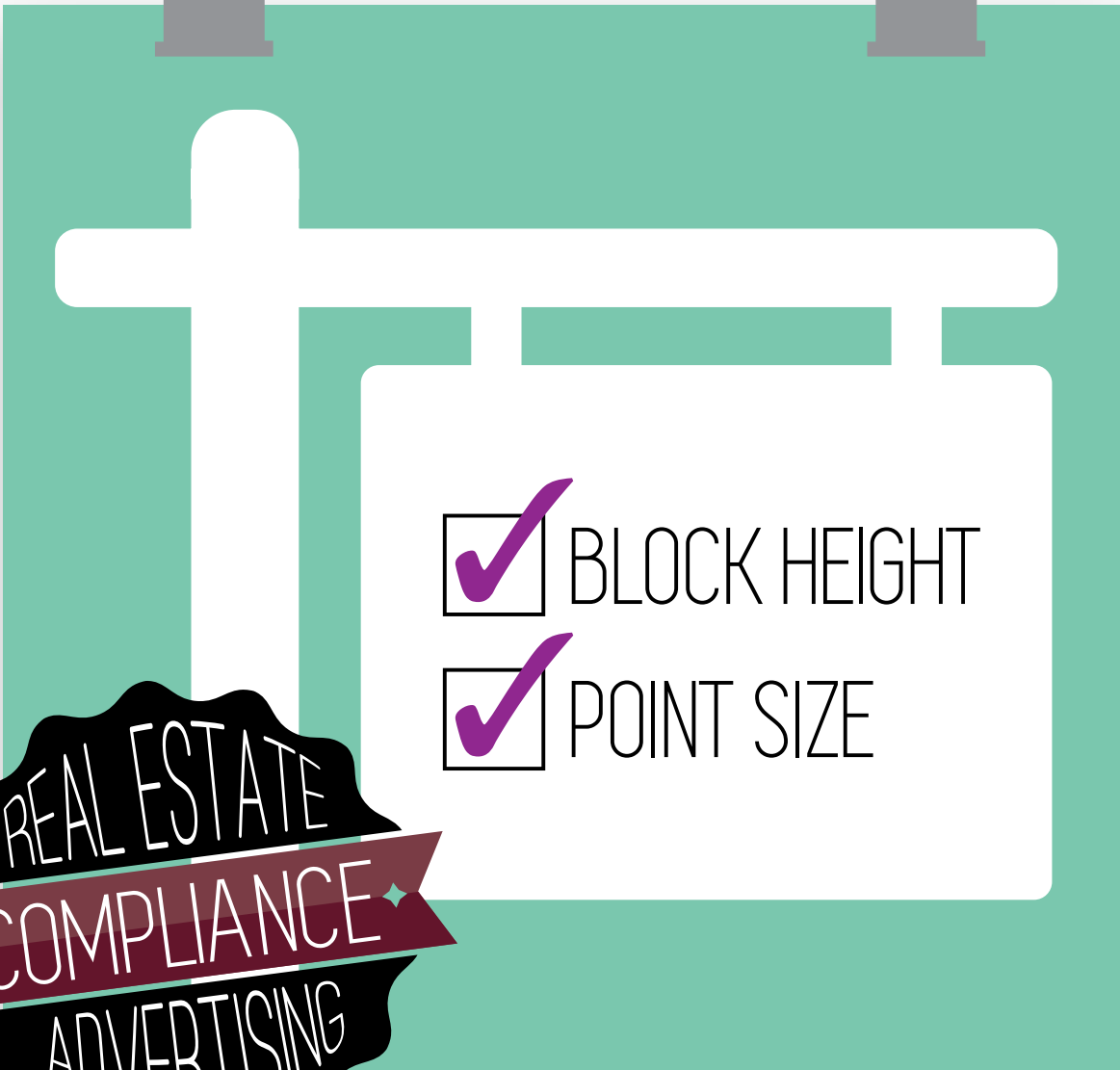


A publication of Michigan Realtors®

MICHIGAN REALTOR®



PLUS

First Time Homebuyer Savings Legal Lines
President's Report Appraiser Work File Maintenance



2017 RPAC
Tribute & Review



MICHIGAN REALTORS®

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The Westin Book Cadillac, Detroit • February 1-2, 2018
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{ JANUARY | TWO THOUSAND & EIGHTEEN | VOLUME SEVENTEEN | NUMBER ONE }



Go The Distance!

I am excited for this opportunity to address you as the 2018 Michigan Realtors® President!

If you are among those who have made stereotypical resolutions for this new year, congratulations! Now, drop them. That's right, drop those typical resolutions and prepare to get serious and get real in 2018. This is the year to *Go the Distance*.

What does it mean to *Go the Distance*? For Realtors®, it means everything.

- *Going above and beyond the expectations of your clients, your team and even your family and community.*
- *Going above and beyond your knowledge base by discovering and implementing today's trends in real estate and using the tools that are available in the marketplace to make your work more efficient and productive.*
- *Asking yourself one very key question: What will YOU bring to the real estate industry that will separate you from your competition?*

The first step in moving toward these goals is to make plans to attend Achieve, the premier leadership event brought to you by Michigan Realtors®. This is an incredible opportunity to network with some of the biggest influencers in our state and industry while learning about real estate industry trends, legislative developments and leadership. Forging alliances in our industry and setting lofty goals is not out of the question!

ACHIEVE

ENGAGING REALTORS® - BUILDING LEADERS

Thursday, February 1, 2018 - Friday, February 2, 2018

The Westin Book Cadillac, Detroit

Additionally, we hope you will join us at two other events honoring important members of our organization during Achieve.

RPAC Recognition Lunch - Celebrating 2017 Local Association RPAC Achievement Award winners and all members who have gone the distance in investing in RPAC.

President's Reception - "Be Our Guest" and celebrate the installation of the 2018 President-Elect, Treasurer and newly-elected Directors.

Please visit www.mirealtors.com to register.

I am grateful for and encouraged by the hard work and dedication of our past officers and all of you who have contributed to the success of this organization and our industry as a whole. The coming year will be an exciting one filled with challenges, opportunities and growth for all of us who choose to embrace them. I hope you will be one of those people! I am truly looking forward to working alongside my fellow officers as the Michigan Realtors® President and to going the distance *with you* in 2018. ●



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COMING EVENTS

February 1-2, 2018

Achieve

The Westin Book Cadillac, Detroit

April 25, 2018

Broker Summit

The Inn at St. John's, Plymouth

September 26-28, 2018

The Convention

Grand Traverse Resort & Spa, Traverse City

Graduate Realtors® Institute (GRI)

GRI-I, GRI-II and GRI-III

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Continued Push For First Time Homebuyer Savings Accounts in the New Year

My first home purchase was a condominium. I had a full-time job, a little bit of money in the bank, and a handful of student loan debt. My down payment was made possible in part by a very kind gift from my parents. This story is a familiar one for many first-time home purchasers.

Indeed, major news outlets are running articles highlighting the increasingly common truth that Realtors® and their clients are facing everyday -- young homebuyers turning to mom and dad, grandma and grandpa, to help purchase their first home. With a competitive market for buyers, increasing student loan debt nationwide, and rising down payment requirements, Michigan Realtors® is prepared to do something to help young purchasers and their families get a leg up on savings.



...MICHIGAN REALTORS® IS PREPARED TO DO SOMETHING TO **HELP YOUNG PURCHASERS AND THEIR FAMILIES GET A LEG UP ON SAVINGS.**

Recent statistics show nationwide that over 22% of new home loans included a parent or relative as a cosigner. That is a 2% increase over last year. Some call it the “bank of mom and dad” and gift letters are common when first-time homebuyers are pulling together their down payment. These first-time homebuyers are vital to moving the entire real estate market. They are the buyers and sellers of the future and they create upward mobility for current owners.

Michigan Realtors® believes that there is an opportunity for the State of Michigan and the Association to play a role in helping families and individuals save for first-time home purchases through the creation of the Michigan First-Time Homebuyer Savings Account (FHSA). This innovative savings

vehicle would incentivize people to save, promote financial literacy and support retention of college graduates and workforce talent in Michigan.

Michigan Realtors® is spearheading efforts in the State Legislature to pass Senate Bills 511 and 512, sponsored by Senator Peter MacGregor (R-Rockford) and Senator Ken Horn (R-Frankenmuth). The Michigan FHSA is a self-directed account that allows an account holder to begin saving for the purchase of a first-time principle residence in Michigan, for themselves or a named beneficiary. Modeled after the Michigan Education Savings Program (MESP) that many utilize for college savings, the FHSA would provide an annual state income tax deduction for investments into the account - up to \$5000 for an individual, \$10,000 for married filing jointly - for a period of up to 20 years. Additionally, the interest on this account would be allowed to grow tax free, as long as it was used towards the purchase of a first home in Michigan. Included in the bills are tax claw backs for the state if the account is not used for its intended purpose.

The beneficiaries of these accounts are numerous.



It's not just parents of grandparents setting them up for their minor children, but a person in high school, college, or beyond can also begin saving for their first home. Furthermore, the legislation defines a first-time homebuyer as an individual that has not owned a home in 3 years or more. Since the economic downturn hit Michigan particularly hard, this provision offers former homeowners that may have gone through foreclosure or short-sale, a second chance at realizing their dream of homeownership once again.

The bills received a very welcome reception upon their introduction passing through the Michigan Senate Finance Committee unanimously, while drawing support from the Michigan Bankers Association, Michigan Credit Union League, Michigan Chamber and Michigan Home Builders Association. Michigan Realtors® staff is meeting with members of the legislature to educate them on the importance of this legislation for our state which is experiencing a large outmigration of young

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college-educated workers over the last several years. Our message of promoting homeownership and retaining talent is resonating. If all goes according to plan by the time this article goes to press, the bills should have passed the Senate on a bi-partisan basis and be on their way to the House Tax Policy Committee.

In addition to our traditional lobbying efforts, you can expect to hear and see radio and Internet advertisements geared towards drumming up public support for the bills as they make their way through the legislature. These ads are made possible in part by the National Association of Realtors® that believes very strongly in our efforts and the precedent that they could set for other states. These ads will also play an important role should these bills become law, by establishing Realtors® as the ambassadors of this program in Michigan. The success of FHSAs will be determined by the number of Michiganders that utilize this important investment tool, so lending leading your voice, along with your knowledge and experience is important. Michigan Realtors® is committed to an education effort for Realtors® and the public alike once FHSAs are made available.

With our efforts, hopefully instead of heading to “The Bank of Mom and Dad” for home-financing needs, future homebuyers will have a great tool for saving money for the purchase of a home, allowing them to live, work and play in this Great State.

Please be sure to stay up to date on all the latest goings on with Michigan Realtors® Public Policy by visiting <http://www.mirealtors.com/Advocacy-Initiatives>, or subscribing to and liking our YouTube channel <https://www.youtube.com/MICHREALTORS>. ●



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Appraisers, leaving their work files behind

BY MICHEAL R. LOHMEIER,
FASA, MAI, SRA, MMAO(4)



Appraisers shoulder a lot of responsibilities beyond preparing appraisal reports when operating an appraisal business. Many of these responsibilities are similar to those burdened by other professionals, such as maintaining licenses, advertising and developing client relationships, office management, accounting and payroll. However, unique to the appraisal profession is the maintenance of work files in adherence with requirements established by the *Uniform Standards of Professional Appraisal Practice* (USPAP). USPAP provides the *minimum* obligations for work file record retention, however other external influences may invoke greater requirements. Additional requirements may stem from state license laws, professional associations' standards of practice and individual client agreements.

Every year I receive questions pertaining to maintaining work files. The most common scenarios include an appraiser retiring and closing up its entire practice; an appraiser retiring and selling off its interest in a business to its remaining partner(s); and an appraiser leaving one appraisal firm for another.

Each of these scenarios may be managed by addressing the appraiser's responsibilities with respects to appraisal work files and how to meet or exceed those responsibilities.

First, let me make it clear that an appraiser is never simply absolved of its related USPAP responsibilities because of a personal lifestyle or professional choice. The choice to retire, sell off interest in a business, or switch employment does not negate an appraiser's responsibilities to USPAP. So it's impossible to just decide to turn the lights off, go home and never think about your clients again. That's not acceptable, and not contributing to USPAP's primary objective, which is to "promote and maintain a high level of public trust in appraisal practice."¹

In each of these scenarios the thought process needs to be determined while focused on maintaining public trust.

IDENTIFY THE CONTENTS OF THE WORK FILES

An appraiser's work file is "documentation necessary to support an appraiser's analyses, opinions and conclusions."ⁱⁱ The contents of a work file includes a true copy of all written reports, and all other data, information and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP. This may include documents such as property record cards, property sale data sheets, property photographs, rental surveys, building costs, inspection reports relied on, building sketches, aerial and zoning maps, building permits relied on and any other data, worksheets and spreadsheets needed to show compliance.

Work files may be retained in many different formats, including paper, electronic or digital media

so long as the appraiser can retrieve the information in a usable and reliable manner. The work file must be preserved for as long as it's needed, although USPAP does provide appraisers a minimum retention of time. Work files need to ensure the information retained is kept accurate and complete, so that it is possible to establish the decisions made by the appraiser and actions taken within each assignment, and reasons why. Work files must be retained in a manner that ensures the safeguarding of confidential information. When saving work files digitally, appraisers should make sure the files are frequently backed up and password protected to ensure that non-authorized staff does not have access.

USPAP doesn't require everything relied on to be in each individual work file. If information is not in the work file, then its location must be referenced. A lot of general data is stored in other areas, such as maps, cost data, depreciation schedules, lending rates, capitalization rates and other texts and publications. It would be impractical to copy each of these into every work file, therefore a reference may be made where the information is stored. The caveat here is that the referenced material must be possessed by the appraiser. Just quoting that obtained information is from local city hall and someone may "go fish for it" is not acceptable.

So when appraisers are deciding what to do with their work files, they must also address how referenced information will be maintained with the same assurances for quality and confidentiality.

5- AND 2-YEAR WORK FILE REQUIREMENT

Appraisers must retain an appraisal's work file for a minimum five years "after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever expires last."ⁱⁱⁱ Again, this includes all information that the appraiser referenced in the work file and which is stored at a different location.

USPAP doesn't require appraisers to maintain physical possession of their work files. Appraisers may choose to make some sort of appropriate retention, access or and retrieval arrangements with another party that maintains custody of it. Appraisers are permitted to retain work files beyond this requirement, however USPAP does not permit appraisers to destroy their work file documentation prior to five years for any reason.

WORK FILE PURGE

Although the 5- and 2-year rule is useful as a minimum for maintaining work files, appraisers still need to be mindful of other requirements that could cause the retention period to be much

UNIQUE TO THE
APPRAISAL
PROFESSION IS THE
MAINTENANCE
OF WORK FILES IN ADHERENCE
WITH
REQUIREMENTS
ESTABLISHED BY
THE *UNIFORM*
STANDARDS OF
PROFESSIONAL
APPRAISAL
PRACTICE
(USPAP).

longer, such as appraiser-client engagements. The disposal of any work files needs to be a conscientious decision and not just a hard and fast boilerplate decision.

When an appraiser maintains its own work files, the control to save and purge when appropriate is easy to monitor and implement. But when the work files are saved by another party, assurances on how and when they should be disposed of must be maintained. Professional disposal companies should provide references, proof of bonding and insurance and the specific process they use. The same is true disposing of hard drives. Despite someone's efforts to erase a hard drive, sophisticated hackers can often read the data one thought was deleted.

HAVE AN EXIT PLAN

When you start to consider leaving an organization, for whatever reasons, develop an exit plan with respect to meeting your responsibilities as an appraiser (e.g., confidentiality requirements) and maintaining your work files. In some instances, work files are relatively simple, as much of the data relied on by the appraiser was communicated within the body of the appraisal report itself, leaving little else the work file. In other cases, work files may be fairly elaborate, with references made to several different locations in the office libraries, different organization departments and in different places of the office's computer drive. But one thing is absolutely certain, if/when you leave employment you still carry with you your responsibilities as the appraiser for those work files.

POTENTIAL SOLUTIONS

There are a number of potential solutions to the above scenarios. The appraiser takes the work files, physically or electronically, or stores them with an off-site storage vendor physically or electronically. Alternatively, an appraiser may make an arrangement with the remaining organization for the organization to maintain the work files with required security assurances. In these instances, agreement is made in which the work files will be made immediately available to the leaving appraiser if/when needed. Needs often arise from clients having post-report questions, responding to state complaints and from unexpected subpoena.

The smoothest exit plans are usually those identified when you first begin a business relationship, not at its end. So prior to starting your own appraisal business, working for another appraisal company or hiring a subordinate appraiser, you need to consider how you will maintain your work files and any referenced "other location" information when/if changes are made to your professional life. Although people come and people go, an appraiser's responsibilities cannot be transferred or eliminated. ●

* **Michael R. Lohmeier**, MMAO(4), PPE, FASA, MAI, SRA, is City Assessor for the City of Novi. He has authored and taught extensively on subjects involving valuation, property tax, market analysis, and highest and best use both locally and nationally. He is available at 248.347.0493 by email at mlahmeier@cityofnovi.org.

- i USPAP, PREAMBLE
- ii Ibid, 2018-19, DEFINITIONS
- iii Ibid., RECORD KEEPING RULE

Advertising RULES



As many Realtors® have heard by now, effective January 1, 2018, in any advertising that includes the name of an associate broker, salesperson or team, the individual licensee's name (or team name) cannot be in larger type size than the name of the firm. This change has caused many brokers to reexamine both existing law and their current advertising.

Under the advertising rules that have been in place for decades, all real estate advertising must include the licensed name of the broker.¹ This requires that a broker use the name on file with the Department of Licensing and Regulatory Affairs ("DLARA"). The broker's logo or franchise name is not sufficient. If the broker has an assumed name on file with DLARA, the broker can advertise in that name.² In addition to the broker's name, the advertising must include either the broker's telephone number or street address.

On January 1, 2018, in any real estate advertising, the type size used for the firm's name must be at least as large as the type size used for the individual licensee's or team name.³ The names do not need to be in the same font or color, and it is not the case, for example, that if the salesperson's name is in bold type then the broker's name must also be in bold type. It is still the case that the advertisement must include the broker's name as licensed or an assumed name on file with DLARA. The advertisement must still include the broker's phone number or address; however, the rules do not regulate the size of the type for the phone number/address.⁴

On September 18, 2017, the Department issued its interpretation of "type size" in real estate advertising in a communication to all licensees. According to the Department, when comparing the type size of the name of the associate broker, salesperson or team (what we will refer to as the "Licensee") with the type size of the name of the employing broker (what we will refer to as the "Firm"), either of the following tests may be used:

- Test No. 1.** The height of the block containing the name of the Licensee may not exceed the height of the block containing the name of the Firm; or
- Test No. 2.** The point size of the majority of letters in the name of the Licensee may not exceed the point size of the tallest word in the name of the Firm.

An advertisement that satisfies **EITHER** of these tests is in compliance.

The following visual illustrations provide examples of compliant advertising within the above tests.

¹ Rule 329; now MCL 339.2512e(1).

² Rule 301; now MCL 339.2512e(5).

³ MCL 339.2512e(3)(b).

⁴ MCL 339.2512e(3)(a).

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HEIGHT OF THE BLOCK

1. The first advertising illustration satisfies test number 1; that is, the block height of the name of the salesperson, “Simone Licensee” is 4.5 inches, and the block height of the name of the Firm, “Acme Brokerage Capital City Firm” is also 4.5 inches. The advertising also includes the office phone number for the Firm, so it is otherwise compliant with the Code requirements. Note, however, that if the legal name of the Firm in this illustration was only “Acme Brokerage”, the advertisement would not be compliant with test number 1 because the block height of “Acme Brokerage” alone is smaller than the block height of “Simone Licensee.”

2. The second advertising illustration also satisfies the first test because the block height of “Simone Licensee” is smaller than the block height of the name of the Firm – Again, the legal name of the Firm on file with DLARA in this illustration is “Acme Brokerage Capital City Firm.”

3. The third advertising illustration also satisfies the first test because the block height of the name of the Licensee – in this case, “Simone Team” – is equal to the block height of the name of the Firm. Remember that the block height of the name of the Firm must be greater than or equal to the block height of the name of the Licensee. Phone numbers and addresses are not included in the calculation.

Simone Licensee
(517) 555-5554 (c)

ACME BROKERAGE
Capital City Firm
(517) 555-5555 (o)

A 4.5"
block height equal to B

B 4.5"
block height equal to A

Simone Licensee
(517) 555-5554 (c)

ACME BROKERAGE
Capital City Firm
(517) 555-5555 (o)

A 5.5"
block height lesser than B

B 6.25"
block height greater than A

Simone Team
(517) 555-5554 (c)

ACME BROKERAGE
Capital City Firm
(517) 555-5555 (o)

A 4.5"
block height equal to B

B 4.5"
block height equal to A

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POINT SIZE OF THE MAJORITY

4. In the fourth advertising illustration, the point size of the majority of letters in the name of the Licensee is compared to the point size of the tallest word in the name of the Firm. Here, while the point size of the first and last name of the Licensee is not the same, the point size of the last name is used for comparison purposes because that word has the most letters. Similarly, while all of the words in the Firm name are not the same point size, the point size of “Acme Brokerage” is used because those letters are taller than the letters in “Capital City Firm”. Since the point size of “Licensee” is equal to the point size of “Acme Brokerage” – both at 240 points – this advertising illustration is in compliance with the second test.

5. The fifth advertising illustration includes both the name of an individual Licensee, “Simone Licensee”, and the name of a team, “Simone Team”. Under the advertising rules, both the name of the individual Licensee and the name of the team is compared to the name of the Firm. Since the point size of both the name of the individual and the team are equal to the point size of the Firm name, the advertisement is in compliance with the second test. Note again that for purposes of comparison, we look at the tallest word in the Firm name. In this case, “Acme Brokerage” at 180 points.

6. In the last advertising illustration, the agent uses large stylized lettering for the first letter of both her first and last names. Under the second test, the focus is on the size of the majority of letters in the Licensee’s name – so, the relevant point size here is 210 points, not 420 points. Since the letters in the name of the Firm are also 210 points, this advertising illustration is in compliance with the second test.

Simone Licensee
(517) 555-5554 (c)

ACME BROKERAGE
Capital City Firm
(517) 555-5555 (o)

A 240pt point size equal to “Acme Brokerage”

B 240pt point size equal to “Licensee”

Simone Licensee
(517) 555-5554 (c)

SIMONE TEAM

ACME BROKERAGE
Capital City Firm
(517) 555-5555 (o)

A 180pt point size equal to C (Minion Pro Semibold Italic)

B 180pt point size equal to C (Arial Narrow Bold)

C 180pt point size equal to A and B (Bell MT Bold)

140pt

SIMONE TEAM
(517) 555-5554

ACME BROKERAGE
Capital City Firm
123 Main Street, Capital City

A 210pt

A 210pt point size equal to B

“S” 420pt initial caps not included in comparison

B 210pt

B 210pt point size equal to A

In summary, the requirement is that the size of the name of the Firm must be greater than or equal to the size of the name of the Licensee. This requirement can be met by comparing either block height or point size. An advertisement that satisfies either test is compliant. It is not necessary to satisfy both tests. The purpose behind having two separate tests is to preserve the goal of the advertising rule – that is, to make sure that the advertising makes clear what company is doing the advertising – while at the same time, providing licensees with creative flexibility. Remember that these are minimum requirements. A Firm can always adopt more stringent requirements than the law dictates.

2018 officers & Directors

Officers



President: Sara Lipnitz, Greater Metropolitan

Sara Lipnitz, Associate Broker, SFR, PMN, has been involved in the real-estate industry for over 25 years; first in the commercial market, and for the past 16 years in residential sales. She is a top producing Realtor® in the Birmingham/Oakland County marketplace. Sara currently holds the following positions: National Association of Realtors®, RPAC Federal Fundraising Trustee Vice Chair, NAR Meeting and Federal Political Coordinator. Sara serves on the following committees for the Michigan Realtors®: RPAC Trustees, Budget & Finance Committee, Appraisal Management Committee and the Personnel Committee. Locally, Sara sits on RPAC committee and Professional Standards Committee for the Greater Metropolitan Association of Realtors®. Past positions include: Michigan Realtors® Public Policy Committee, Local Chapter President for WCR Birmingham-Bloomfield Chapter, WCR Michigan Ways & Means Committee Chair; GMAR Grievance Committee, GMAR Diversity Committee, GMAR Nominating Committee and GMAR RPAC Committee. Sara is a graduate of the 2014 National Association of Realtors® Leadership Academy, was named the 2012 Realtor® of the Year for GMAR, 2015 Member of the Year for WCR and a Golden R President Circle member with RPAC. She is also the founding member of the Birmingham-Bloomfield Realtor® Network, established in 2006. Sara is also involved with several local charities and is active in her church.



President-Elect: Matt Davis, Battle Creek Area

Matt Davis, GRI, grew up in Historic Marshall Michigan graduating from Marshall High School in 1988 and subsequently a BS degree from Miami University in Oxford, OH in 1992. Matt, is a second generation Realtor® and Broker with Rosemary Davis REALTORS® in Marshall and has been active in community and Realtor® association service throughout his 20-year career. He has served 15 years on the BCAAR Board of Directors including 2 stints as President, was BCAAR's Realtor® of the Year in 2004, 2007 and 2015. In 2015 Matt was recognized as Michigan Realtors®, REALTOR® of the Year as well. Matt has served the Michigan Realtors® as a member of; Public Policy Committee (Past Chair), Board of Directors District 7 Director, RPAC Trustees (Past Chair), Convention Committee, Budget Finance Committee, numerous task forces and was the proud recipient of the Michigan Realtors® Realtor® Active in Politics (RAP) Award in 2005. In 2012, Matt was appointed by Michigan Governor Rick Snyder as a professional member of the State Board of Real Estate Brokers and Salespersons. He was re-appointed in 2016 and is the current Chairperson of that licensing board. Nationally, Matt was appointed as the Michigan RPMIC (Realtor® Party Member Involvement Committee for NAR in 2006, and in that position serves as a "whip" for Michigan's 16 Federal Political Coordinators (FPCs) as well as coordinating NAR grassroots activity in Michigan. He was FPC for former Congressman Joe Schwarz (MI-7), and is the current FPC for Congressman Tim Walberg (MI-7), and has also served on the NAR Grassroots Strategic Plan workgroup and the NAR Public Policy Coordinating Committee. Married to Leigh for 15 years, he has 2 daughters at home, Kendall (14) and Madelyn (11). Matt enjoys Waterford crystal, breeding chinchillas, and Pierogis.



Treasurer: Maureen Francis, Greater Metropolitan

In 1992, Maureen Francis left the United States to work as a business advisor in the first group of US Peace Corps volunteers to serve in the former Soviet Union. After nearly a decade in advertising and management consulting in Ukraine, Maureen found a new calling: residential real estate sales in Birmingham, Michigan. Maureen and her husband, Dmitry Koublitsky, have helped home buyers and sellers share their love for all that Metro Detroit offers since 2001. Maureen was President of the Greater Metropolitan Association of Realtors® in 2014 and was honored as Realtor® of the Year in 2015. She's served on the Realcomp Shareholders Committee and numerous committees at the local, state and national level. Maureen is a graduate of NAR's Leadership Academy and an RPAC Golden R President's Circle investor.

Board of Directors

The Michigan Realtors® 2018 board of directors is made up of 14 district directors (see next page) and six other representatives, which are listed below. District directors are elected during the One Realtor®, One Vote Online Election, which takes place every fall.

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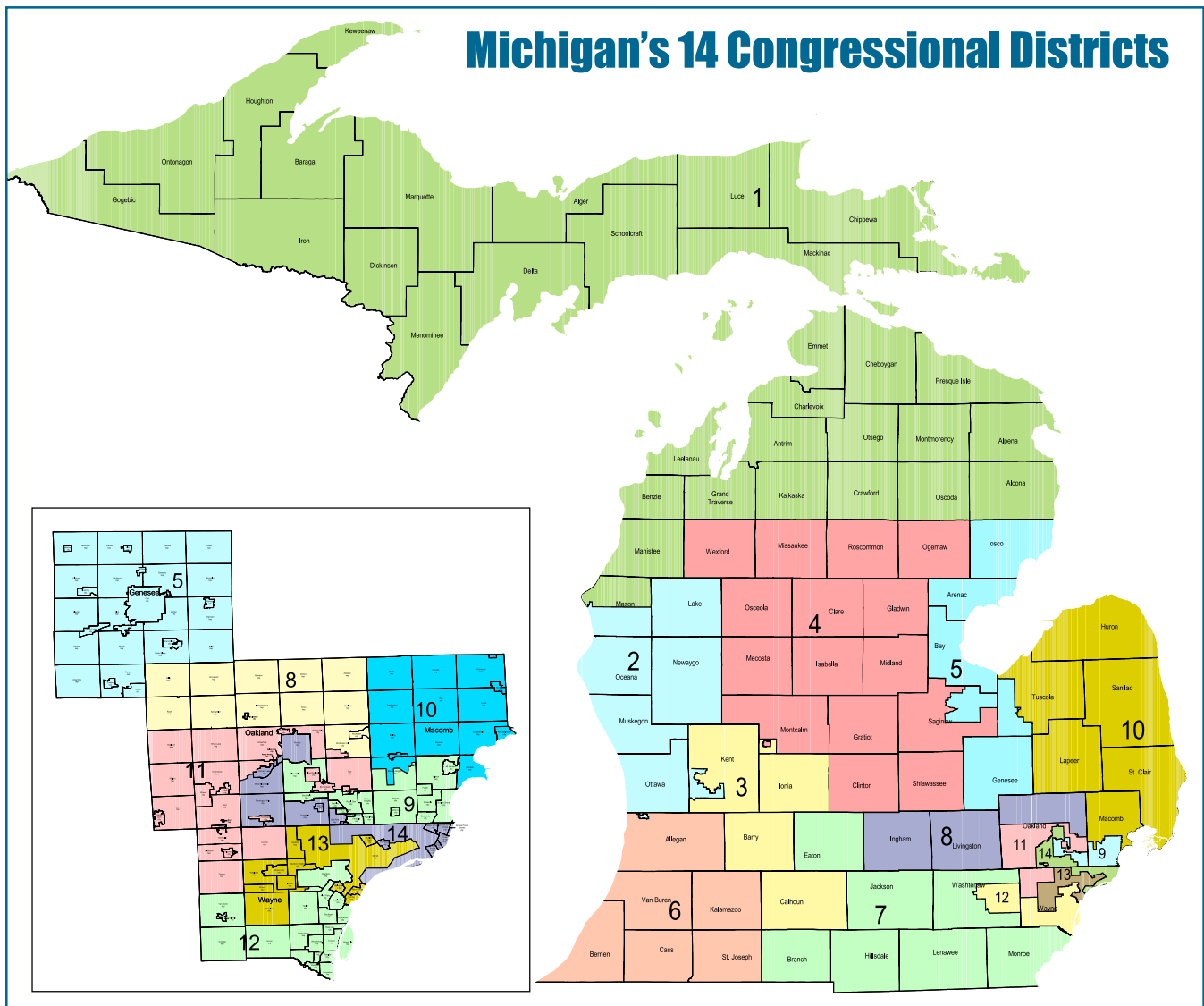
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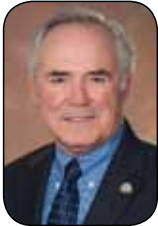
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I Know Nothing

The Neitrings found a Realtor® to list the property for Hofstra, and Hofstra completed a seller's disclosure statement. Hofstra drew a line through the first two pages of the seller's disclosure statement and wrote across each page: "Seller has never lived at property." Hofstra testified that her real estate agent wrote the words on the seller's disclosure statement. The real estate agent in turn testified that "it was standard practice to use this language when an owner 'never lived in the property' and has 'no idea [about] anything.'"

In January of 2014, the plaintiffs in this case, Samantha Celano and Ryan Adams (the "Buyers"), walked through the home. Celano testified that the walk-through occurred in the evening, that the house was dark and that there was plastic hung throughout the house due to renovations. On January 21, 2014, the Buyers emailed Hofstra's Realtor® a list of questions about the home. They specifically asked Hofstra to fill out the seller's disclosure statement to the best of her ability. The Buyers indicated that the seller must have some information on the age of the roof, etc. Lisa Neitring responded, "We are unsure of age of the roof, we made some repairs last year to it. It will probably need a new one shortly."

Hofstra and the Buyers entered into a purchase agreement on January 24, 2014. On February 10, 2014, Ryan Adams' father performed an inspection on the home that made no mention of potential water issues. He did indicate that he could not determine the grade outside because there was "snow everywhere." On February 28, 2014, Hofstra and the Buyers closed and the Buyers agreed to accept the home "as is" and "with all faults."

Needless to say, Spring followed Winter and within

a few months the house was severely flooded along with the surrounding property. At its worst, there was nearly a foot of standing water in the living room. The Buyers were forced to re-grade the property and to remove all flooring and drywall in the house. At this time, they discovered an extensive amount of mold. Also, the nextdoor neighbors informed the Buyers that the property was known to flood and that the Neitrings had experienced problems with flooding on the property. Further, the Buyers contacted a former owner of the home who said that he had also experienced flooding problems. Both the neighbors and the former owner were willing to sign affidavits swearing to the truth of their statements. The Buyers sued Hofstra and the Neitrings for fraud, fraudulent misrepresentation and silent fraud. All of these claims were dismissed by the trial court, and the Buyers appealed to the Michigan Court of Appeals.

In order to establish a claim of fraud against Hofstra, the Buyers had to establish she made a representation that she knew to be false. Both the trial court and the Court of Appeals found that Hofstra made no such affirmative representation. Instead, Hofstra had said "seller has never lived at property" and denied any knowledge about the home. In the same way, Lisa Neitring's response

about the condition of the roof made no reference to flooding, water damage or mold.

Further, the

fact that the Neitrings made substantial renovations to the property did not constitute an "affirmative statement" or "representation" with respect to flooding, water damage or mold on the property.



It is apparently some agents' belief that if the sellers have never lived in the home, they **LEGALLY "KNOW NOTHING" THAT MUST BE DISCLOSED** in the seller's disclosure statement.



Second, the Buyers alleged that Hofstra's failure to provide full disclosure as to the flooding, water damage and mold constituted "negligent misrepresentation." In order for the Buyers to prevail on a claim for negligent misrepresentation, the Buyers needed to establish that there had been some type of affirmative misrepresentation that was so incomplete as to be misleading. The Court found that Hofstra was not liable for negligent misrepresentation because she had made no representations whatsoever relating to flooding, water damage or mold. The Court of Appeals found Hofstra's statement saying she never lived in the home did not constitute any sort of affirmative statement about water or mold in the home.

Finally, the Court of Appeals reviewed the silent fraud claim against Hofstra and the Neitrings. The Court of Appeals found that Hofstra had a statutory duty under the Seller Disclosure Act to make certain disclosures. The Court of Appeals reviewed the record to determine whether Hofstra's failure to disclose the flooding, water damage and mold issues was done with the intent to defraud the Buyers. The Court of Appeals found as follows:

Written across the first two pages of Hofstra's signed disclosure statement were the words, 'Seller has never lived at property.' In effect, by stating that she had never lived on the property, Hofstra was indicating that she did not have knowledge as to the property's condition. While the disclosure statement constituted a representation by words, plaintiffs [Buyers] failed to provide any evidence to dispute its authenticity. Hofstra visited the property once before she purchased it. She never lived on the property, and she never came to visit Lisa and Michael thereafter. Plaintiffs provided no evidence that disputes these facts. Furthermore, while plaintiffs [Buyers] rely on affidavits from a neighbor and former owner to argue that Lisa and Michael struggled with flooding, those witnesses do not claim that Hofstra knew about the flooding. Thus, plaintiffs [Buyers] provide no evidence that Hofstra – rather than Lisa and Michael [Neitrings] – knew about the property's conditions.

Hofstra prevailed in this case because the Buyers were unable to produce any evidence that Hofstra knew about flooding issues or mold problems. Had the Buyers been able to produce any evidence that Hofstra had been aware of flooding problems – for example, if her granddaughter had told Hofstra about the flooding – then she could have been liable under either theory of fraudulent misrepresentation or silent fraud. In that situation, the fact that Hofstra had never lived in the home – and that her statement to that effect in the seller's disclosure statement was true – would not have protected her.

As an aside, the Neitrings escaped liability for silent fraud by reason of the fact they owed no duty to the Buyers. Because the Neitrings were not the sellers, they had no obligation to complete the seller's disclosure statement or to otherwise volunteer information about the condition of the home.

Realtors® reading this case should not construe it as a ringing endorsement for the practice of routinely marking seller's disclosure statements with words to the effect "I have never lived on the property – I know nothing," particularly when dealing with rental properties or properties which have been purchased for resale. In this case, Hofstra knew absolutely nothing – she toured the home prior to closing and never saw it again. Further, a period of four years elapsed between the time Hofstra visited the home and the time it was sold. Hofstra knew nothing (at least according to the record) about the condition of the home. A person who has owned a rental property for several years is not in the same position. The same would be true of a person who purchased property and made improvements, cosmetic or otherwise, for the purpose of resale. Sellers must complete the seller's disclosure statement by disclosing whatever they may know about the home regardless of whether or not they have ever actually lived there. ●



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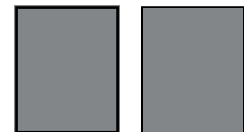


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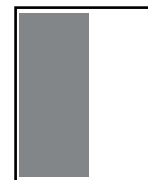
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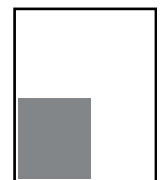
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