

FREQUENTLY ASKED HOTLINE QUESTIONS*

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1. AGENCY

QUESTION: I am a buyer's agent. My clients had their attorney review the offer after I wrote it but before it was presented to the sellers. The lawyer is asking for many changes to the offer which, in my opinion, will make it unacceptable to the sellers. How should I advise my buyer-clients?

ANSWER: Do not ever advise a client to ignore the advice of counsel, even if the advice of counsel seems like bad advice.

QUESTION: I am an agent in an office that practices designated agency. I am currently a designated agent for seller. I also represent someone as a designated buyer agent. My buyer is interested in making an offer on my listing. Is it possible to be a dual agent in a designated agency office?

ANSWER: YES. It is possible to be a dual agent in a designated agency office, but you must get both the buyer and the seller to consent in writing. Without informed consent you have unconsensual dual agency and will forfeit your right to a commission.

QUESTION: I am representing clients with the sale of their home. I received a call from someone who is interested in making an offer on my client's home. May I represent that potential buyer as a transaction coordinator?

ANSWER: NO. A transaction coordinator does not represent either party, but is a neutral party. You cannot both be a transaction coordinator and listing agent in the same transaction. In this circumstance, you could work with the buyer as a customer, rather than a client.

QUESTION: I am a listing agent for a real estate firm that practices designated agency. My husband works at the same firm and he is the designated agent of a buyer who wants to make an offer on one of my listings. Can we do this or are we required to enter into a dual agency arrangement?

ANSWER: While the law does not expressly prohibit a husband and wife from acting as designated agents on opposite sides of a transaction, we would strongly advise against it. If a problem later arises in connection with the transaction or the property, it may be difficult to convince the parties (or a court) that the parties received the full range of fiduciary duties from their respective designated agents.

QUESTION: I am a real estate salesperson purchasing a home for myself. Can I act as a transaction coordinator in this purchase?

ANSWER: NO. According to agency law, a transaction coordinator is an agent that represents neither the buyer nor the seller. Under these circumstances, you are the buyer of this property and clearly cannot hold yourself out as a "neutral" transaction coordinator.

QUESTION: I represent a buyer who has made an offer of \$150,000 on a house listed at \$180,000. The listing agent called and told me that the sellers were rejecting the offer and that the sellers would take no less than \$170,000. My buyer then submitted an offer for \$170,000, which the sellers promptly accepted. Although everyone in this transaction is happy, my broker believes that the listing agent breached a fiduciary duty owed to the sellers by telling me the bottom line price the sellers were willing to accept. Is my broker correct?

ANSWER: POTENTIALLY, YES. Michigan case law has held that a broker representing a seller may not suggest to a purchaser that the seller will accept less than the stated price. *Harvey v Lindsay*, 264 Mich 118 (1933). Under your circumstances, unless the sellers gave their agent permission to disclose the minimum price that they were willing to accept, the listing agent may have breached a fiduciary duty owed to her sellers.

QUESTION: I own a brokerage which practices traditional agency. Would it be possible to have one of my agents represent the seller and another of my agents represent the buyer in the same transaction without establishing dual agency?

ANSWER: NO. In the above circumstance, all of the agents in the firm would be dual agents. In order to have your agents represent the buyer and seller exclusively, your firm would have to practice designated agency.

QUESTION: Is it true that an agency disclosure form is not required for commercial property?

ANSWER: YES. The law requires an agency disclosure form only if the property in question includes one to four residential dwelling units or a residential building site. MCL 339.2517(11)(g). Note that some commercial property includes residential dwelling units. Disclosure would be required for those types of properties.

QUESTION: I represent someone who is interested in leasing a house. Am I required to provide an agency disclosure form?

ANSWER: YES. The agency disclosure law defines a real estate transaction as one involving the sale **OR LEASE** of real estate consisting of not less than one or not more than four residential dwelling units or a building site for a residential unit. MCL 339.2517(11)(g).

QUESTION: Our office represents the firm's clients as designated agents. Can compensation be offered to sub-agents through the MLS? We were told that no one can be the agent for the seller, unless the seller signs a piece of paper specifically naming them as a designated agent.

ANSWER: Your firm can act as designated agents and offer sub-agency through the MLS to cooperating firms. This is not an attempt to create an agency relationship between the cooperating firm and the seller. Instead, it is an offer of sub-agency offered by your firm, *i.e.*, broker to broker.

2. BUY AND SELL AGREEMENTS

QUESTION: My seller was home when the inspector showed up with the buyer's agent. The seller was told that he could not be present during the inspection. Is this true?

ANSWER: NO. There is no law that requires the sellers to leave their property during an inspection.

QUESTION: I listed a home for \$300,000. My seller has received a full price offer and wants to counter it at \$310,000. Can he do this?

ANSWER: YES. Even if a full price offer is presented to the seller, he or she is not obligated to sell it at that price and can counter at a price that is higher than the listing price. (A listing broker may be entitled to a commission even if the seller does not accept a full price offer.)

QUESTION: The purchase agreement provides that the seller shall surrender possession of the home on August 1st at 12:00 a.m. Is the seller entitled to possession for the entire day on August 1st?

ANSWER: While the weight of authority seems to be that 12:00 a.m. (or midnight) marks the start of the new day, this understanding is by no means uniform. For this reason, to avoid confusion, Realtors® are encouraged to avoid using this deadline in contracts and instead use 11:59 p.m. or 12:01 a.m.

QUESTION: My buyer made an offer that the seller countered. Before we could respond, the listing agent sent me a text stating that her seller was withdrawing the counter offer and going with highest and best. Can a counteroffer be withdrawn in a text message?

ANSWER: YES. The seller may withdraw the counteroffer at any time prior to receipt of an acceptance by any means of communication.

QUESTION: I represent a buyer who entered into a purchase agreement with a 15-day inspection contingency. During the inspection, the buyer discovered numerous defects with the property. My client still wants to purchase the property but only if the seller remedies the defects. Can my buyer force the seller to do this?

ANSWER: PROBABLY NOT. While inspection contingency clauses vary, typically an inspection contingency clause gives the buyer the option of moving forward with the purchase agreement as written or terminating the purchase agreement. A buyer can request that a seller make repairs, but typically cannot require the seller to do so. And some inspection contingency clauses permit the seller to terminate the purchase agreement if the buyer even makes such a request. A buyer needs to carefully review the language of the inspection contingency clause prior to making such a request.

QUESTION: I am representing a buyer in the purchase of a home. I was told there were two other offers and that we should submit our "highest and best offer." My buyer's offer was not accepted and now my buyer is demanding to see the other two offers. Is the seller legally required to show us the other offers?

ANSWER: NO, the seller has no legal obligation to let your buyer see the other offers.

QUESTION: I represent a buyer who put in an offer on a home where there were multiple offers. My client's offer was not accepted. We have reason to believe that my client's offer was in fact the "highest and best." Are we entitled to see a copy of the offer that was accepted by the sellers in order to verify that it was the "highest and best" offer?

ANSWER: NO. Moreover, it does not matter whether the accepted offer was in fact the "highest and best." As long as the sellers did not engage in unlawful discrimination (for example, on the basis of national origin), they were not required to accept the "highest and best" offer or otherwise treat all offers equally. A "Primer on Multiple Offers" prepared especially for buyers in this situation is available on MR's website.

QUESTION: My seller received an offer for \$200,000 and countered that offer at \$210,000. After the counteroffer had been delivered to the buyers' agent, but before the buyers responded to the counteroffer, the seller decided not to take a chance and withdrew his counteroffer and accepted the buyers' offer for \$200,000. I have been told that the buyers will not honor the contract. Don't we have a binding contract?

ANSWER: No. The sellers' counteroffer operated as a rejection of the buyers' offer. Once an offer has been rejected, it is "terminated" and cannot thereafter be resurrected and accepted. Legally, where you are at now is the seller has offered to sell the property on the terms originally proposed by the buyer, which offer can be accepted (or rejected) by the buyer.

QUESTION: I am representing a buyer in connection with the purchase of a home. The agreed upon closing date is "on or before" January 4th. My client is ready to close and wants to schedule the closing date earlier than January 4. Is the seller obligated to close at an earlier date?

ANSWER: NO. This language is typically interpreted to mean that while the parties can agree to close prior to the stated date, neither party can be required to do so.

QUESTION: The seller just sent a counteroffer and now has received a better offer. Can the seller rescind his/her counteroffer?

ANSWER: A counteroffer can be rescinded up until the time it has been accepted. The rescission must reach the buyer or the agent for the buyer before the seller or the agent for the seller receives an acceptance.

QUESTION: Does a buyer's agent have a legal right to present his client's offer to the seller or at least be present when his client's offer is presented to the seller?

ANSWER: NO. There is nothing in Michigan that grants such a right. Sellers can determine whether or not they wish to entertain an offer directly from a cooperating agent.

QUESTION: The listing ticket included an item and the buyers assumed that it was therefore included in the transaction and didn't expressly reference that item in the purchase agreement. Now the sellers say that they are taking it with them because the buyers didn't contract to buy the item. Are they right?

ANSWER: The status of an item that is not specifically contracted for depends on the item. If the item is a fixture, then it becomes a part of the real estate and transfers to the buyer even if not specifically included in the purchase agreement. The general definition of a fixture is something that cannot be removed without damaging itself or its surroundings or that becomes useless when removed. When an item is not a fixture, but personal property, the answer is less clear. Where an item was specifically mentioned in the listing ticket, but was not mentioned in the purchase agreement, a seller's attorney could argue that since the listing ticket is not an offer, it cannot be accepted and the item is not included in the sale. A buyer's attorney, on the other hand, could argue that a listing ticket is in fact an advertisement and that a buyer should be entitled to rely on the fact that the home, if purchased, will include all advertised items. There is simply no all-purpose correct answer to this question. In order to avoid disputes, buyers' agents are encouraged to include all items in the purchase agreement, either by

specifically mentioning them, or by simply expressly incorporating all items listed in the listing ticket.

QUESTION: Our seller/client has entered into a purchase agreement, but now does not want to sell. My client has asked us to figure out a way to get him out of the deal.

ANSWER: While you may know from your experience some way to get your client out of the deal without liability, resist the urge to provide this type of legal advice. The appropriate answer to this question is to tell your client to speak to an attorney.

QUESTION: We received an offer on a listing, and it was accepted by the seller. We delivered it back to the buyer's agent two days ago. Now we have been advised that the buyer refuses to bottom-line the purchase agreement. Can the buyer walk away from the deal and get his earnest money deposit back?

ANSWER: The buyer certainly cannot walk away from the deal and get his earnest money deposit back by simply refusing to bottom-line receipt of the purchase agreement. Unless the specific purchase agreement requires a bottom-line signature in order to form a contract, the contract between the buyer and the seller is formed when the seller signs the offer and delivers his acceptance to the buyer or the buyer's agent. Traditionally, the practice of bottom-lining has been done to assure that REALTORS® can prove that they complied with Rule 307 which requires a licensee to provide a fully executed copy of the purchase agreement to the seller and buyer.

QUESTION: I have a listing on a home owned by a married couple. Currently, the wife is out of town on business but they want to accept an offer. Can the husband sign the contract on the wife's behalf and make this a binding contract?

ANSWER: NO. In order for there to be a binding contract, both the husband and the wife would have to sign the purchase agreement. He would be able to sign on her behalf if she were to execute a power of attorney that

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expressly grants him that power. As an alternative, to facilitate signatures from out-of-town parties, often a contract expressly states that the parties may sign and deliver an acceptance electronically.

QUESTION: My sellers have a purchase agreement signed with Buyer A. Buyer B has now made an offer on the same property that the sellers consider to be a better offer. Buyer A has proposed an amendment to his purchase agreement asking to purchase some of the sellers' outdoor lawn furniture and pool equipment. The sellers believe that the purchaser's proposed amendment reopens the terms of the contract. The sellers want to rescind the purchase agreement with Buyer A and enter into a purchase agreement with Buyer B. Does Buyer A's proposal of an amendment to the existing purchase agreement reopen the contract such that my sellers may terminate it?

ANSWER: NO. Some REALTORS® have the misconception that if an amendment to an existing contract is proposed and rejected, the purchase agreement is terminated. Ordinarily this is not the case. If a proposed amendment to a contract is rejected, the purchase agreement remains in full force and effect. One party can neither change the terms of a purchase agreement nor terminate the purchase agreement without the consent of all parties to the transaction. Note that the rules may be different when the proposed amendment relates to the removal of a contingency, depending on the wording of the contingency. Suppose, for example, the purchase agreement provides that if the buyer does not waive the inspection contingency in writing within 10 days, the purchase agreement shall be null and void. On the 10th day, the buyer presents the seller with a proposed addendum in which the seller is to agree to make certain repairs. The seller may take the position that the purchase agreement is null and void, because the buyer did not waive the inspection contingency within the timeframe set out in the purchase agreement. Again, however, the effect of the buyer's request that the seller make certain repairs depends on the wording of both the contingency and the proposed addendum and the timing of same.

QUESTION: I am a REALTOR® who represents a buyer. My buyer became interested in a property and wanted to make an offer. I contacted the listing agent and he told me that an offer had been made for less than full price. My buyer really wanted this property and decided to make a full price offer. It is my understanding that since my buyer made a full price and terms offer, the seller must sell him the property. Am I correct?

ANSWER: NO. The Michigan Court of Appeals has held that a listing does not constitute an "offer" and cannot therefore be "accepted." *Eerdmans v Maki*, 226 Mich App 360 (1997). It should be noted however, that depending on the terms of the listing contract, a seller who rejects a full price and terms offer may nonetheless be obligated to pay a commission to the listing broker.

QUESTION: I represent the sellers as a listing broker. An offer came in from another office but my seller is currently out of town and cannot be reached. The seller authorized me via telephone to accept the offer on my seller's behalf. Is this an enforceable contract?

ANSWER: NO. A broker can sign a binding purchase agreement on behalf of the buyer or seller only if he has explicit written authority to do so. Verbal authority over the telephone would NOT be sufficient. A listing agreement by itself does not give the broker authority to bind his/her principal to a contract for the sale of land absent explicit language granting such power. *Weitting v McFeeters*, 104 Mich App 188 (1981). Moreover, the written authorization must be very specific. The agent's lack of written authority renders the purchase agreement void and does not bind either party unless it is ratified by each. *Baldwin v Schiappacasse*, 109 Mich 170, (1896).

QUESTION: I am a REALTOR® representing sellers on the sale of their house. They entered into a purchase agreement with a buyer yesterday. Today the buyer's agent called me and said that the buyer wishes to exercise his three day right of rescission. Does such a right exist?

ANSWER: NO. There is no three day right of rescission on a contract for the sale of real estate.

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QUESTION: My buyer client made an offer on a house listed by another company. The listing agent told me that he had called his seller and that the seller had accepted my client's offer. I never received the written acceptance and I have since found out that the seller entered into a contract with another buyer. My buyer believes that he should get the house because of the verbal acceptance of his offer. Is he correct?

ANSWER: NO. The statute of frauds requires that a contract for the sale of real estate be in the form of a signed written document in order to be enforceable. Since the so-called acceptance came through verbal communications between the seller, the listing agent, and the buyer's agent and was never reduced to a signed writing, the contract is unenforceable. MCL 566.108.

QUESTION: I am a real estate salesperson representing a buyer. We submitted an offer on a home to the listing agent and 2 days later the listing agent sent me a text message indicating that his seller had accepted my buyer's offer. Later that same day I received another text from the listing agent stating that the seller had decided to go with a better offer. My buyer is angry and believes the seller accepted the contract through the text message. Am I correct?

ANSWER: NO. Since it is a contract for the sale of real estate, the statute of frauds requires there to be a signed writing in order to have an enforceable contract. A text message from the listing broker notifying you that the seller has accepted the offer would not satisfy this requirement. It has no more effect than if the listing broker had called and told you the seller had accepted your client's offer. (If there had been a text message directly from the seller stating "I accept," your buyer would have a better argument, particularly if the purchase contract expressly provided for electronic signatures.)

QUESTION: I am the listing REALTOR®. An offer was made by a buyer that was well below the listing price. I telephoned the buyer's agent to tell him that my seller has rejected the offer. The agent said that it is necessary for the seller to reject the offer in writing. Is this true?

ANSWER: NO. A seller has no legal obligation to reject an offer in writing or to even respond to an offer at all.

QUESTION: I am representing a buyer who has made an offer on a home. The seller countered our offer with a clause stating that the buyer waives his right to inspect the property. Is this permissible?

ANSWER: YES. The seller is free to propose such a clause in a purchase contract and it is up to the buyer to either agree or reject such a provision.

QUESTION: I submitted an offer to an agent listing a home. The listing agent told me state law requires that a pre-approval letter was necessary in order for an offer to be valid. Is this true?

ANSWER: NO, while sellers may require a pre-approval with any offers they consider, there is no state law that requires a pre-approval in order for an offer to be valid.

QUESTION: I presented an offer from my buyer; however, the listing agent told me that the offer was not valid since the buyer's signature was not witnessed. Does an offer to purchase real estate require a witnessed signature?

ANSWER: NO. There are no legal requirements for witnessed signatures in a contract for the sale of real estate.

3. COMMISSIONS/ADMINISTRATIVE FEES

QUESTION: I received an offer through a buyer's agent who is a participant in my MLS but never showed the property to his buyers. It turns out that his clients contacted the sellers directly and arranged a showing without a licensee present. The buyers then contacted the buyer's agent and asked him to write up an offer. Do I have to pay the buyer's agent commission if he did not show the house?

ANSWER: YES. An offer of compensation through an MLS does not require that the agent bringing the buyer show the buyer the house. An agent may qualify as procuring cause even if he or she did not show the house to the buyers.

QUESTION: I am representing a seller in the sale of his residence. My seller now has seller's remorse. I have heard that brokers can file liens on real estate in order to collect commissions. Is this true?

ANSWER: NO. The Commercial Real Estate Broker's Lien Act allows brokers to file liens for a commission owed in connection with the sale or lease of commercial property. Since you have a residential listing, filing a lien could result in a lawsuit for slander of title.

QUESTION: I have heard different things about whether or not a brokerage firm can charge administrative fees. Are these fees permissible?

ANSWER: YES. At one time, some argued that RESPA prohibited brokers from charging administrative fees in addition to a percentage commission and/or that the legality depended upon how the fee was described in the listing contract. A United States Supreme Court decision made clear that such fees are not prohibited under RESPA (and that it does not matter how the fees are described). Of course, a REALTOR® must have an agreement with a buyer or seller in order to charge such a fee.

QUESTION: I am a salesperson and I formed a corporation for tax purposes. I have told my broker that I want him to make all future commission checks payable in the name of my company. Is this possible?

ANSWER: NO. Rule 201(3) states:

Associate broker and salesperson licenses shall only be issued to individuals.

Since salespersons' licenses can only be issued to individuals and brokers can only pay commissions to real estate licensees, a salesperson cannot receive commission checks from his broker in the name of a corporation or other entity. A real estate broker's license, on the other hand, may be issued to an individual or to an entity. An associate broker with one real estate company could set up a corporation, obtain a broker's license for that corporation and ask the real estate company for which he works to issue his commission checks in the name of his corporation. This option is not available to licensed salespersons.

QUESTION: I am a broker who had a salesperson recently leave my company on good terms. She is now with another broker but had a number of pending transactions that are now scheduled to close. I would prefer to pay her directly instead of going through her new broker. Can I pay my former salesperson directly for these sales?

ANSWER: YES. You can make these payments directly to your former salesperson. The Occupational Code states:

If an individual earned commissions or other income while employed by a real estate broker, it is not grounds for disciplinary action under section 2512 for that broker to pay those commissions or income to that individual, regardless of whether that individual is now employed by another real estate broker or is no longer licensed. MCL 339.2510(2).

QUESTION: I have a listing agreement with my sellers for the sale of their home. Sellers entered into a purchase agreement with Buyer A. We were all set to close but then the sellers stopped returning my calls. I recently learned that the sellers were planning to close on the property “secretly” and without my involvement in an apparent effort to avoid paying the commission. I intend to file a *lis pendens* on the sellers’ property to secure my commission. Is this acceptable?

ANSWER: NO. Ordinarily, a REALTOR® has no right to file a lien on residential property in order to protect his or her claim to a commission. In order to file a lien, a person must have a contractual or statutory right to file a lien. Because the penalties for wrongfully filing a lien on real property are severe, a REALTOR® should never file a lien on real property without the assistance of a lawyer.

4. CONDOMINIUMS

QUESTION: I have a client whose condominium association has foreclosed a lien for non-payment of dues. How long is the redemption period?

ANSWER: The redemption period for a foreclosure by the association of co-owners is six months from the date of sale unless the property is abandoned which will reduce the redemption period to one month.

QUESTION: My agent is representing a seller in the resale of a residential condominium unit. The agent representing the buyer has faxed me a note stating that the buyer wants to terminate the purchase agreement pursuant to their nine-day right of rescission. Can the buyer rescind?

ANSWER: NO. The nine-day right of rescission under the Condominium Act is only applicable to the initial sale of a residential condominium unit from the developer to the first buyer, i.e., the sale of a brand new unit. MCL 559.121. The Condominium Act provides that in connection with an initial sale, a purchase agreement shall not become binding until 9 business days after the purchaser is provided copies of all of the condominium documents. Thus, while in the case of the initial sale, the approval of the condominium documents is automatically a contingency, for resales, a buyer needs to explicitly include this contingency in the purchase contract. MCL 559.184.

QUESTION: I currently represent buyer who is looking to buy a condominium unit as an investment/rental property. The condominium documents provide that the units must be owner-occupied. Can a condominium association prohibit an owner from renting his units?

ANSWER: YES. A condominium restriction prohibiting the rental of units is enforceable.

QUESTION: I represent a buyer in connection with the purchase of a site condominium. The unit he is buying does not have a fence. He wants to build a fence on this property. How can we find out if this is this allowed?

ANSWER: The project's condominium documents, typically the bylaws, should state which type of improvements are allowed to a unit. Your buyer should review the condominium documents to see if there are any prohibitions on fences in the condominium project. Condominium bylaws are recorded along with the master deed. If the documents are unclear about building a fence, your buyer should consult a lawyer.

5. DISCLOSURE

QUESTION: I am listing vacant land. Should I have my seller complete a vacant land disclosure form?

ANSWER: Sellers of vacant land are not legally required to provide a disclosure form. Sellers who do provide vacant land disclosure forms should be cautioned against making any representations where they are unsure. Unlike with the statutorily required residential seller's disclosure form, a seller could be held liable for an innocent misrepresentation made in a vacant land disclosure form.

QUESTION: My seller says that her basement leaked ten years ago, but that she had some grading work done, and it has not leaked since. Can she answer "no" to the question about basement leaks on the Seller's Disclosure Statement?

ANSWER: No. The Michigan Court of Appeals has said that given the wording of this specific question (i.e., "Has there been evidence of water"), there is no time limitation. (In that specific case, the sellers were required to disclose the fact that the house had flooded 26 years ago.)

QUESTION: On the Seller's Disclosure Statement, my sellers indicated that the microwave was in working order. The purchase agreement said nothing about the microwave. Is the buyer entitled to the microwave?

ANSWER: No. The Seller's Disclosure form specifically states that "the items below are included in the sale of the property only if the purchase agreement so provides." This language was added to the form some years ago to specifically address this question.

QUESTION: My seller bought a house at sheriff's sale. Now that the redemption period has expired, he has decided to list it for sale. Is he exempt from the Seller Disclosure Act?

ANSWER: NO. The foreclosure exemption from the Seller Disclosure Act applies only if the lender acquires the property through foreclosure and not to third-party purchasers.

QUESTION: I currently have a property listed by the heirs of a man who died in his house as a result of a spider bite from a brown recluse spider. Does my seller have to disclose this information?

ANSWER: Unless a prospective buyer asks if someone died in the home, you do not have to disclose this information. However, if there is a history of infestation in the home, the seller must disclose that in the seller's disclosure statement.

QUESTION: I am listing a 10-acre residential property that is traversed by a utility easement. The easement will service a housing development in the near future. Is my seller required to disclose this easement?

ANSWER: YES. The Seller Disclosure Act requires that a seller of residential property disclose any easements affecting that property.

QUESTION: A local township is selling a residential property. Is it required to fill out a seller's disclosure statement?

ANSWER: NO. Governmental entities are exempt from the Seller Disclosure Act.

QUESTION: I have a client who is selling a residential property (1 to 4 residential units) that is owned by a limited liability company. Is he exempt from having to provide a seller disclosure statement?

ANSWER: NO. Residential properties owned by a limited liability company are not exempt from the Seller Disclosure Act.

QUESTION: A widow put her home in a trust and named her two children as successor trustees. After her death, one of the children moved into the home temporarily until it could be sold. Does there need to be a seller's disclosure statement?

ANSWER: YES. The trustee who is residing in the home must complete a seller's disclosure statement. Only non-occupant fiduciaries are exempt under the Seller Disclosure Act.

QUESTION: The owner of the home I am listing inherited the home from her father. She does not live in the home but legal title is in her name. Does there need to be a seller's disclosure statement?

ANSWER: YES. While property owned by an estate is exempt under the Seller Disclosure Act so long as the personal representative does not live in the home, once the property has been distributed from the estate to the heir, it is no longer exempt.

QUESTION: My clients are selling an 8-unit apartment building. Are they required to provide a seller disclosure statement and/or a lead based paint disclosure form?

ANSWER: The sellers of the apartment building are only required to provide a lead based paint disclosure form. The Seller Disclosure Act does not apply to apartment buildings with more than 4 units; however, the Lead Based Paint Disclosure Act does apply to all apartment buildings.

QUESTION: I am currently listing property and an in-house buyer made an offer. An agent from another company called and I told them that my seller was reviewing an offer. The agent asked if it was an in-house offer and said that I had an obligation to disclose if it was. Is there a law that requires me to disclose that it is an in-house offer?

ANSWER: NO. There is no legal duty to disclose whether any offers your seller has received are in-house offers. (In certain circumstances, such disclosure

may be required pursuant to the Code of Ethics Standard of Practice 1-15.)

QUESTION: The buyer's lender has requested a copy of the seller's disclosure statement and the lead based paint disclosure. Am I legally required to give copies of these documents to the bank?

ANSWER: The buyer's lender can certainly require these documents as a condition of making the loan.

QUESTION: Is a landlord required to provide a Seller's Disclosure Statement in connection with a residential lease that is longer than one year?

ANSWER: NO. A seller disclosure statement is not required in connection with a residential lease of real estate unless it is a lease with an option to purchase. (On the other hand, an agency disclosure form is required in connection with a residential lease.)

QUESTION: I am listing an REO property. The bank is exempt from providing a seller disclosure form, but I am being told by the agent representing the buyer that my client must provide a signed seller disclosure form that has the word "exempt" on it. Is this true?

ANSWER: NO. There is no provision in the Seller Disclosure Act that requires an "exempt" party to provide a form.

QUESTION: I have a seller-client who is the trustee of a property owned by her parents' trust and in which she currently resides. I seem to recall from continuing education courses that she is not exempt from the Seller Disclosure Act. Am I correct?

ANSWER: YES. The Seller Disclosure Act exempts transfers by a nonoccupant fiduciary in the course of the administration of a trust. Since in your situation the trustee lives in the property, she is not exempt from the Act. MCL 565.953(d).

QUESTION: I have a seller who is selling a house built in 1980. The buyer's agent said that my client must provide a Lead-Based Paint Seller's Acknowledgement (MR Form L-1) stating that the house was built in 1978 or later. Is this true?

ANSWER: MR has created Form L-1 whereby the sellers acknowledge that their home was built in 1978 or later and is therefore exempt from the Lead-Based Paint Disclosure Law. However, the form is provided as a risk reduction measure only to document what the seller represents the age of the house to be and a seller is not required under the law to provide such a form. The law only requires that if the home was built prior to 1978, a seller must complete a Lead-Based Paint Seller's Disclosure Form (MR Form L-3).

QUESTION: I am currently listing a residential property for a client that has relocated to another state through the company for whom he works. I told him that I would fill out the Seller's Disclosure Statement on his behalf since he is out of town. Is this permissible?

ANSWER: Agents should never fill out the Seller's Disclosure Statement on behalf of their seller-client. If an error is later discovered, the agent may find herself in a position in which both the buyer and seller are pointing fingers at her.

QUESTION: I am representing a seller of a house and some land. The state has approved construction of a wind farm adjacent to my seller's property. Construction will begin this coming spring. Must this be disclosed?

ANSWER: MORE THAN LIKELY YES. The Seller Disclosure Act has a section that specifically asks whether there is "farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc." While there is no definitive answer to this question, it is certainly a reasonable interpretation that a future wind farm would fall within this description.

Remember also that the ultimate decision as to whether something should be disclosed should always be left to the seller-client. A listing agent who advises her seller-client that something need not be disclosed has arguably assumed responsibility for any later problem that arises.

QUESTION: Do sellers have to disclose if a home is modular?

ANSWER: There is no law which requires a seller to volunteer the fact that his home is a modular home.

QUESTION: My sellers are not going to provide a Seller's Disclosure Statement because they have never lived in the residence, but have only used it as a rental. Is this proper?

ANSWER: NO. Sellers are not exempt from Seller Disclosure Act requirements just because they have never lived in the property. Sellers who have owned and leased a residence must nonetheless fill out the Seller's Disclosure Statement to the best of their knowledge. The list of exceptions can be found in Section 3 of the Seller Disclosure Act. MCL 565.953(3).

QUESTION: My client is selling his house to one of his nephews. He believes that he is exempt from the Seller Disclosure Act because he is selling his home to a relative. Is he correct?

ANSWER: NO. The Seller Disclosure Act contains an exception for transfers made to a spouse, parent, grandparent, child or grandchild. MCL 565.953(f). No such exception exists for transfers to other relatives.

*LAST UPDATED March 29, 2017

QUESTION: I am a REALTOR® representing a bank that is selling a property that it has repossessed through the foreclosure process. The bank tells me that it is exempt from both the Michigan Seller Disclosure Act well as the Federal Lead Based Paint Disclosure requirements. Is this correct?

ANSWER: This is partially correct. The bank is exempt from the Michigan Seller Disclosure Act but it is not exempt from the Federal Lead Based Paint Disclosure requirements.

Under the Michigan Seller Disclosure Act, both the foreclosure sale itself, and the subsequent resale by the lender to a third party, are exempt from the disclosure requirements. MCL 565.953(c).

As to the Federal Lead Based Paint Disclosure Law, while the original foreclosure sale is exempt, a subsequent resale from the lender is not.

QUESTION: I am a REALTOR® representing a licensed builder who is selling a house that he has built. The builder currently resides in this property. Is he exempt from the Seller Disclosure Act?

ANSWER: NO. The builder would have been exempt from the Seller Disclosure Act had he not resided in the property. Section 565.953(i) exempts a transfer from a licensed builder ONLY if it is a newly constructed residential property that has not been previously inhabited.

QUESTION: I am a REALTOR® representing a seller in the sale of a vacant parcel of land that is zoned residential. An agent representing a buyer has requested a Seller's Disclosure Statement. The buyer's agent claims that a Seller's Disclosure Statement is required for the sale of all properties that are zoned residential. Is this true?

ANSWER: NO. The Seller Disclosure Act applies only to the transfer of not less than 1 or more than 4 residential dwelling units. MCL 565.952.

QUESTION: I am representing a seller in connection with a short sale transaction. It is my understanding that short sale transactions are exempt from the Seller Disclosure Act. Am I correct?

ANSWER: NO. Short sale transactions are not exempt from the Seller Disclosure Act. However, if a lender acquires the property through foreclosure or a deed in lieu of foreclosure, the lender is exempt from the Seller Disclosure Act.

QUESTION: I am a REALTOR[®] that is listing a residential property that is owned by a non-profit organization. It is my understanding that non-profits are exempt from the Seller Disclosure Act. Am I correct?

ANSWER: NO. Non-profit organizations do NOT fall within any of the Seller Disclosure Act exemptions. Your seller will need to provide a Seller's Disclosure Statement.

6. DO NOT CALL/TELEPHONE SOLICITATIONS

QUESTION: I run a real estate office and I would like to call past clients to see if they are interested in buying new properties or selling their current one. Can I call these clients if they are on the Do Not Call Law registry?

ANSWER: Since you have a past business relationship with your clients, you may call them for up to 18 months after the end of the relationship unless and until they ask you to not to call again. In addition, if a prospective client on the Do Not Call registry calls you to inquire about your services, you may call him for 3 months unless and until he asks not to be contacted.

QUESTION: I have heard that it is illegal for a real estate agent to call someone who is selling their house "for sale by owner" if they are on the federal "Do Not Call" list. Am I correct?

ANSWER: MORE THAN LIKELY YES. An agent can call a FSBO under limited circumstances based on a ruling by the Federal Communications Commission (FCC). The FCC ruled that agents can call FSBOs who have a sign in their front yard with a telephone number on it, ONLY if they have a client who is interested in purchasing that seller's property.

The FCC's ruling states: "[w]e find, however, that calls by real estate agents who represent only the potential buyer to someone who has advertised their property for sale, do not constitute telephone solicitations, so long as the purpose of the call is to discuss the potential sale of the property to the represented buyer. The callers, in such circumstances, are not encouraging the called party to purchase, rent or invest in property, as contemplated by the definition of 'telephone solicitation.' They are instead calling in response to an offer to purchase something from the called party." (FCC 05-28; CG Docket No. 02-278, 2/10/05.)

QUESTION: I am a REALTOR® who has hired an unlicensed assistant. I am having my assistant make cold calls to prospective sellers. I have made sure that my assistant has verified that these prospective sellers are not on the Do Not Call List. Can my assistant make these calls?

ANSWER: NO. Under Michigan license law, an individual must be a real estate licensee in order to make cold calls to prospective sellers.

QUESTION: I often keep track of the expiration of other companies' listings so that I can call the seller immediately and hopefully persuade the seller to list with me. Is this permissible?

ANSWER: Yes, however, before calling such a seller, you need to make certain that the seller is not listed on the federal do-not-call registry. Also, both federal and Michigan law requires that firms with agents who use this practice need to maintain a company specific do-not-call registry - *i.e.*, a list of persons who have indicated that they do not wish to receive calls from your particular company.

7. EARNEST MONEY DEPOSITS

QUESTION: I am the listing broker. I always ask the cooperating broker for proof of the earnest money deposit. Is the cooperating broker obligated to provide proof in the form of a copy of the check?

ANSWER: NO. There is no law requiring the cooperating broker to provide proof of the earnest money deposit. You could, however, make this requirement part of the purchase agreement.

QUESTION: I am acting as a transaction coordinator in a real estate transaction. I was told that I am not allowed to hold an earnest money deposit in such a transaction. Is this true?

ANSWER: No. There is no prohibition against transaction coordinators holding earnest money deposits.

QUESTION: I am representing the sellers in the sale of their house. There have been some delays and the buyer is asking for yet another extension. My sellers will only give the buyer an extension if the buyer agrees to a \$2,000 non-refundable deposit. I have heard that non-refundable deposits are illegal. Is this true?

ANSWER: NO. A buyer and seller can certainly agree that a deposit will be non-refundable. You will want to make certain that this is explicitly stated in the contract so that there can be no argument about the parties' intent.

QUESTION: I represent a buyer who had a signed purchase agreement. Just prior to the closing date, the buyer suffered buyer's remorse and chose not to purchase the property. The sellers are upset and want the earnest money deposit, but the buyer is disputing the fact that the sellers are entitled to the EMD. The sellers have also put their house back on the market. I was told that the sellers could not relist their house when there is a dispute over the EMD. Am I correct?

ANSWER: NO. The fact that the buyer and sellers are in a dispute over the EMD does not prevent the sellers from relisting. However, if the buyer has not clearly indicated that he will not go forward with the purchase, the sellers should consult with an attorney before binding themselves to a second purchase agreement.

QUESTION: I am representing a seller of a home who is entering into a purchase agreement that would allow the buyer to move in before the closing. The seller has requested that the buyer make a \$10,000 non-refundable earnest money deposit directly payable to the seller, which the buyer is willing to pay. Can this be done?

ANSWER: While legally this can be done, this arrangement does present a number of potential issues. For example, what happens if the seller is unwilling or unable to go through with the sale of the home? How will insurance/casualty risks be handled? For these reasons, both parties should be encouraged to seek the advice of counsel before proceeding forward.

QUESTION: My business model is such that my brokerage firm never holds buyers' earnest money deposits. Am I nonetheless required to maintain a trust account?

ANSWER: NO. You are only required to maintain a trust account if you are holding money belonging to others.

QUESTION: I represented a buyer in a transaction that ultimately did not close. The seller agreed to release the earnest money back to the buyer. Can I mail the money back to the buyer or must I deliver it in person?

ANSWER: There is no requirement that you deliver the earnest money in person.

QUESTION: I represent a buyer who has entered into a purchase agreement. My buyer was not satisfied with the home inspection and has decided not to buy the house. The purchase agreement clearly states that if the buyer is dissatisfied with the inspection report he can terminate the contract and receive a full refund of his earnest money deposit. The sellers disagreed with the buyer and have stated that they want the earnest money deposit. I'm of the opinion that I can release the money to the buyer based upon the clear language of the purchase agreement. Am I correct?

ANSWER: NO. Rule 313(6) states:

Disbursement of an earnest money deposit shall be made at consummation or termination of the agreement in accordance with the agreement signed by the parties. However, any deposit in the trust account of the broker for which the buyer and seller have made claim shall remain in the broker's trust account until a civil action has determined to whom the deposit must be paid, or until the buyer and seller have agreed, in writing, to the disposition of the deposit. The broker may also commence a civil action to interplead the deposit with the proper court.

Since the sellers are making a claim to the earnest money, you cannot release the money to the buyer. The fact that it seems quite likely that the buyer would prevail in any litigation over the earnest money deposit does not mean that you can release the earnest money to the buyer over the objection of the sellers.

QUESTION: Six months ago the buyers refused to go forward with the purchase of my sellers' home. The deal is dead, but the earnest money is still in dispute. Are my sellers prohibited from selling their home to someone else as long as the earnest money is in dispute?

ANSWER: No. The status of disputed earnest money has no effect on your sellers' right to sell their home. The earnest money dispute does not create a lien upon the property, nor does it entitle the buyers to prevent a subsequent sale. The sellers should, however, contact an attorney if there is any chance that the buyers are still claiming a right to purchase the home.

QUESTION: I am a real estate broker and I have heard that some other brokers in my area are allowing their salespersons to hold the earnest money checks until there is a binding purchase agreement signed by all parties. It is my understanding that salespersons are required to turn over these checks to their brokers' upon receipt. Am I correct?

ANSWER: YES. The Occupational Code provides:

A real estate salesperson shall pay or deliver to the real estate broker, on receipt, a deposit or other money paid in connection with a transaction in which the real estate salesperson is engaged on behalf of the real estate broker. MCL 339.2512(k)(ii).

Note that the Code does not contain any definitive time deadline for turning over a check to a broker. It only requires a salesperson to turn over the check "on receipt." While we don't think it is necessary for a broker to require a salesperson to drive over to the broker's house at midnight to deliver a check the salesperson just received, on the other hand a broker should not have a policy that permits a salesperson to hold a check until the purchase agreement is accepted. The broker, however, is not required to deposit the check in its trust account until the purchase agreement is accepted.

QUESTION: I am representing a buyer to a purchase agreement in which the buyer and seller have agreed that the earnest money is to be held by a title company. Is it legal for me to deliver the check to the title company?

ANSWER: YES. The Occupational Code states:

If a purchase agreement signed by a seller and purchaser provides that an escrowee other than a real estate broker shall hold a deposit, a licensee in possession of that deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties. MCL 339.2512(k)(vii).

REALTORS® should understand that title companies are not subject to the requirements of Article 25 of the Occupational Code and may have their own rules as to how funds will be held and under what terms they will be released. Often a title company will only hold an earnest money deposit if the parties execute the title company's form of escrow agreement.

QUESTION: I am a broker who represents a buyer. My buyer made an offer on a property that was accepted by the seller. Both the buyer and the seller have agreed in the contract that I am to hold the earnest money check in my office and not deposit it in my trust account until the inspection period has passed. Would this be allowable under Michigan law?

ANSWER: NO. The Occupational Code provides:

A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money that belongs to others and is made payable to the real estate broker into a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received. MCL 339.2512(k)(v).

An agreement to the contrary by the buyer on the seller does not relieve the broker from his duty to deposit money in his/her possession within the prescribed time set by the code. If the buyer and seller want to make such an agreement, then they should also agree to have someone other than a real estate licensee hold the funds.

QUESTION: I am a REALTOR® that just moved to Michigan from another state. The state I'm coming from requires a listing broker to make sure that an earnest money deposit is provided for each transaction. Is this required in Michigan?

ANSWER: NO. While an earnest money deposit is typically provided as a matter of custom (and is a good idea), it is not required in order for there to be a valid binding contract. The parties' mutual promises contained in a purchase agreement constitute sufficient "consideration" to create a binding contract.

QUESTION: I am a REALTOR® representing a buyer who is making an offer on a property that a bank has taken back through the foreclosure process. The bank, through its listing agent, has countered my buyer's offer stating that the earnest money deposit will be held by the listing office. I told the listing agent that this is illegal. Am I correct?

ANSWER: NO. There is no prohibition against the listing office holding the earnest money deposit in its trust account. The amount of the deposit and where it is held is negotiable between the buyer and the seller.

QUESTION: What are a REALTOR®'s responsibilities when a title company or other entity is to act as escrow agent and hold the earnest money deposit?

ANSWER: If a purchase agreement signed by a seller and purchaser provides that an escrowee other than a real estate broker shall hold a deposit, a licensee in possession of that deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties. MCL 339.2512(k)(vii).

QUESTION: Once a transaction falls through, does a broker need to get a written release from both parties before releasing the earnest money deposit?

ANSWER: Rule 313(6) only requires that a written release be signed if there is a dispute. Once a broker is aware that both sides claim a deposit, the rules require that the broker not disburse the funds until he has a written agreement signed by both parties or a court order.

QUESTION: What if an earnest money deposit check bounces?

ANSWER: A REALTOR®'s role as an escrow agent is a neutral role and, therefore, the REALTOR® should notify both parties if the buyers' earnest money check bounces.

QUESTION: My buyers are having second thoughts about going ahead with the purchase of a home. Can they just walk away from the transaction and forfeit their earnest money or are there other potential risks?

ANSWER: Some purchase contracts provide that in the event of a default by the buyers, the sellers' only remedy is to keep the buyers' earnest money deposit as "liquidated damages." However, many, perhaps most, purchase agreements provide that in the event the buyers default, the sellers can keep the earnest money deposit and sue the buyers for damages.

QUESTION: I have money in my trust account from a failed transaction three years ago. I cannot locate either party to the transaction. What should I do with this money?

ANSWER: Unclaimed money "escheats" to the State. (Michigan Department of Treasury - Unclaimed Property Division - 517- 636-6940.)
<http://www.michigan.gov/treasury/0,1607,7-121-44435-5585-,00.html>

QUESTION: Eight months ago, both the buyer and the seller claimed the earnest money in connection with a failed transaction. I did not hear anything on this until the buyer called recently and requested the money. Can I release the earnest money to the buyer without contacting the seller?

ANSWER: Once a dispute has occurred, Rule 313(6) requires a REALTOR® to keep the earnest money deposit until the parties reach an agreement or until there is a court order directing the release of the funds. After a dispute arises, there is no provision that allows a REALTOR® to release the deposit after a stated time period has elapsed.

Note that under Michigan escheats law, if an escrow agent "has a contract with one party, but a release cannot be secured from the other party," the funds must be reported to the State three years from the date of the last contact with the missing party.

QUESTION: Should the commission check that a broker receives at closing be deposited in the broker's trust account pending disbursement of the salesperson's portion of the commission?

ANSWER: It is not necessary that a commission check be deposited in the broker's trust account and, in fact, it is at least arguable that a broker is prohibited from doing so by the provision that prohibits a broker from commingling his own business funds with trust funds. MCL 339.2512(k)(iv).

8. FAIR HOUSING

QUESTION: I am a broker and some of my agents put Christian crosses on their signs. Are there any consequences to me for permitting this practice? Can I make these agents stop this practice?

ANSWER: Placing crosses or any other religious symbols on real estate signs may be interpreted as an attempt to discourage buyers of other faiths. For this reason, brokers should not permit their agents to do this.

QUESTION: I have clients who are selling their house. In a recent showing, the sellers' neighbors accosted the agent showing the house as well as the prospective buyer because the buyer was an ethnic minority. They hurled racial epithets and the agent and buyer were forced to leave the area. What can be done to remedy this situation?

ANSWER: The neighbors should be advised that this behavior is both illegal and actionable. The buyers and their agent should be advised that the sellers do not condone their neighbors' offensive conduct and be invited back to view the house.

QUESTION: I have a prospective buyer who is Hispanic. He told me that he wants to live in a "Hispanic neighborhood." What can I do about this?

ANSWER: The client needs to be told that it is illegal for you to direct him/her to particular neighborhoods based upon ethnicity or nationality of the residents in that neighborhood. If, on the other hand, the client identifies a particular geographic area in which he wishes to live, the REALTOR® can honor the client's request to limit the search to that neighborhood. The REALTOR® would be well-advised to have a written record as to the client's specific request.

QUESTION: I have a rental house that I have recently rented to someone who has physical disabilities. The tenant wants me to install rails in a number of areas within the house at my expense. Must I do this?

ANSWER: If a person has a disability, a landlord must allow him or her to make reasonable modifications to the rental unit; however, the landlord can require the disabled tenant to pay for the modifications and for the restoration of the property to its original condition at the termination of the lease.

QUESTION: I own a two-bedroom rental home. Can I restrict large families from leasing this property due to the house's limited capacity?

ANSWER: Landlords can restrict the number of persons that may occupy a home or apartment and, in fact, many municipalities license rental units for a particular number of occupants. While it is appropriate to restrict the number of occupants, a restriction should never refer to "large families" or a specific number of children.

QUESTION: I have a buyer who wanted me to find out the local area school test scores. When I went to the website with the scores, I noticed that they were broken down by many different demographics including race. Can I provide my buyers with this list?

ANSWER: REALTORS® should not distribute demographic information broken down by race. Instead, REALTORS® should provide buyers with a list of the various websites from which they can obtain school test score information.

QUESTION: I plan on stating on the MLS and other advertising that my seller's house is in a "family neighborhood." Can I use this type of description?

ANSWER: Real estate advertising should not include statements that either suggest that families with children are NOT welcome or that they are the ONLY people welcome. A reference to a "family neighborhood" may be interpreted as an attempt to discourage buyers who are not families with children.

*LAST UPDATED March 29, 2017

QUESTION: I have a prospective buyer that wants to see a home in a neighborhood that I consider to be very dangerous. However, this neighborhood is primarily made up of a number of ethnic minorities. What can I do?

ANSWER: REALTORS® should never refuse to show (or even discourage a buyer from seeing) a particular house that a buyer-client has asked to see based upon the REALTOR'S® assumption that the buyer would not like the neighborhood. Historically, a large number of Fair Housing Act cases have involved agents who have allegedly steered clients to particular neighborhoods where the agent thought the client would be "most comfortable." If a client makes a specific inquiry about crime statistics, the REALTOR® should not offer her own perceptions as to an area, but should refer the client to places where official statistics may be available.

QUESTION: I plan to start an advertising campaign marketing my services exclusively to single women. I also plan to incorporate a donation to women's charities into this advertising campaign. Is this allowable?

ANSWER: While it is permissible to set up a program which donates money to one or more specific "women's charities," an advertising campaign should not be directed at women (as opposed to men) or single persons (as opposed to married persons). Unlike the Fair Housing Act, the Michigan Elliott-Larsen Civil Rights Act also prohibits discrimination based upon marital status. MCL 37.2502.

QUESTION: We had a buyer come to our office who has plainly stated that he does not want a woman representing him. What should I tell him?

ANSWER: The Fair Housing Act prohibits a broker from matching clients with agents on the basis of gender (or on the basis of any other protected class).

9. FORECLOSURES AND SHORT SALES

QUESTION: I represent the seller on a short sale. I have worked for six months to put together a short sale and now the seller's lender has conditioned its acceptance on my agreement to reduce my commission by 2%. Can the seller's lender do this?

ANSWER: Unfortunately, yes. The seller's lender is being asked to agree to take less than it is contractually owed. Accordingly, it can refuse to do so, or it can condition its approval on just about anything, including a lower commission payment.

QUESTION: I am a REALTOR[®] that bought a property at a sheriff's sale. The owner of the property no longer occupies the property. As the buyer, am I allowed to declare the property abandoned and shorten the redemption period to 30 days?

ANSWER: NO. Only a mortgagee can file an affidavit of abandonment to shorten the redemption period after a sheriff's sale. A successful third-party bidder at a foreclosure sale cannot use the abandonment process.

QUESTION: I represent a seller whose house is in foreclosure. The property was purchased by the bank at the sheriff's sale. The seller entered into a purchase agreement but due to some unforeseen delays the closing will not be able to take place until the redemption period expires. Must the bank allow the sale to go through since the purchase agreement was in place before the redemption period expired?

ANSWER: NO. Once the redemption period expires the seller has no legal title or rights to the property. The bank has no contractual duty to sell the property to the buyer.

QUESTION: I represent a seller whose mortgage is in default and who has a foreclosure sale coming up. We have received numerous offers on the property but we need the lender's approval on what will certainly be a short sale. I was told to have the seller accept all of the offers and present them all to the seller's bank for its consideration. Is this permissible?

ANSWER: A purchase agreement, which is contingent upon the sellers' bank's approval, is in many ways the same as a purchase agreement that is contingent upon the purchasers' bank's approval. In both situations, there is an implied obligation on the part of the sellers or buyers to do all they can to obtain their bank's approval. There is a strong argument that each purchase agreement accepted by the sellers would constitute a binding purchase agreement subject to satisfaction of any contingencies. In order to avoid problems, a seller who wants to sign more than one offer may wish to include a statement along the lines of: "This agreement shall not be binding on the seller unless approved by sellers' mortgagee. Sellers shall have the right to present more than one contract for their mortgagee's consideration." Keep in mind, however, that if the contract is not binding on the sellers, it is probably not binding upon the buyers either.

QUESTION: I represent a buyer who has submitted an offer that will result in a short sale situation. The offer was accepted by the seller subject to the seller's lender's approval. Several months have gone by without any response from the seller's lender. Can my buyer terminate the contract?

ANSWER: There is no law that gives a party the right to terminate a contract after a particular period of time. For this reason, a purchase contract with a contingency for the seller's lender's approval – as with any other contingency – should have a stated deadline for obtaining such approval, after which the buyer can terminate the contract.

QUESTION: I represent a buyer who is buying a foreclosed property from a bank. The bank has made a condition of the contract that it holds the earnest money deposit. I believe that this is illegal. Am I correct?

ANSWER: NO. There is no prohibition against the seller holding the earnest money deposit. Both the amount of the deposit and where it is to be held are negotiable items between the buyer and the seller.

QUESTION: I just entered into a listing agreement with sellers that is likely to end up being a short sale. I plan to make this fact known when I enter the listing into the MLS. Should I get my sellers' permission to do this?

ANSWER: YES. Entering information that the sale of the home will be a short sale may affect the sellers' ability to sell the home, therefore, you should get their permission before entering that information into the MLS. (Note that some MLS rules require the disclosure of a potential short sale when "reasonably known.")

QUESTION: A landlord is currently in the foreclosure process on his investment property. The landlord has tenants that claim they no longer have to pay rent due to the foreclosure. Is this true?

ANSWER: NO. The tenants are still responsible for the payment of rent to the landlord under the terms of their lease, despite the property being in foreclosure.

QUESTION: I represent sellers whose house was auctioned at a sheriff's sale and is currently in the redemption period. The house was purchased at the sheriff's sale by someone other than the lender. How can my client redeem the property?

ANSWER: By law, payment of the redemption price may be made either to the register of deeds or to the person who actually purchased that property at the foreclosure sale. The sheriff's deed should have a "redemption affidavit" attached which includes the calculation of the redemption price and provides contact information for the purchaser or the "purchaser's designee" representative for facilitating the redemption.

*LAST UPDATED March 29, 2017

QUESTION: I am listing a property for a seller whose house sold at sheriff's sale. The seller owes the bank \$150,000. The bank had a winning bid of \$100,000, resulting in a deficiency of \$50,000. If we are unable to sell the property during the redemption period, will the seller be liable for the \$50,000 difference?

ANSWER: Yes, ordinarily the seller will be liable for the \$50,000 deficiency whether or not the property is redeemed. If the seller happens to have other loans which had been secured by junior liens on the property, the seller would also remain liable for those debts as well.

10. GENERAL LICENSING ISSUES (OCCUPATIONAL CODE AND RULES)

QUESTION: I want to change the name of my brokerage company. Do I need to get a new license?

ANSWER: NO. If you are simply changing the name of your existing company you should file Form LCL-013 (Request for Name and/or Address Update).

QUESTION: I am a licensed real estate agent. Whenever I host an open house, I have my unlicensed assistant accompany me to answer the door and ask prospective buyers fill in a register. Several agents have told me that unlicensed assistants cannot attend open houses. Is this correct?

ANSWER: IT DEPENDS. A non-licensee cannot independently conduct an open house. The manner described above is allowable since the unlicensed assistant is acting as a host/hostess and not performing any licensed activities.

QUESTION: I was at a continuing education class and the instructor told us that we are no longer required to display our licenses to the public. Is this correct?

ANSWER: YES. Brokers are no longer required to display their licenses to the public; however, licensees are still required to have their pocket cards in their possession while they are performing licensed activities. MCL 339.2506.

QUESTION: I am a licensed salesperson commonly known by the nickname "Stevie M" and I use that name in all of my advertising. Is it a violation of licensing law to use a nickname in my advertising?

ANSWER: NO. The Occupational Code does not prohibit salespersons from using nicknames in their advertising. However, the broker's name and telephone number or address must also appear in the advertising.

QUESTION: I have a friend who owns and leases more than 5 separate homes. Doesn't she need a real estate license?

ANSWER: NO. Licensure is required if a person engages in more than 5 real estate sales in any 12-month period. MCL 339.2502b.

QUESTION: A man from Canada is selling land located in Michigan. Can I represent him or does he need a Canadian agent?

ANSWER: YES, you can represent him in this transaction. Your license authorizes you to sell real estate in the state of Michigan. It does not matter if the client is from another state or country.

QUESTION: I am both a licensed appraiser and licensed real estate broker. I have a partner who is a licensed appraiser. I will be on vacation and unavailable for two weeks. May I have my partner show one of my listings during this time?

ANSWER: NO. Your partner is required to have a real estate license (not just an appraiser's license) in order to show property.

QUESTION: A former salesperson who wants to join my company has contacted me. Her license expired ten years ago. What is she required to do in order to get her license reissued?

ANSWER: A prior licensee who has been unlicensed for more than three years can get her new license by doing one of the following:

1. Successfully complete six hours of approved continuing education courses for each year and partial year that have lapsed since the expiration of her license;
2. Successfully complete an approved 40-hour prelicensure course in the 12-month period preceding the date of application; or
3. Pass the State examination required for a salesperson's license.

MCL 339.2502a(6).

*LAST UPDATED March 29, 2017

QUESTION: It recently came to my attention that I am required to provide a written policy and procedures manual. Is this true?

ANSWER: YES. The Occupational Code provides that a broker must supervise the work of a real estate salesperson. "Supervision" is defined to include "at least" all of the following:

- a) Direct communication in person or by radio, telephone, or electronic communication on a regular basis.
- b) Review of the practice of the supervised licensee.
- c) Review of the salesperson's reports.
- d) Analyses and guidance of the salesperson's performance in regulated activities.
- e) Providing written operating policies and procedures to the salesperson. MCL 339.2512f.

QUESTION: The real estate brokerage that I own has numerous branch offices licensed with the state of Michigan. One of the branches sells vacation homes and is only open during the peak season. Other brokers have told me that an office must be open year round to be a legal branch office. Is this true?

ANSWER: NO. The Occupational Code does not set any rules requiring a branch to be open year round.

QUESTION: What must be included in a real estate licensee's advertising?

ANSWER: The Occupational Code states that all advertisements to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity by a real estate broker must include the broker's name or the name under which the broker is conducting business and either the broker's telephone number or street address and shall state that the person doing the advertising is a real estate broker. Salespersons may only advertise to sell property in their own name if the property is their personal residence. MCL 339.2512e

QUESTION: Who can provide a market analysis and who can be paid for a market analysis?

ANSWER: The Occupational Code allows a salesperson to prepare a market analysis only for a customer or potential customer and only if the salesperson does not charge separately for this service. This means that a salesperson cannot prepare a market analysis for any third party. A broker or associate broker can prepare a market analysis for any person or entity other than in "federally related transactions" and can charge for this service. The market analysis must be in writing and also include this language in boldface print: **"This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser."** MCL 339.2601(a)(ii).

QUESTION: How long should my office hold records?

ANSWER: Rule 313(5) requires that escrow account records be maintained for at least three years. It is possible, based on statutes of limitations for various causes of action, that litigation could be initiated up to six years after a transaction has closed. There are also tolling provisions in the law that could extend the statute of limitations. Thus, while there are no absolutes, it is advisable to hold all records for a minimum of seven years.

QUESTION: I am a real estate licensee and I would like to make an offer on some property but I do not wish to disclose the fact that I am a real estate licensee until after the purchase agreement is accepted. Can I do this?

ANSWER: NO. The Occupational Code provides:

If a licensee buys or otherwise acquires, directly or indirectly, an interest in real property, the licensee shall disclose to the owner of the property that the licensee is licensed under this part before the owner is asked to sign the purchase agreement. MCL 339.2517.

QUESTION: A potential buyer of the property is a limited liability company, one of the members of whom is a real estate licensee. Do I need to disclose that fact to the seller?

ANSWER: YES. Disclosure is required if a real estate licensee is acquiring property "directly or indirectly." Acquiring property through a limited liability company in which you are a member would likely be viewed as an "indirect" acquisition.

QUESTION: I am a broker who has a salesperson who recently tendered her resignation in writing to me. This agent owes me a substantial amount of money in membership dues and MLS fees. I told the agent that I would not be sending her license back to the state until these obligations were met. Can I do this?

ANSWER: NO. The Occupational Code states:

If a real estate salesperson is discharged or terminates employment with a real estate broker by giving the employer a written notice of the termination, the real estate broker shall deliver or mail by certified mail to the department, within 5 days, the real estate salesperson's license MCL 339.2507(1).

If a salesperson or associate broker has departed, a broker cannot impose any conditions upon the release of the license.

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QUESTION: I have real estate broker's licenses in both Michigan and Indiana. Currently, I also have offices in both states. I want to close my office in Michigan but still operate in both states. Is this possible?

ANSWER: NO. The Occupational Code requires a real estate broker to maintain a "place of business" which is defined as:

. . . a physical location that a real estate broker, by advertisement, signage or otherwise represents to the public is a place where clients and customers may consult or do business with a licensee. MCL 339.2501(m); MCL 339.2505(3).

QUESTION: I am a REALTOR® representing a seller to whom I am related. I have spoken to other agents and they told me that I have to disclose this relationship to potential buyers. Are they correct?

ANSWER: NO. There is nothing in the Occupational Code or the rules that require agents to disclose that they are related to a seller or buyer whom they represent. When the Code refers to someone buying property "indirectly," it is referring to the situation where, for example, the licensee is a partner in a partnership that is buying the home. A licensee does not hold an "indirect" interest in a home by virtue of the fact that the home is owned by a relative of that licensee.

QUESTION: I am the listing broker. My sellers have told me that they need to receive a minimum amount of \$200,000 from the sale but that I can keep any amount in excess of this amount as my commission. I told them that such an arrangement is illegal in Michigan. Am I correct?

ANSWER: YES. This would be a "net list agreement" prohibited by Rule 315(3), which provides:

A licensee shall not become a party to a net service provision agreement for an owner, seller, or buyer as a means of securing a real estate commission.

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QUESTION: I am a listing broker and my seller has just recently accepted a purchase agreement. Today, I received another offer for this property. Does license law obligate me to present this offer to my seller?

ANSWER: NO, unless your listing agreement provides to the contrary. Rule 307(5) states:

A licensee shall not be subject to disciplinary action for failing to submit to the seller any additional offers to purchase which are received after the seller has accepted an offer and the sales agreement is fully executed, unless a service provision agreement requires that subsequent offers be presented.

To avoid some type of breach of fiduciary duty claim from a seller-client, REALTORS® who do not wish to present additional offers are strongly encouraged to include a provision in their listing agreement form which expressly states that additional offers received after a binding purchase agreement is signed will not be presented to the seller.

QUESTION: The house that I have listed was the scene of a terrible crime. Is this fact something that I have to disclose to prospective buyers?

ANSWER: NO. An agent is not required to disclose this type of occurrence unless the prospective buyer was to specifically inquire. The Occupational Code states:

An action shall not be brought against a real estate broker, an associate broker, or a real estate salesperson under the following circumstances: . . . (b) For failure to disclose to a purchaser or lessee of real property that the real property was or was suspected to have been the site of a homicide, suicide, or other occurrence prohibited by law which had no material effect on the condition of the real property or improvements located on the real property. MCL 339.2518(b).

REALTORS® should be aware that if a buyer were to ask if anything of this nature has occurred, the REALTOR® must respond honestly to such question.

QUESTION: What kind of records does a broker need to keep for its trust account?
How long does a broker need to keep these records?

ANSWER: Trust account requirements include:

- (1) A trust account must be a non-interest-bearing account;
- (2) Checks from a trust account must be signed by broker or associate broker;
- (3) Broker must maintain a chronological journal for the account showing all deposits/disbursements and showing a running balance after each entry;
- (4) Broker must also maintain separate accounting ledgers showing receipts/disbursements for each transaction;
- (5) Broker may deposit its own funds – not to exceed \$2,000 – so as to avoid bank charges. Broker must maintain a ledger for its own funds; and
- (6) Trust account records must be maintained for at least 3 years.

(See MCL 339.2512(1)(k) and Rule 313 for more detail).

11. LISTING AGREEMENTS AND BUYER AGENCY CONTRACTS

QUESTION: I have a house listed. A buyer went directly to the seller with an offer which was accepted. Is this a valid purchase agreement?

ANSWER: YES. Although the buyer went directly to the seller instead of the listing agent, there is still a valid purchase agreement. Assuming the contract was an exclusive right to sell, the seller still owes a commission.

QUESTION: I am the broker/owner of ABC Realty Company. I have decided that I no longer wish to be associated with the ABC Realty franchise and I have decided to go with 123 Realty franchise. Do I have to get the authorization of all my clients to transfer the listings and agency agreements to the 123-franchise name?

ANSWER: It depends. If you are setting up a new corporation, then you will need to transfer the listings from the old corporation to the new corporation and obtain the sellers' approvals to do so. If you are simply using your existing corporation with a new assumed name referencing the new franchisor, then no transfer will be required. In the latter situation, however, a seller could argue that the new affiliation gives him the right to terminate the listing, if he chooses to do so. In other words, the seller could argue that his decision to list with your company was based upon your affiliation with the ABC-franchise.

QUESTION: My sellers sent me a written notice terminating my listing contract for their residence 6 weeks prior to its expiration. They will no longer return my calls or allow any showings. Aren't my sellers in breach of contract and can't I require them to let me show their home to potential buyers?

ANSWER: Even if your sellers are in breach of contract, you cannot require them to let you show their home. Your only remedy would be to file a lawsuit asking a court to compensate you monetarily for the sellers' breach of contract.

QUESTION: I currently have two buyers under buyers' agency contracts that are both interested in making offers on the same home. How should I handle this situation?

ANSWER: Your buyers' agency contract form should contain language notifying buyers of the possibility of competing offers. The contract should contain language that puts buyers on notice that other buyers represented by your office may make offers on the same property. The contract should also contain a provision that states that your firm will preserve any confidential information gained from the agency relationship. The MR Exclusive Buyer Agency Contract contains the following language in paragraph 7.

CONFLICT OF INTEREST (BUYERS): Buyer acknowledges that Broker may represent other buyers desirous of purchasing property similar to the Desired Property. Buyer acknowledges and agrees that Broker may show more than one buyer the same property, and may prepare offers on the same property for more than one buyer. Broker shall preserve any confidential information disclosed by any buyer-client and shall not disclose the existence of, or the terms of, any offer prepared on behalf of one buyer to another buyer. In the event Broker works for two competing buyer-clients in connection with any specific property, Broker will be working equally for both buyer-clients and without the full range of fiduciary duties owed by a buyer's agent to a buyer. In this situation, the competing buyer-clients are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.

If your buyer agency form contains similar language and you are careful not to disclose any confidential information to either client, you should be protected. If you do not have such a written waiver, you could face claims of breach of fiduciary duties from one or both buyers.

QUESTION: What is a “service provision agreement?”

ANSWER: A “service provision agreement” is the term that DLARA uses to refer to both listing contracts and buyer agency contracts. MCL 339.2501(w).

QUESTION: Is it true that so long as I check “buyer’s agent” on an agency disclosure form, a buyer agency agreement isn’t necessary?

ANSWER: No. While the agency disclosure form is required by the Occupational Code, it does not offer REALTORS® all of the protections set forth in a typical buyer’s agency contract. A buyer’s agency contract, for example, should put the buyer on notice as to the limitations on the role of the buyer’s agent. Moreover, for designated agency firms, a buyer’s agency contract is not just a good idea, but is required in order to establish the designated agency relationship.

QUESTION: I am the listing agent on a listing that is about to expire. There is a binding contingent purchase agreement in place, but closing is not scheduled until next month. Do the sellers have to re-list with my company?

ANSWER: No. The sellers are not required to re-list with your company once the listing period expires. They should be advised, however, that if they list with another company, they will need to exclude the pending sale from the new listing (so they don’t find themselves inadvertently liable for two commissions).

QUESTION: A competitor's listing agreement has a clause that provides for an automatic 6-month renewal period if the seller does not cancel the contract before the listing expires. I don't believe this is a legal contract. Am I correct?

ANSWER: YES. There can be no automatic renewals in listing agreements. Rule 305(2) provides:

A service provision agreement shall include a definite expiration date and shall not contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement upon or after the expiration date.

12. LOTTERIES/RAFFLES/GAMES OF CHANCE

QUESTION: I want to start a marketing program where I will contact past clients for referrals and then enter their names into a drawing to win prizes. Is this legal?

ANSWER: NO. You cannot pay any consideration to individuals who are not licensed under the Occupational Code. Even a chance to win a prize would likely be viewed as "consideration." The only exception is a landlord may pay a referral fee to an existing tenant for a referral of another tenant, so long as the value does not exceed ½ month's rent.

QUESTION: The property that I have listed has attracted very little interest. In order to create more interest I want to set up a raffle at the next open house whereby agents can drop off their business cards for the opportunity to win a \$500 gift certificate at a local retailer. Can I do this?

ANSWER: NO. The Occupational Code provides that: *"A plan or scheme involving a lottery, contest, game, prize, or drawing shall not be used by a real estate broker or real estate salesperson for the sale or promotion of a sale of real estate."* MCL 339.2511. It does not matter whether the prize is offered to the potential buyers or to their agents – both are prohibited.

QUESTION: I am a REALTOR® representing sellers in connection with the sale of their property. In order to generate some traffic, my sellers suggested that we give away instant lottery tickets to the first 20 people who come to an open house. Is this legal?

ANSWER: YES. There is no prohibition against the giving away instant lottery tickets to a predetermined number of prospective buyers. What you need to avoid, however, is conducting any raffles or other games of chance at open houses.

QUESTION: My sellers are having a difficult time selling their home. They have asked whether they can sell their property by having a raffle. Is this legal?

ANSWER: NO. According to the Michigan lottery statute, only certain nonprofit organizations are eligible for a license to conduct bingos, millionaire parties, and raffles, and to sell charity game tickets.

13. PROPERTY MANAGEMENT/LEASES

QUESTION: I run a property management company that specializes in luxury home rentals. In order to ensure that only eligible candidates apply, I have instituted a policy that requires prospective tenants to have a minimum credit score prior to viewing the property. Is this an allowable policy?

ANSWER: YES. It is permissible to require a minimum credit rating as a criterion to determine whether a prospective tenant is eligible to see a property. Such a policy should be disclosed to and approved by the owner of the property and must be applied to all applicants equally. Any variation in the application of the policy could subject you to a claim of unlawful discrimination.

QUESTION: I am currently leasing a house to a tenant whose former boyfriend has been stalking and harassing her. She wants to terminate the lease early and go into hiding. Can she do this?

ANSWER: YES, if she has a "reasonable apprehension of present danger." The Landlord-Tenant Act allows tenants to terminate a rental agreement in cases of domestic violence, sexual assault or stalking. MCL 554.601b.

The law states: ". . . a tenant shall be released from his or her rental payment obligation in accordance with the requirements of this section after submittal of written notice of his or her intent to seek a release and written documentation that the tenant has a reasonable apprehension of present danger to the tenant or his or her child from domestic violence, sexual assault, or stalking. Submittal of written notice shall be made by certified mail."

Written documentation of a reasonable apprehension of present danger includes:

- A valid personal protection order.
- A valid probation order, conditional release order or parole order.
- A written police report that has resulted in the filing of charges by a prosecuting attorney.

QUESTION: I am a broker who wants to get into property management. Can I use my existing trust account for property management funds or should I set up a separate account?

ANSWER: A broker should set up a separate property management account, which may be an interest-bearing account. The Occupational Code states:

A property management account may be an interest-bearing account or instrument, unless the property management employment contract provides to the contrary. The interest earned on a property management account shall be handled in accordance with the property management employment contract. MCL 339.2512c(3).

QUESTION: I heard that any residential real estate lease that is longer than one-year is illegal in the state of Michigan. Is this true?

ANSWER: NO. There is no prohibition in Michigan against leases that are longer than one year.

QUESTION: I am a REALTOR® representing an individual who owns rental properties. He prohibits pets in his apartments. A blind person who uses a guide dog has expressed interest in one of the apartments. Can the property owner refuse to rent an apartment to this individual based on the pet prohibition?

ANSWER: NO. A guide/leader dog is not considered a "pet," but rather a service animal. Prohibiting service animals would violate various laws/regulations prohibiting discrimination against disabled persons.

QUESTION: I represent someone who is interested in leasing a house. Am I required to provide an agency disclosure form?

ANSWER: YES. The agency disclosure law defines a real estate transaction as one involving the sale **OR LEASE** of real estate consisting of not less than one or not more than four residential dwelling units or a building site for a residential unit. MCL 339.2517(11)(g). Although the "standard" agency form may be used in lease situations, MR has an agency disclosure form designed specifically for lease transactions available on its website (Form K-Lease).

QUESTION: I manage several residential rental properties. Is it okay to charge first and last months rent plus a security deposit in advance?

ANSWER: The Landlord and Tenant Relationship Act allows landlords to charge up to one and one-half months rent as a security deposit. MCL 554.602. In addition, the first month's rent may be required in advance of move in. If a landlord also charges the last month's rent in advance, it must be considered part of the security deposit. Thus, the security deposit plus last month's rent cannot exceed one and one-half month's rent. The last month's rent must be deposited with the security deposit and handled in accordance with the Security Deposit Act.

QUESTION: I own a 2-bedroom rental home. Can I restrict large families from leasing this property due to the house's limited capacity?

ANSWER: Landlords can restrict the number of persons that may occupy a home or apartment and, in fact, many municipalities license rental units for a particular number of occupants. While it is appropriate to restrict the number of occupants, a restriction should never refer to "large families" or a specific number of children.

QUESTION: I have a rental house that I have recently rented to someone who has physical disabilities. The tenant wants me to install rails in a number of areas within the house at my expense. Must I do this?

ANSWER: If a person has a disability, a landlord must permit him or her to make reasonable modifications to the rental unit; however, the landlord can require the disabled tenant to pay for the modifications and to restore the property to its original condition at the termination of the lease.

14. REAL PROPERTY TAXES/TRANSFER TAXES

QUESTION: I am selling a piece of commercial property that has a lower SEV now than when I purchased it. Is this transaction exempt from state transfer tax?

ANSWER: NO. The declining SEV exemption from the state transfer tax is not applicable to commercial property. It is only applicable to residential property that is your principal residence

QUESTION: Some clients of mine sold their principal residence in 2013 and the SEV was lower at the time they sold it than when they purchased it. They just found out that they might be entitled to a refund of the state transfer tax they paid. They sold the house at a profit; will they still be entitled to the refund?

ANSWER: YES, to qualify for the state transfer tax refund, the SEV at the time of purchase must be higher than the SEV at the time of sale. The fact that they sold the house at a profit has no effect on their ability to get a refund. The only requirement is that the home was sold at the price that would be arrived at through an arms-length negotiation.

QUESTION: Some clients of mine bought vacant land in 2011 on which they had a house constructed in 2012. They sold the house in late 2014. Will they be entitled to a state transfer tax refund if the SEV of their property at the time the house was completed was more than at the time of sale?

ANSWER: NO, since at the time of purchase, the land was vacant, they cannot claim a refund of the state transfer tax since the property was not their principal residence at the time of purchase.

QUESTION: I represented a buyer of a Fannie Mae/Freddie Mac property who paid the Michigan real estate transfer tax. Now that a recent Federal Circuit Court ruling has said that Fannie Mae/Freddie Mac are exempt from transfer tax, is my buyer eligible for a refund?

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ANSWER: YES. Assuming that the transaction occurred within the last four years, the buyer can obtain a refund by filing form 2796 with the Michigan Department of Treasury, along with a copy of the settlement statement (HUD-1) and the recorded deed containing the tax stamp.

QUESTION: I have a client that is transferring her house to her sister in return for her sister's agreement to pay off the mortgage. Is this transaction exempt from transfer tax? If not, how will the transfer tax be calculated?

ANSWER: Transfers between siblings are not exempt from transfer tax. Here, the consideration paid is the amount of the mortgage being assumed.

QUESTION: I am selling the mineral rights on a parcel of land that I own. Am I required to pay transfer tax?

ANSWER: NO. A transfer of mineral rights is exempt from both state and county transfer taxes (MCL 207.505(n); MCL 207.526(q)).

QUESTION: I am currently listing for sale the home of a man who has moved into an assisted living facility. Is he still eligible for the principal residence exemption?

ANSWER: YES. The general property tax act provides:

A person who previously occupied property as his or her principal residence but now resides in a nursing home or assisted living facility may retain an exemption on that property if the owner satisfies all of the following conditions:

- (a) The owner continues to own that property while residing in the nursing home or assisted living facility.
- (b) The owner has not established a new principal residence.
- (c) The owner maintains or provides for the maintenance of that property while residing in the nursing home or assisted living facility.
- (d) That property is not occupied, is not leased, and is not used for any business or commercial purpose. MCL 211.7cc(5).

QUESTION: I am selling a property on land contract payable over a five-year period. When is the transfer tax due in such a transaction?

ANSWER: According to the State Real Estate Transfer Tax Act, the transfer tax is not due until legal title is passed from the grantor to the grantee after all consideration is paid. MCL 207.526(o). On the other hand, the property is subject to the "pop up tax" at the time the land contract begins. MCL 211.27a(6)(b).

QUESTION: My church is selling some property it owns which is exempt from real property taxes. Will the deed be exempt from transfer tax?

ANSWER: NO. The transfer of real property from a non-profit organization is not exempt from transfer tax.

QUESTION: I own 100% of a corporation, which in turn owns an apartment complex. The corporation has owned the property for many years and the current taxable value is significantly lower than the SEV. I am in the process of selling this property and the buyer has asked that we structure this sale as a stock sale in order to prevent the assessor from uncapping the taxable value. Will this transaction result in an uncapping?

ANSWER: YES. A sale of more than 50% of the ownership interest in an entity will trigger the uncapping of the taxable value. (Such transaction will also be subject to state transfer tax.)

QUESTION: My client is purchasing a second home that he will be using as a primary residence. It is my understanding that he may claim a homestead exemption on the house he is leaving. Is this true?

ANSWER: YES, provided certain criteria are met.

The Michigan Department of Treasury allows for a Conditional Rescission of Principal Residence Exemption (PRE). A conditional rescission allows an owner to receive a PRE on both the owner's current property and on previously exempted property if the previous principal residence meets ALL of the following criteria:

- is not occupied.
- is for sale.
- is not leased.
- is not used for any business or commercial purpose.

If your client's property meets ALL of these criteria, he can claim a Conditional Rescission of Principal Residence Exemption.

QUESTION: I am a REALTOR® who just recently acquired a real estate license in Arizona. I have moved to my new home in Arizona and am trying to sell my home here in Michigan. Can I claim the Conditional Rescission of a Principal Residence Exemption (PRE) on my Michigan home?

ANSWER: NO. You can only claim the Conditional Rescission of a Principal Residence Exemption if both of the residential properties you own are in Michigan.

QUESTION: I am representing a seller who is buying a second home to live in while he tears down his existing home in order to build a new one. Can he claim the Conditional Rescission of the Principal Residence Exemption under these circumstances?

ANSWER: NO. In order to qualify for the conditional rescission, the prior home must be listed for sale.

QUESTION: I have a client who recently remarried and has moved to her new husband's house, but is not on the title for that house. She has listed her prior home for sale, but has not found a buyer. Can she claim a Conditional Rescission of Principal Residence Exemption on her prior home?

ANSWER: NO. In order to qualify for a conditional rescission on a prior residence, the owner of that property must be eligible and claim a principal residence exemption on her current home.

QUESTION: I have clients that are in the process of selling one of their properties to their adopted granddaughter. It is my understanding that this is an exempt transaction for purposes of state transfer tax transfer. Am I correct?

ANSWER: YES. Under the State Real Estate Transfer Tax Act, this is an exempt transfer. MCL 207.526(k). No state transfer tax is owed.

15. RESPA AND OTHER FEDERAL REGULATORY ISSUES

QUESTION: I have heard that the TILA-RESPA Integrated Disclosure Rule (TRID) affects the manner in which the appraisals are ordered. Am I correct?

ANSWER: TRID requires that a lender provide a buyer with two new disclosure forms: one at the time the borrower applies for a loan (Loan Estimate), and the other at the time the buyer closes on the loan (Closing Disclosure). The Loan Estimate must be provided to the buyer within three business days after the buyer receives the buyer's loan application. Under TRID, lenders cannot receive fees nor order appraisals until they get authorization from the buyer to proceed after the buyer has received the Loan Estimate. Therefore, purchase agreements should not contain language that requires buyers to cause the lender to order an appraisal immediately.

QUESTION: I am selling commercial property to a buyer that is paying cash. Is RESPA applicable to this transaction?

ANSWER: NO. RESPA applies only to residential transactions that involve a federally related mortgage loan.

QUESTION: I recently entered into an arrangement with the local school system whereby I will be making donations to the school system on behalf of the students whose parents are referred by the school system to me as clients. Is this acceptable?

ANSWER: NO. The Occupational Code states that a licensee is subject to the penalties set forth in Article 6 if he or she "*shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article*" MCL 339.2512(h). A licensee may not pay referral fees to an organization, even if the organization is a public or a charitable organization.

QUESTION: An agent licensed in the state of California referred a buyer to me. Can I pay that agent a referral fee?

ANSWER: YES, provided it is paid through their broker and the California agent does not conduct in Michigan “a negotiation for which a commission is paid” (MCL 339.2512(h)). In other words, a Michigan broker can pay an out of state agent a referral fee provided the out of state agent does not represent either the buyer or seller in a Michigan real estate transaction.

QUESTION: I have clients that have bought and sold many properties through me over the years. They have just referred a couple to me so that I could assist them in locating a home. I would like to give a gift certificate to my long term clients. Can I do this?

ANSWER: It depends on the reason for the gift. You may not give your long term clients a gift for a referral. The Occupational Code states that a licensee is subject to the penalties set for in Article 6 if he or she “*shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article . . .*” MCL 339.2512(h). In this example, unless your client is a real estate licensee, you are prohibited from making any payments for this referral. On the other hand, a licensee can give a gift to the client to show his/her appreciation for the client’s past business.

QUESTION: A local attorney referred his client to me to purchase one of my listings. He is not a real estate licensee but he is demanding a referral fee. He said because he is an attorney he is exempt from the rule prohibiting referral fees to non-licensees. Can I pay him?

ANSWER: NO. There is no exemption from the licensing requirement for attorneys. The only exemption to the referral fee prohibition deals with paying existing tenants for the referral of other tenants. MCL 339.2512b(b).

QUESTION: Does the buyer or seller get to choose the title company?

ANSWER: This is simply a matter of contract between the parties. REALTORS® should keep in mind, however, that RESPA prohibits a seller from requiring the buyer to purchase title insurance from a particular title company. This restriction would not apply in the typical situation where the seller is paying for the buyer's owner's policy. However, this restriction would apply if the seller required the buyer to purchase the lender's policy from a particular title company.

QUESTION: I am a REALTOR® and I am interested in going into a joint advertising venture with a title company. Would this be possible?

ANSWER: IT DEPENDS. RESPA does not prohibit joint advertising; however, if one party is paying less than its pro-rata share of the cost of the advertisement, there may be a RESPA violation.

QUESTION: I have a property that I am trying to move. To generate interest I am offering tickets to a Detroit Red Wings game to anyone that refers a buyer to me, provided that the sale successfully closes. Is this permissible?

ANSWER: NO. The Occupational Code prohibits such a payment to anyone who is not licensed. MCL 339.2512(h). (It would, however, be permissible to give the Detroit Red Wings tickets to the actual buyer of the home as DLARA does not consider this to be a "referral fee.")

QUESTION: I am representing a buyer in the purchase of a home. I have referred the buyer to a moving company and I will be receiving a referral fee from this company. Is this a violation of RESPA?

ANSWER: NO. RESPA regulates "settlement services" related to the making of a federally related mortgage loan. Services that are provided after closing, such as moving services, are not considered "settlement services" as defined by RESPA.

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16. TITLE ISSUES

QUESTION: I am a buyer's agent. The title work shows the seller's deceased father as record title holder of record to a small portion of the land my client is purchasing. Seller has asked his father's estate attorney to take care of this matter. Buyer does not want to delay closing. Should I let my buyer close before this title problem is worked out?

ANSWER: While it may not be advisable to close under these circumstances, the buyer cannot be prevented from closing. In circumstances such as this, a buyer's agent should give his client something in writing recommending that the closing not take place until the buyer consults with an attorney.

QUESTION: I was contacted by a prospective seller who wants to sell her deceased father's home. She believes she should be able sell it without going through probate because she has her father's power of attorney. Is she correct?

ANSWER: NO. The power of attorney expired upon the death of the father.

QUESTION: With the recent court decisions regarding same sex couples I was wondering if such a couple can hold property as tenants by the entireties?

ANSWER: Property can be held as tenants by the entireties in Michigan only if the couple was legally married under Michigan law at the time of conveyance by deed. Given the fact that same sex marriages are not currently recognized under Michigan law, in order to enjoy many of the same benefits as an entireties property, same sex couples in Michigan may wish to hold property as joint tenants with full rights of survivorship.

QUESTION: What if only one spouse of a married couple signs a listing agreement? Is the result the same where only one spouse signs the purchase agreement?

ANSWER: A listing agreement or buyer's agency agreement signed by only the husband or wife is binding on that party even if his/her spouse does not sign the agreement. In the event of sale, the spouse that signed the listing agreement would be legally bound to pay a commission. The same is not true for the seller on a purchase agreement. In order to be valid, a purchase agreement must have the signatures of all of the owners of the property. A husband or a wife can make a binding contract to buy property without the signature of his/her spouse.

QUESTION: I am an agent representing a seller in the sale of the home. He wants me to advertise that the payment on this house is \$600 per month. Can I do this?

ANSWER: YES, but only if the advertisement includes additional information. Regulation Z of the Federal Truth in Lending Act provides a list of criteria one must follow when advertising financing terms. This regulation states that if a "triggering term" is used in the advertisement, then the advertisement must include additional information. A triggering term includes one or more of the following:

- 1) The amount of the down payment expressed as either a percentage or dollar amount.
- 2) The amount of any payment expressed as either a percentage or dollar amount.
- 3) The number of payments or the period of repayment.
- 4) The amount of any finance charge.

If the advertisement uses a "triggering term," then it must also contain the following information:

- The amount or percentage of the down payment.
- The terms of the repayment.
- The annual percentage rate or "APR."

QUESTION: I am a REALTOR® that is representing a seller who is selling a large parcel of land in northern Michigan. The oil and gas rights were reserved 30 years ago by the previous owner. There has been no drilling done during this timeframe. Does the previous owner continue to retain these rights?

ANSWER: IT DEPENDS. Under the Michigan Dormant Minerals Act, under certain circumstances, reserved oil and gas rights will terminate after 20 years.

The Dormant Minerals Act applies only to oil or gas rights, and not to other mineral rights. You should advise your seller to discuss this issue with an attorney to see what steps can be taken to clear title.

QUESTION: For estate planning purposes, my neighbor would like to add her 14-year-old daughter to the deed to her home. Is this legal?

ANSWER: Yes. There is nothing prohibiting a minor from holding title to real property. The difficulty will arise if the neighbor and her daughter later want to sell the home while the child is still a minor. Your neighbor should consult an estate planning attorney prior to adding her daughter to the deed.

QUESTION: I am a REALTOR® that represents a seller of a home. He recently had a construction company build a deck and patio for him. Because of a dispute, he did not pay the full amount he was charged for construction. The contractor filed a construction lien and is threatening to foreclose. Can the contractor do this?

ANSWER: YES. The contractor claiming the lien may sue to foreclose at any time within one year after the lien is recorded. Provided it is a valid lien, a circuit court may order the sale or partial sale of the property.

17. MISCELLANEOUS

QUESTION: I have received a Writ of Garnishment on one of my agents. It is my understanding that since my agent is an independent contractor, I do not have to obey this order. Am I correct?

ANSWER: No. The Writ of Garnishment is a court order, and you must obey it. The fact that the agent is an independent contractor does not absolve you from obeying the order. Failure to honor a writ of garnishment can result in you becoming liable for all or a portion of the agent's debt.

QUESTION: My next-door neighbors' fence is the color brown, but I want to paint the side facing my yard a different color. Do I need my neighbor's permission to paint the fence a different color?

ANSWER: Yes. Since the fence is your neighbors' property, you will need their permission to paint the fence.

QUESTION: Some agents in my area are giving potential buyers the combination or code to the lock boxes on vacant properties. Is this permissible?

ANSWER: NO. Although this situation is not specifically addressed by the Occupational Code, it is extremely ill-advised to provide the code or lock box combinations to non-agents. Doing so could subject the agent (and the agent's firm) to any number of possible claims, including breach of fiduciary duty and negligence claims. This practice may also be deemed to violate the Code of Ethics. Standard of Practice 3-9 provides that "REALTORS® shall not provide access to listed property on terms other than established by the owner or the listing broker."

QUESTION: I am a REALTOR® who wishes to sell some investment property on land contract. What is the maximum amount of interest that I will be able to charge?

ANSWER: The answer to this question depends on the status of the buyer. While generally, the maximum amount of interest on land contracts cannot exceed 11% per year, a buyer who is a corporation or limited liability company may be charged up to 25% per year.

QUESTION: My real estate company used to be a franchisee with a national company whose name is a registered trademark. During this time, I bought a number of Internet domain names that included the name of the franchise. I am no longer a franchisee, for this company. May I still legally use the domain names that I purchased?

ANSWER: NO. Since the name of this national company is trademarked and you are no longer a franchisee, you are not licensed to use this domain name.

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