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JANUARY 2024

ADVICE

for
*Buyer's
Agents*

PLUS

2024 Leadership Team
Capitol Report President's Report



Critical Best Practices

Volume 23 | Number 1

MICHIGAN REALTORS®

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Congratulations, Sandi!

The Ann Arbor Area Board of REALTORS®
is thrilled to congratulate
Sandi Smith on serving as the
2024 Michigan REALTORS® President!



ANN ARBOR AREA
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{ JANUARY | TWO THOUSAND & TWENTY FOUR | VOLUME TWENTY THREE | NUMBER ONE }



Reach Out In 2024

It is an honor and privilege to serve as your 2024 Michigan Realtors® President. I have been asked about what set me on my pathway to volunteer leadership. My journey here is in significant part due to the encouragement of others. My first broker suggested to me that I join a local committee. Our local AE (the late Pete Cornell) suggested that I run for the Board of Directors. Thereafter, a sitting Council member in Ann Arbor prodded me into running for City Council. Friends on the Michigan Realtor® Board of Directors then wanted me to run for Treasurer, which of course, led me directly here. I have often referred to this process as “hands on my back,” but I think perhaps a better visual aid is an “outstretched hand.” Consider the impact that you can have on a person’s life if you offer a few words of encouragement to them, offer them a hand and invite them to participate.

Consider the **impact** that you can have on a **person’s life** if you offer a few **words of encouragement** to them. . .

If you’re interested in starting or furthering your path in volunteer leadership, make plans to attend the 2024 Achieve Leadership Conference on January 25-26 in Ann Arbor. Achieve provides leaders of every level with the tools needed to be part of the change they want to see in their local associations, offices and communities. The event gathers the best and brightest association leaders and public policy advocates from across Michigan.

ACHIEVE

January 25-26, 2024
Sheraton Ann Arbor Hotel



If you have never experienced an Achieve Conference, I encourage you to make this the year to attend. You can scan the QR code above to register and view the schedule of events.

One of my major focuses this year is to work with Michigan Realtors® and our local association partners to amplify the call for volunteer leadership. We must ensure that the Realtor® family is one where everyone, regardless of race, religion, gender, sexual orientation, identity or any other protected classification is welcome and encouraged to be involved. I am hopeful that Achieve or your next office meeting will provide an

opportunity to see that call for leadership in action. We are all invested in the strength of our association, and that strength is directly tied to the diversity of the people involved and the new voices that we can inspire to participate.

Lastly, I am excited to announce that Michigan Realtors® is developing a new web site, set to launch in late 2024. In the dynamic landscape of web development, creating a new website is an intricate process that demands great attention to the user experience. Our priority is to have our website best suit the needs of our membership, featuring cutting edge content in an easily-organized and accessible format. We’ll also look to ensure mobile friendliness, acknowledging the growing use of smart devices in our industry. And my favorite, the login process will be streamlined, prioritizing security without sacrificing convenience.

In closing, I am extremely excited for this opportunity to serve as the 2024 Michigan Realtors® President. I hope you will never hesitate to reach out with a new idea or an interest to share your talents. Until then, I look forward to seeing you in Ann Arbor for Achieve. ●

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CHIEF EXECUTIVE OFFICER
Robert Campau, Esq.
RCE, CAE
rcampau@mirealtors.com

EDITOR/ADVERTISING
Joe Kras
MBA, SAG-AFTRA
jkras@mirealtors.com

CHANGE OF ADDRESS/UNSUBSCRIBE
Kaetana Beech
kbeech@mirealtors.com

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Important Disabled Veterans Property Tax Relief Becomes Law

Michigan is home to many veterans of our armed services, and for a long time now 100% disabled veterans have been eligible for property tax relief on their homestead property. Over the years changes have been made to the law to clarify its use and to ease the administrative burden on both the disabled veteran and the local and state government. This year the Michigan Legislature, the Governor and stakeholder groups such as Michigan Realtors® stepped up in a big way to address some of the frustrations surrounding the disabled veteran property tax exemption.

In the past couple of years Michigan Realtors® has fielded an increasing number of calls related to the disabled veteran's property tax exemption. These calls were the direct result of Realtors® and their clients' frustrations on the tax exemption. In particular, the annual requirement to file for the exemption, the loss of the exemption for a surviving spouse that moves to a new property, and the ability to prorate the exemption based on when the veteran occupied the home. Many of these calls no doubt were also the result of the May 2022, Michigan Court of Appeals decision in the case of *Lockhart v. Ontonagon Township*.

The court of appeals case dealt with a surviving spouse of a disabled veteran that sought to maintain the exemption after her husband's death. In this case, the property in which Ms. Lockhart and her husband lived was deeded to her, meaning her husband's name never appeared on the deed. Because he never owned the property, the court ruled that the plain language of the statute meant that she did not qualify for the exemption after his death. This ruling ran counter to how many understood the intent of the statute and spurred the introduction of Senate Bills 176, 330 and 364.

The bills, along with a handful of other disabled veteran exemption bills, were introduced throughout the winter and spring of last year. As the bills worked their way through the legislature this fall, they combined to make the disabled veteran exemption more accessible and fixed in terms of its status.

The new law, signed by the Governor now provides 3 important and valuable changes to the property tax exemption:

In the **past couple of years**
Michigan Realtors® has fielded an
increasing number of calls related to the
disabled veteran's property tax exemption.

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1. Beginning January 1, 2025, a disabled veteran exemption that is in place, will not have to be renewed annually. It will remain in place until rescinded or denied by the assessor.
2. The surviving spouse of a qualified disabled veteran is eligible for the exemption on any homestead property, including one purchased after the veteran's death, as long as they are unmarried.
3. The disabled veterans tax exemption will be prorated based on closing documents starting at the disabled veteran occupies the property as a homestead.

These changes are significant and can provide valuable property tax relief to disabled veterans and their spouses that gave so much for our country. The ability to maintain their exemption without the annual filing will address the numerous instances where the exemptions were denied because of error. Furthermore, the ability for a surviving spouse to maintain the exemption after the disabled veteran has passed to move or downsize is a piece of public policy that we should all be proud of.

While this new law is a huge victory, there is still a lot that can be done around the disabled veterans property tax exemption. One of the current discussions in the legislature is finding a way for local governments and the state of Michigan to agree on how to pay for the tax relief, long-term. Other potential areas of change being discussed are scaling the exemption to the percentage of disability (e.g. providing for a 50% property tax exemption for a veteran that is 50% disabled) or extending the exemption to a surviving spouse whose service member paid the ultimate sacrifice.

As you work with your clients in this new year, please be aware of these important changes to the disabled veteran property tax exemption. Please visit www.michigan.gov/treasury for the latest information and guidance on the disabled veterans property tax exemption. ●

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2024 Officers



President: Sandi Smith, Ann Arbor

Sandi Smith, AHWD, GRI, e-PRO, first entered real estate while still a college student at the University of Michigan. She joined the Ann Arbor Area Board of Realtors® and quickly became engaged at the committee level and served as a Director. Sandi was honored as the 2007 Realtor® of the Year. She has also been active in the Ann Arbor community, serving 2 terms on City Council and 3 terms on the Downtown Development Authority. Sandi is a past chair for the Jim Toy Community Center and currently serves on the Board of the Washtenaw Housing Alliance, a unique coalition of over 30 non-profit and government entities that are committed to ending homelessness in our community. She is the co-founder and Associate Broker of Trillium Real Estate in Downtown Ann Arbor.



President-Elect: Christopher M. Germain, Upper Peninsula

Christopher M. Germain is a lifelong resident of Michigan's Upper Peninsula. In 2004, he attended Holloway Institute to then go on and receive his real estate license. Since then, he has taken a very active role in the real estate community. He is a past director on the Delta County MLS Committee, past president of the Upper Peninsula Realtors®, and has served on various PAGs. In addition, he was selected to take part in the Inaugural Leadership Academy class for the Michigan Realtors® and then went on to facilitate the academy for the following two years. He occasionally speaks on real estate and various business topics around the country. He has served his community as Captain of the Ford River Township Volunteer Fire Department. He is a past president of the Delta County Jaycees, Past Master of Delta Lodge 195 of Free and Accepted Masons, past secretary of the Delta County Fire Chiefs Association, past director of the Delta County Fire Training Council, and a past committee member of Delta County Relay for Life.



Treasurer: Mark Oegema, West Michigan Lakeshore

Mark Oegema has been a licensed Realtor® since 2004. He has a deep passion to educate himself deeper, grow in leadership, be a voice of advocacy for Real Estate & most importantly learn from others. He is a Broker-Part owner of Home Realty. Oegema currently sits on the Board of Directors for Michigan Realtors® and will serve as treasurer in 2024. He currently serves on the Legal Action Committee for Michigan Realtors® and Government Affairs Committee for WMLAR. He has just completed Michigan Realtors® Leadership Academy (2023). Oegema is a RPAC Major Investor (Golden R). His prior involvements include: Michigan Realtors® Public Policy Committee, Chair of Public Relations for WMLAR, Past Board Member for WMLAR (2012-2015), Past President for WMLAR (2016) & WMLAR Realtor® of the Year Recipient (2021). Mark is a graduate of Grand Valley State University's Seidman School of Business with a BBA in Marketing. Oegema enjoys volunteering with Habitat for Humanity and has taken 5 Global Village Trips along with serving locally. Outside of Real Estate, Mark and his wife Kristen stay busy with their two kids Harper (5) and Hayden (4).

2024 Board of Directors

The Michigan Realtors® board of directors is made up of district directors and other representatives, which are listed below. District representatives serve as liaisons between the Michigan Realtors® and local associations in their region.



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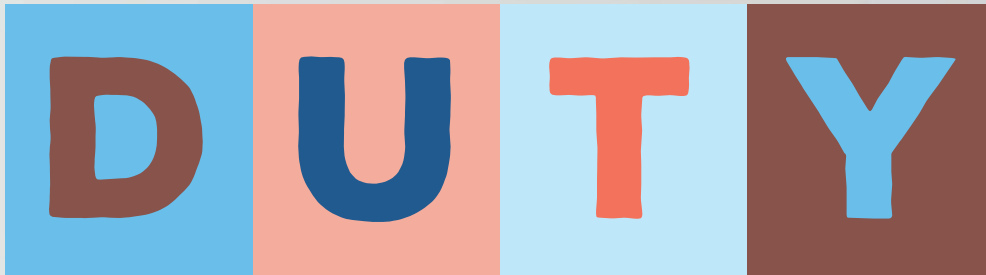
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Buyer's Agents'



of Reasonable Care & Skill

BY GAIL A. ANDERSON, ESQ.

When we talk about the fiduciary duties owed by real estate agents to their clients, we often focus on the duties of confidentiality and loyalty. An equally important fiduciary duty is the duty of “reasonable care and skill.” The level of care and skill required of a real estate agent is that generally possessed by other agents. As one court has described it, real estate agents are expected to demonstrate the level of skill, care and diligence that their industry holds out to the public. A client who claims that their agent breached their fiduciary duties is arguing that the real estate agent’s conduct fell below the industry standard. This article will discuss a couple of cases where a buyer made such a claim.



A “STANDARD” CONTRACT?

In a North Carolina case decided last summer, a Buyer had hired a Buyer’s Agent to help her find a home in Durham, North Carolina. When they could not find an acceptable existing home, Buyer’s Agent introduced Buyer to a builder, Level Carolina Homes (“Level Homes”), who was developing a new subdivision in the area. Buyer entered into a contract with Level Homes and eventually closed on the purchase and moved into the home.

After she moved into the home, Buyer discovered numerous costly defects, including drainage issues, foundation cracks, electrical and plumbing problems, as well as mold. The cost of the repairs was estimated at between \$80,000 and \$90,000. Buyer sued both Level Homes and Buyer’s Agent. Buyer claimed that Buyer’s Agent had breached his fiduciary duty – specifically his duty to exercise reasonable care, skill and diligence. The trial court threw out the case against the Buyer’s Agent, and the Buyer appealed.

It turned out that the contract that Buyer had signed with Level Homes significantly limited Buyer’s rights against the builder. The contract disclaimed all warranties other than a one-year warranty on workmanship. The contract also limited damages to the actual cost of repairs and required arbitration rather than a jury trial with appeal rights.

Buyer took the position that Buyer’s Agent was responsible for the fact that her remedies against the builder were limited. Buyer claimed that before she signed the contract with Level Homes, she had specifically asked Buyer’s Agent whether the contract was “standard,” and Buyer’s Agent had told her it was, in fact, “standard.” Buyer’s Agent admitted that he had said the contract was “standard,” but testified that what he had meant was the contract was Level Homes’ standard form of contract. Buyer’s Agent said he did not mean that the contract was a “standard” real estate contract or even a “standard” builder’s contract.

Buyer argued that when she asked Buyer’s Agent whether the contract was “standard,” he should have advised her to consult with an attorney. Buyer’s Agent’s response was to point out that her signed buyer’s agency contract specifically advised buyers to seek professional advice on “matters of law.”

Interestingly, none of the three judges on the panel hearing this case thought that this clause in the buyer’s agency contract would be sufficient in all instances. In reaching this conclusion, the judges relied on testimony from the director of the North Carolina Real Estate Commission. The director had opined that when a buyer questions a contract, the “standard in the industry” requires agents to advise the client to seek legal advice. The director had also opined that if the buyer does not question the contract, the duty to advise a client to seek counsel may be satisfied through a clause in the buyer’s agency agreement. All three judges accepted this opinion as the appropriate “standard in the industry.”

Buyer’s Agent won in this case because two of the three judges thought that Buyer’s question as to whether the contract was “standard” was not a specific legal question. Since Buyer had not asked a specific legal question, these judges concluded that Buyer’s Agent did not have a duty to advise Buyer to consult with an attorney.

This case could have easily come out the other way. A different panel of judges could have looked at these same facts and concluded that when Buyer asked Buyer’s Agent whether the contract was “standard,” what she was really asking is whether the terms were negotiable. If this was the question being asked, then under this Court’s view of the “standard in the industry,” the Buyer’s Agent should have advised her to consult with an attorney.

This case is not a Michigan case, so, of course, it is not binding on Michigan courts. There are, however, some lessons to be learned. First of all, a real estate agent should never tell a client that a real estate contract is “standard.” Many people outside the real estate industry believe that if a contract is “standard,” it means that the terms are not subject to negotiation. Of course, it is never the case that a real estate contract is not subject to negotiation.



...*real estate agents* are expected to *demonstrate* the level of *skill*, *care* and *diligence* that their industry holds out to the public.

Second, at the time the buyer's agency agreement is signed, it is important that the agent makes clear what services the agent will provide and that the client should consult with an attorney on legal questions. However, buyer's agents should also advise buyer-clients to consult with an attorney when they ask a legal question. Often, clients need help identifying what is, in fact, a legal question.

INSPECTION WAIVERS

In another case, an Ohio buyer bought a home with a mold problem that made the home unlivable for a year. This Buyer argued that the Buyer's Agent had breached his fiduciary duty by allowing her to waive an inspection despite knowing she suffered from a life-threatening illness that caused unusual sensitivity to chemicals, dust, mold and other contaminants.

The Court first held that, as a matter of law, a buyer's agent owes a duty to instruct clients to obtain expert advice when necessary or appropriate. However, in this instance, the purchase agreement specifically stated that "if a buyer does not elect inspections, the Buyer acknowledges that Buyer is acting against the advice of Buyer's agent and broker." In addition, the buyer's agency agreement stated that "neither [Brokerage Firm] nor my agent are qualified to inspect or identify mold in any property" and that "Buyer may request a specific inspection for mold." Not only did the agreements contain very specific waiver clauses, but the testimony was that the Buyer's Agent had gone over the provisions of both agreements with the Buyer and had her initial her acceptance of each waiver.

Based on these facts, the Court found that Buyer's Agent had not breached his fiduciary duty but had adequately advised Buyer as to her right to have inspections.

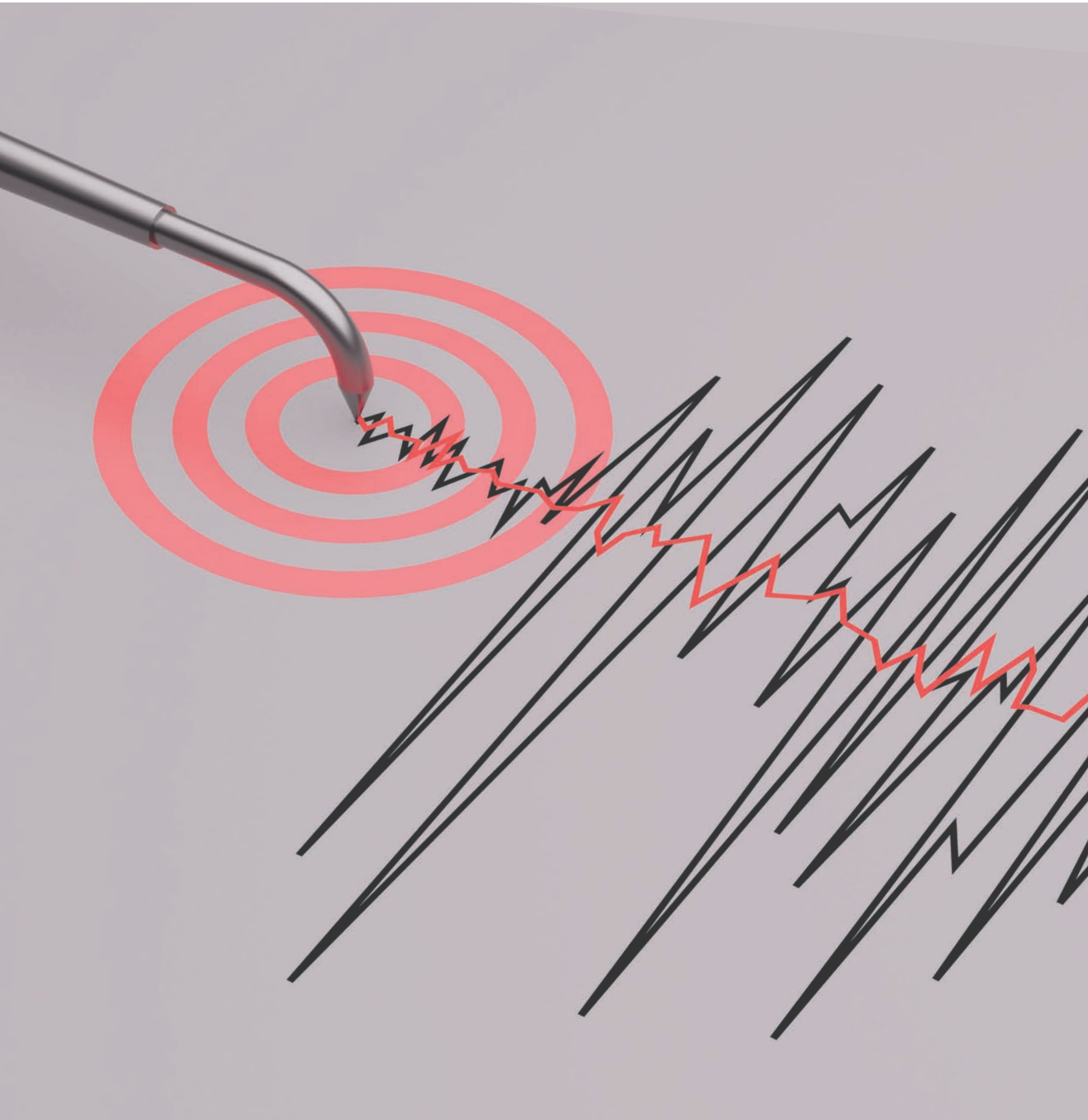
Again, this is not a Michigan case. However, it does illustrate the importance of making certain that an inspection waiver is knowingly given. If, for example, a buyer agrees to an "informational inspection" (or an appraisal guarantee) in order to make their offer more desirable to a seller, their buyer's agent should make certain that the buyer fully understands the implications of that decision. The Michigan Realtors® have developed an "Acknowledgment and Release" form to assist in that discussion.

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FINAL WORD

Buyer's agents are held to the level of skill, care and diligence that the industry holds out to the public. This duty includes an obligation to advise clients to obtain expert advice when necessary. It includes making certain that waivers are knowingly given. It is important to use clearly drafted forms that explain a client's rights and obligations. Agents should also go over these contract provisions with their clients and make sure their clients understand the choices available to them. Finally, when questions come up during a transaction, buyer's agents should refer their buyer-clients to the appropriate professionals. ●





Class Action Shockwaves: Best Practices in the Aftermath



It's no secret that the recent verdict in the *Burnett v. NAR* class action lawsuit has sent shockwaves through the real estate industry. While we may not know the final outcome for many months or even years, Realtors® may wish to adopt practices that address the underlying concerns raised in this case (and others like it). These best practices prioritize professionalism, transparency, and customer service.

AN OVERVIEW OF *BURNETT V. NAR*

The crux of the *Burnett* lawsuit lies in the alleged anticompetitive practices concerning the sharing of commissions among real estate brokers. The lawsuit, which named the National Association of Realtors® (NAR) and a number of large broker franchises as defendants, was brought forth by a group of sellers. The plaintiff-sellers alleged that: 1) NAR's Cooperative Compensation Rule which requires listing brokers to make a blanket offer of compensation to buyers' brokers violates federal antitrust laws, and that it did so by 2) eliminating the probability that buyers would ever pay their buyer's broker directly, thereby eliminating any incentive to negotiate the commission paid to a buyer's broker.

The Realtor® defendants argued that the cooperative compensation rule is not anti-competitive but instead, very pro-competitive because it creates a more efficient, accessible marketplace. This is especially true for low-income

and first-time homebuyers who otherwise might not be able to afford both a down payment and an out-of-pocket commission payment for professional representation.

The Realtor® defendants further argued that the rule cannot be construed as a scheme to "fix" commission rates because home buyers and sellers have always had the ability to negotiate the compensation amount paid to their respective brokers. There is no set compensation amount that is fixed or controlled by the law, MLS's, Realtor® associations or any other third party. The Realtor® defendants pointed out that the cooperating compensation offered by the listing broker to cooperating brokers could be a percentage of the purchase price, it could be one dollar or even zero dollars.

On October 31st, 2023, a Kansas City jury found that NAR and the other co-defendants had violated antitrust law and awarded the plaintiffs \$1.8 billion in damages. Federal antitrust law permits private plaintiffs to recover treble (or triple) damages against a party who is found to have engaged in anticompetitive conduct. For this reason, the final damages calculation in the *Burnett* case could be as high as \$5.4 billion.

WHAT'S NEXT?

NAR has indicated that it plans to appeal the verdict. This is the first step in what will likely be a long legal process. Class actions typically take years – not months – to resolve. While we await a final resolution, Realtors® can take this time as an opportunity to critically examine and, if necessary, reevaluate their business practices. The following will outline some encouraged “best practices” that will help Realtors® inform buyer-clients as to how commissions are paid while simultaneously demonstrating the vital role Realtors® play in navigating the home buying process.

Articulate Your Value

At this juncture, Realtors® must take the time to communicate to their clients (and the public) what value they bring to a transaction. This means articulating that Realtors® do more than simply facilitate a transaction; they are fiduciaries who offer invaluable insights, guidance, and negotiation skills, all while stewarding the complex process of homeownership. A Realtor®'s expertise mitigates risks for clients and extends beyond merely closing deals; it involves understanding market trends, property valuations, local regulations, and a labyrinth of other issues that can easily derail a transaction. As we assess the post-Burnett landscape, it is imperative that Realtors® continue to make this value proposition known to clients, customers, and the general public.

Transparency

Realtors® should prioritize transparency as they engage with clients. By having candid conversations about services to be rendered, broker compensation, market conditions and potential challenges, Realtors® can demonstrate their credibility and commitment to a high standard of professionalism. This is about more than just a commitment to ethical behavior; it also reflects a culture of transparency. This transparency fosters long-term working relationships and helps to safeguard against misunderstandings that kill deals and irreparably diminish a client's confidence in the real estate industry.

Buyer's Agency Agreements

Reader, if you take anything away from this article, take this: Realtors® should always use a written buyer's agency agreement. A written agency agreement formalizes the relationship with a buyer-client and ensures that the client knows what to expect at all stages of the transaction (E.g., what services they will receive and how the broker will be compensated for the work performed). Remember that is not enough to simply send the buyer-client an agency agreement and ask them to sign it. Realtors® should walk their buyer-clients through the provisions of the agency agreement and thoroughly explain the scope of their representation, including what fiduciary duties will be owed to the client (confidentiality, loyalty, disclosure, etc.) and how the agent will be paid.

Compensation

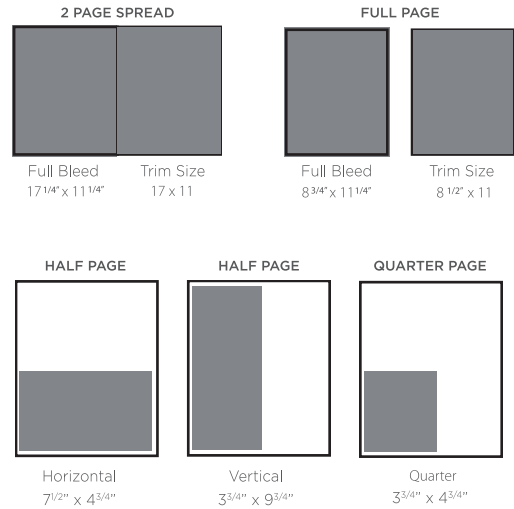
When discussing the buyer agent's agreement with their client, a buyer's agent should not gloss over the topic of compensation. Buyer-clients should never be told that the buyer's agent's services are free or that the buyer need not be concerned about the cost because it will be paid by the listing broker and/or the seller. Buyers need to understand that neither sellers nor listing brokers are required to offer buyer's agents any compensation. Buyer's agents are encouraged to use forms similar to Michigan Realtors®' buyer agency form which has the buyer agreeing to pay the buyer's agent's commission but gives the buyer a credit for any amounts that the buyer's agent receives from the seller and/or the listing broker.

Client Education and Preparation

Education and preparation are invaluable resources that Realtors® can offer to their buyer and seller clients. First-time homebuyers especially will rely on the Realtor®'s skills and expertise in navigating what is likely one of the largest and most important transactions of their life to date. Agents should work diligently to clearly explain state and federal laws, the broker's business policies, and any other considerations that might impact the transaction and professional representation.

Equally important, the agent should provide the client with a comprehensive understanding of how the transaction will work. The means explaining:

- The timeline for house hunting, mortgage approval, and closing.
- The local market and how it impacts the buyer/seller.
- Dangers of using price per square foot as a method of home valuation.
- Costs of homeownership and other financial complexities of buying and selling a home (E.g., mortgage rates and terms, appraisals, inspections, and coordination with lenders).
- Financing options.
- How offers and acceptances work.
- What the MLS is and how it is used.
- Local housing market trends, such as trends in price or negotiation tactics.
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in damages.

Customer Service

Perhaps one of the most effective ways to articulate the value proposition of using a Realtor® is to offer consistent, unparalleled customer service. This includes, but is certainly not limited to:

- Advocating/negotiating on behalf (and in the best interests) of the client.
- Preparing competitive offers that fit within the client's budget.
- Providing consistent updates on the state of the transaction.
- Staying communicative and responding promptly to questions from clients and the agent(s) representing the other side of the transaction.
- Working collaboratively with appropriate parties to ensure that all contractual terms are met and deadlines are adhered to.
- Assisting in resolving conflicts that could potentially derail the transaction. And, when appropriate, referring the client to outside professionals (inspectors, appraisers, engineers, tax professionals, legal counsel) when an issue arises that is outside the scope of the Realtor®'s expertise.
- Keeping track of important contract deadlines.
- Showing a buyer-client all properties that fit within their stated criteria regardless of the amount of cooperative compensation being offered by the listing broker.
- Acting as a reliable source for information about the home buying and selling process.
- Treating clients and customers equally and with respect.
- Providing a client with education on the home buying/selling process and coordinating a plan.
- Ensuring that all required actions are completed in advance, so that closing day is a celebration and not a cause for stress.²

CONCLUSION

The *Burnett* litigation has certainly sparked criticism of real estate broker commission structures and fostered great debate among industry and legal gurus. Even so, it has also presented Realtors® with a unique opportunity to assess their current business models and adopt a balanced approach that prioritizes professionalism, transparency and customer service, while also promoting a robust real estate market. This is a pivotal moment for our industry that necessitates introspection, yes, but also demands recognition of the positive impact Realtors® have on helping their clients achieve the American Dream of homeownership. By following the best practices outlined in this article, Realtors® can continue to communicate the incredible value they bring to a real estate transaction and why they're worth every cent of their compensation.

If you'd like to learn more about how you, as a Realtor®, can demonstrate your value to customers, visit competition.realtor.com. ●

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¹ "179 Ways Agents Who Are REALTORS® Are Worth Every Penny of Their Compensation", Retrieved, December 11, 2023, from nar.realtor.com/competition-in-real-estate.

² "Buying a Home is Easy if You Work with a REALTOR®", Retrieved, December 11, 2023, nar.realtor.com/infographics/buying-a-home-is-easy-if-you-work-with-a-realtor.

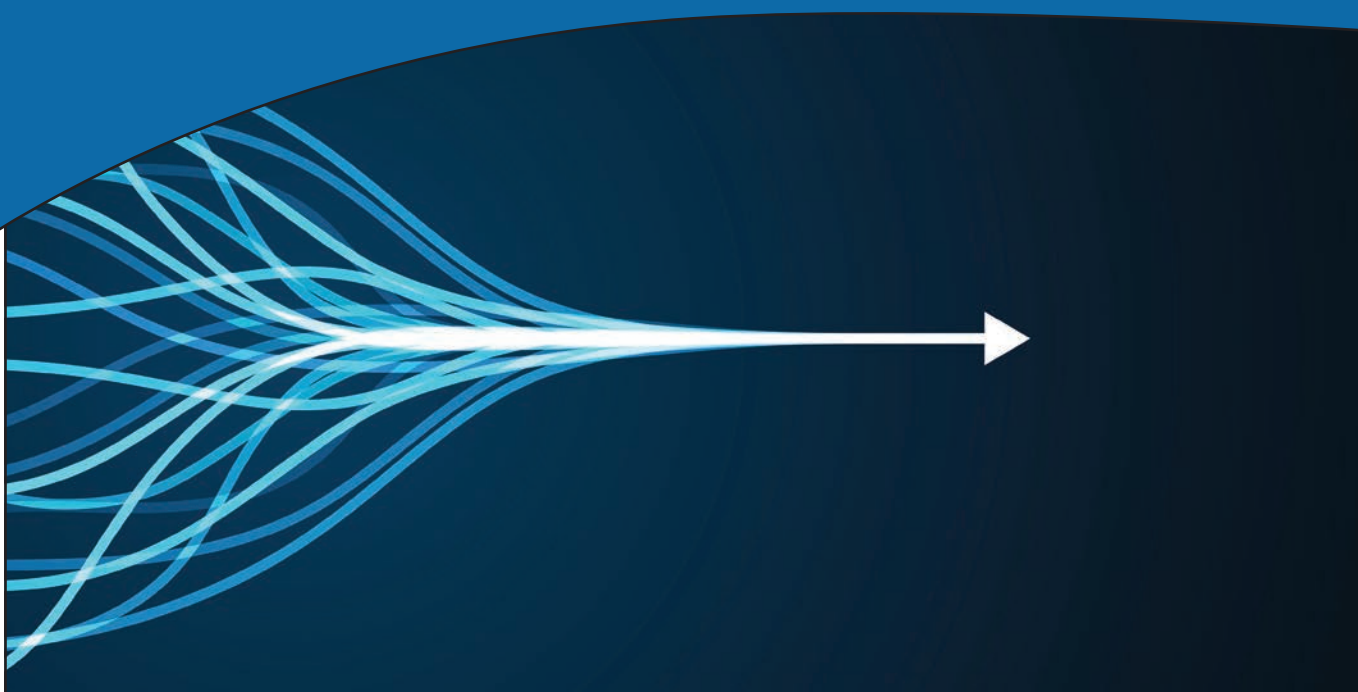
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