

Part 3 Lapse of Broker's license and Broker's Death or Disability: The proposed rules provide clarity and assist the salesperson or associate real estate broker in determining their ability to practice if his or her affiliated broker's license lapses, or if the broker dies or becomes disabled. The proposed rules do not place any new burden on an individual.

Part 4 Practice and Conduct: The proposed rules clarify the licensee's duties to ensure compliance and consumer protection, but they do not place any new burden on an individual.

Part 5 Real Estate Education: The proposed rules provide additional information and clarity for greater compliance with the rules. The proposed rules do not place any burden on an individual.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There is no identified burden imposed by the proposed rules.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no anticipated increases or reductions for other state or local governmental units as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, town, village, or school district as a result of these proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no anticipated actions that a governmental unit must take to comply with the proposed rules.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriations have been made to any governmental units as a result of the proposed rules. No additional expenditures are anticipated or intended with the proposed rules.

16. In general, what impact will the rules have on rural areas?

The proposed rules impose requirements on individual licensees rather than small businesses. Even if a licensee's workplace qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules will not impact public or private interests in rural areas.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules do not have any impact on the environment.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The department did not consider exempting small businesses because they are not impacted by the proposed rules.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate individual licensees. Further, the Michigan Occupational Code requires real estate brokers and salespersons to be licensed.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

There are approximately 39,084 real estate salespersons, 10,985 associate brokers, and 4,019 individual brokers in Michigan.

A licensee may work in a small business. However, no matter what type of business environment the licensee works in, he or she will have to comply with the proposed rules. The rules do not impact small business differently because the impact is to the individual licensee only.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all real estate licensees. The rules were drafted to be the least burdensome on all affected licensees.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify compliance and reporting requirements for small businesses with the proposed rules because the proposed rules do not impact small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency did not establish performance standards to replace design or operation standards required by these rules.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not impact small business. They impact an individual licensee. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules affect individuals applying for licensure and renewal, regardless if they practice in a small business. There is no separate cost to a small business.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no expected costs for equipment, supplies, labor, or administrative costs that a small business would incur in complying with the proposed rules.

The rules impact licensees and not small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no expected costs for legal, consulting, or accounting services that a small business would incur in complying with the proposed rules.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her business because it would create disparity in the regulation of the profession.

Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's work qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The department worked with the Michigan Board of Real Estate Brokers and Salespersons in the development of the proposed rules. The Board is composed of real estate professionals and public members.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved in the development of the rules.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There are no estimated compliance costs with these rule amendments on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

No businesses or groups will be directly affected or benefited by the proposed rules. No additional costs will be imposed on any businesses or groups.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on any businesses or groups.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

It is estimated that there will be no new compliance costs imposed on individuals as a result of the proposed rules.

A. How many and what category of individuals will be affected by the rules?

All licensees and applicants are affected by the proposed rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

There is no qualitative or quantitative impact on individuals as a result of the proposed rules.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules use clear, concise language, and implement the statutory requirements for licensing. The clear, concise language allows the public, applicants, and licensees to better understand the requirements for licensure and renewal.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The rules are not expected to have an impact on business growth, job creation, or job elimination in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The department does not expect any individuals or businesses to be disproportionately impacted by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Illinois: <http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022504540HArt%2E+5&ActID=1364&ChapterID=24&SeqStart=450000&SeqEnd=3100000>;
<http://www.ilga.gov/commission/jcar/admincode/068/068014500D04500R.html>

Indiana: <http://iga.in.gov/legislative/laws/2015/ic/titles/025/articles/34.1/>

Kentucky: <https://apps.legislature.ky.gov/law/kar/201/011/210.pdf>

Minnesota: <https://www.revisor.mn.gov/statutes/cite/82.59>; <https://www.revisor.mn.gov/statutes/cite/82.61>

New York: https://www.dos.ny.gov/licensing/re_salesperson/re_sales_broker_faq.html#3;
https://www.dos.ny.gov/licensing/re_salesperson/re_sales_broker_faq.html#6

Ohio: https://com.ohio.gov/documents/real_RequirementsBrokersLicense.pdf;
https://com.ohio.gov/documents/real_RequirementsSalespersonLicense.pdf

Pennsylvania:

<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/RealEstateCommission/Pages/Real-Estate-Guide.aspx>

Wisconsin: <https://docs.legis.wisconsin.gov/statutes/statutes/452.pdf>;
https://docs.legis.wisconsin.gov/code/admin_code/reeb/25.pdf

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

Since the rules are required by statute, no estimates were made.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

Since the rules are required by statute, there are no reasonable alternatives to the proposed rules.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

Since the rules are required by statute, a statutory change would be needed to provide an alternative.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. The licensing and regulation of real estate professionals are state functions, and states regulate real estate professionals by statute, regulation, or both. Private market-based systems are not used for licensing and regulation.

There are professional organizations that establish criteria for membership, but these organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements but does not join one of the professional organizations would be able to practice, and there would be no way to ensure their competency or hold them accountable.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since the rules are specifically required by statute, there are no alternatives to the proposed rules that the agency could consider. The rules are necessary for the administration and enforcement of the licensing process.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The instructions for compliance are included in the rules.