

A publication of the Michigan Association of REALTORS®

# MICHIGAN REALTOR®



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Legal Q & A





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MICHIGAN REALTOR®

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{ NOVEMBER | TWO THOUSAND & THIRTEEN | VOLUME TWELVE | NUMBER SIX }

## Michigan's New Horizons

Did you know that Detroit – our Detroit – has been the number one-searched U.S. market by global buyers on Realtor.com?

Detroit out-pollled the likes of Los Angeles, Miami, New York and San Francisco according to the National Association of REALTORS® data. With 4.8 million active listings on Realtor.com, the biggest number of hits on the website were from Australia, Germany, Italy, China and Canada.

Michigan is developing a new international presence, and foreign buyers – residential and commercial – are emerging as a market here. Governor Rick Snyder has already conducted a dozen international trade missions this year, some of which were to countries whose consumers we see on Realtor.com.

Michigan's largest international trading partner is Canada, which buys 46 percent, or \$23.5 billion of our exported goods. So, it made eminent good sense for the Michigan Association of REALTORS® to reach across the Detroit River to our Canadian brethren to ask how Michigan and Ontario might undertake some cross-border brokerage and investment together.

The Ontario Real Estate Association (55,000 members strong) responded enthusiastically and invited Bill Martin and me to be their guests in Toronto at their leadership conference this year. We responded in-kind with invitations to both their president and their executive officer to join our summer retreat for MAR's board of directors. Each organization sees the other as a logical real estate partner. As a result, Michigan and Ontario both have task forces at work developing brokerage referral and compensation agreements. These will be the basis for each of our members to be able to work across the border – and be certain that they'll be paid.

Another hurdle in cross-border investment is how you and I – as brokers – know whom to reach out to for a referral. No one was more cognizant of this than the Young Professional Network (YPN), which jumped in this summer with a cross-border YPN event in Detroit at the Motor City Casino. They brought Michigan and Canadian YPN members together for an afternoon of real estate panels and networking. Attesting to the success of the session was the fact that Canadian attendees came from as far away at Montreal, Ottawa and the Canadian consulate in Chicago.

China, now the world's largest auto producer, is another emerging market for us. More than 100 Chinese companies have facilities or installations in Michigan, according to the Michigan Economic Development Corporation (MEDC), and Governor Snyder just returned this fall from his third trip to China in as many years.

"The Chinese see foreign investment as a way to diversify and get their money out of China," notes attorney Peter Theut. "They look for residential real estate, as well as golf courses, strip retail centers, hotels and industrial properties." Theut, based in Ann Arbor, has made over 50 business trips to China. The state of Michigan, he said, is ranked #5 on the list of states in which the Chinese seek investments.

Chinese language and culture classes are already taught throughout the school system in Oakland County, helping make it a convincing case when the MEDC shows Oakland County properties.

I participated in a trade mission to China five years ago and will embark upon another trip to China in January. This trade mission's objective is to visit some specific, "second tier" Chinese cities to present Michigan real estate investment opportunities and to invite select Chinese investors to visit Michigan next year. A "second tier" city, incidentally, is one with a population of less than 15 million people.

Becoming involved in international real estate may not be for everyone. But, visiting the National Association of REALTORS® Global Business Council website (<http://www.realtor.org/global>) is a good, first step. In West Michigan, eight REALTOR® associations, which have allied to form a Global chapter, met at MAR's Convention & Expo in September and under CIPS instructor David Wyant's guidance, elected chapter leadership and established Global Council meeting dates for the year.

The 2013 NAR REALTORS® Conference & Expo in San Francisco in November will offer more international programming. Whether you are a REALTOR® or an association point person, you should consider attending the State and Local Forum on Global Business on Thursday, November 7. It is a 90-minute forum and will feature roundtable discussions with your peers on challenges associated with the implementation and operation of local global programs. **MAR**

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# COMING EVENTS

**November 8-11, 2013**  
NAR REALTOR® Conference & Expo  
Moscone Center, San Francisco, CA

**January 23-24, 2014**  
Achieve & Reception 5:01  
The Henry, Dearborn

**February 5-7, 2014**  
Professional Standards Training  
See Mirealtors.com for locations

**TBD**  
Broker Summit  
Ford Field, Detroit

**October 1-3, 2014**  
Convention & Expo  
Amway Grand Plaza Hotel & DeVos Place, Grand Rapids

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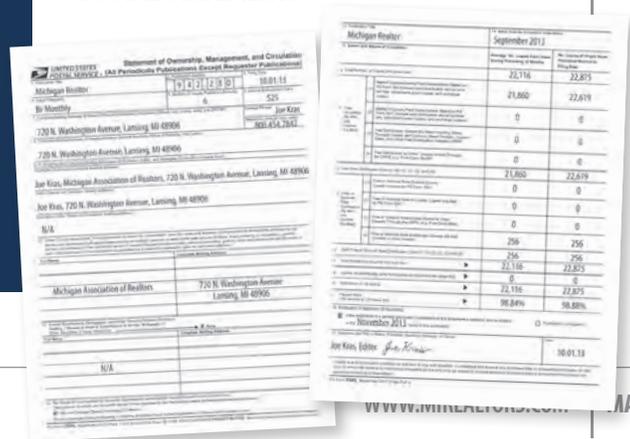


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## POSTAL STATEMENTS



## Growing Up Land Bank

*“We propose a statutory vehicle that could lawfully receive whatever parcels the City wishes to transfer. This entity must then have the authority to transfer them quickly to private parties.”*

These two sentences above are pulled from a letter I wrote in 2001 to then-Governor John Engler on behalf of this association, to make the case for a land bank in the City of Detroit. I was a wide-eyed young intern in a basement office, and this was the first substantive thing I wrote for the MAR.

I guess you could say land banks and I grew up together. We've experienced success, learned from our failures, and look to the future knowing that there is always room for improvement.

When the legislature and the Engler administration first started looking at land banks, they were a means to handle 45,000 - 50,000 tax reverted parcels in the City of Detroit. These properties all had clouded titles and were a drag on City resources and property values. As originally proposed, the land bank provided a mechanism to clear the titles on tax-reverted parcels and get them back into productive use and onto the tax rolls.

Under Governor Granholm, the land bank concept received the attention of the Michigan Land Use Leadership Council and expanded beyond just the City of Detroit. As reintroduced, the legislation applied to all local governments that were interested in entering into an intergovernmental agreement with the state authority. The land bank even received a new name: the Redevelopment Fast Track Authority (RFTA). The bills passed the legislature with a bipartisan vote and were signed into law in 2003. That same year, I graduated from law school, passed the bar exam, and proposed to my wife. It was a big year for the both of us.

Under the RFTA, local land banks had the power to partner with other local jurisdictions and were afforded the right to hold property for sale, lease, renovation, and demolition. The authority could borrow money and issue bonds, but it did not have the power to levy taxes. The RFTA also had the power to purchase property, but did not have the authorization to use eminent domain. It was the intent of the MAR that land banks partner with our membership and utilize REALTOR® expertise in packaging and marketing these properties.

There were many communities that hit the ground running upon the passage of the RFTA. Unfortunately the intended beneficiary,

Detroit, was not among the first. Genesee County entered into the land bank early and became the model, not just for Michigan, but the entire country. Then-Genesee County Treasurer Dan Kildee became the innovator of the land bank model and rode his success to a Congressional seat, while I moved to an office upstairs. Similarly, land banks quickly sprung up in various counties across the state, but their growth has not been without issues and setbacks.

Neighborhood Stabilization Program (NSP) money from the Federal government provided a huge influx of cash, changing the whole perspective of what land bank programs could do. Despite this assistance, stable funding remains a problem in some counties. Tax foreclosures were dealt a blow in the *Perfecting Church*, 478 Mich 1 (Mich, 2007) decision that put into question the notice procedure used in the foreclosure process (however, mass quiet title actions performed by land banks have largely been insurable). As a consequence of land banks expanding their power, the ability of land banks to tilt the playing field in their favor against private industry has been challenged in a couple of lawsuits in Kent County.

Within the association and among state lawmakers there now exists spirited debate regarding the current policies and ultimate authority of a land bank – specifically, whether some land banks have exceeded their original charge under state law. The MAR Public Policy Committee has been clear that increased transparency and efficiency are essential to a successful partnership between REALTORS® and land banks. For those counties with higher land bank inventories, our membership would like to see a specific business plan to dispose of property, either through sale or demolition.

There are currently two initiatives percolating in the state legislature pertaining to tax-reverted properties. Representative Ken Yonker (R-Kentwood) has introduced HB 4626 in an effort to level a perceived inequity between real estate investors and the land banks. Under Representative Yonker's proposal, The Land Bank Fast Track Act would be amended to provide the Department of Labor and Economic Growth the authority to suspend a land bank's acquisition and disposition powers if the Department determines a land bank acquired property in violation of the Act's specific procedures for acquisition and disposition. Again, the best place for these properties is back in private hands and on local tax rolls.

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by Brad Ward

Vice President of Public Policy and Legal Affairs

Further, this proposal would provide that any person or business owner has the ability to file a complaint under this act and an appeal can be made from any party pertaining to the outcome of the complaint. This particular proposal is aimed at curbing an alleged practice whereby the land bank has the first and last chance to “cherry-pick” the most desirable properties before the private sector has a fair opportunity for a fair market investment.

The Michigan Association of County Treasurers and Senator Jim Ananich (D-Flint), in an effort to reduce waste and create better efficiencies, have been looking at ways to streamline the sale of tax-reverted property under state law. The MAR has been very involved as a sounding board on these efforts. It is extremely important to our membership that the private sector maintains the ability to make competitive offers for tax reverted properties.

Under current law, the foreclosing governmental unit must hold at least two (2) property auctions. Generally, one of those sales must have a minimum bid set by the foreclosing governmental unit and the second sale would have no minimum bid, other than that necessary to recoup the costs

associated with the sale. The proposal before the MAR Public Policy Committee would eliminate the requirement for the first minimum bid sale and allow for one (1) or more property auctions. The required sale under the proposal would have no minimum bid requirement. However, several questions remain surrounding the expenses that can be recouped by the foreclosing governmental unit and whether or not the private sector interests are best protected by this kind of streamlining.

It’s been a while since those basement days when I began working on this issue, and everyday since I have been honored to serve this association. The recent legislative proposals on land banks illustrate the fact that, like me, they continue to evolve as they try to find their place in the world. The MAR still holds true to our original perspective; that our members are the primary resource for land banks and local governments when it comes to understanding the market and the ultimate disposition of the property. You can rest assured that the MAR will be deliberative in its approach to any changes. **MAR**

*Wishing you a  
season of splendor*



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# TOP LEGAL Q&A

Each year, MAR and McClelland and Anderson, L.L.P., put together the most frequently asked questions for quick reference. MAR hopes that members will find this information useful and will continue to utilize the Legal Hotline.



# QUESTIONS...

1

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?

2

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?

3

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?

4

I have a seller-client who is the trustee of a property owned by her parents' trusts 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?

5

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 (MAR Form L-1) stating that the house was built in 1978 or later. Is this true?

6

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?

7

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?

8

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?

9

I am selling a property that is a mile away from an indoor shooting range. Is the seller required to disclose this in the Seller's Disclosure Statement?

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## For More Q & A

Visit the MAR Legal Reference Library found on [Mirealtors.com](http://Mirealtors.com). The MAR Legal Reference Library is your one stop source for all things legal. Resources include, videos, legal lines, legal update archives, and featured white papers and guides.

## MAR Legal Hotline

The MAR Legal Hotline allows members to have direct, toll-free access to a qualified attorney who can provide information on real estate law and other related matters. This service is only available to MAR members. This is not a public service. The service is provided through members' dues.

# ...ANSWERS

1

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.

2

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.

3

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.

4

YES.

Section 565.953(d) of the Seller Disclosure Act exempts transfers by a non-occupant 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.

5

MAR 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 requires only that if the home was built prior to 1978, a seller must complete a Lead-Based Paint Seller's Disclosure Form (MAR Form L-3).

6

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

7

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.

8

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

9

The context of the question in the Seller's Disclosure Statement, which asks about landfills, airports and shooting ranges, suggests that the purpose of the question is to find out about possible offensive smells and sounds. Arguably then, an indoor shooting range, if soundproof, is not within the intent of question. That being said, a REALTOR® should never advise a client not to disclose something. You do not ever want to put your seller in a position of being able to say that he did not disclose something because his agent told him not to.

## The Legal Hotline number is 800.522.2820.

It is operated 9 a.m.– 3 p.m., Monday – Friday. This makes the MAR Legal Hotline available to members approximately 250 workdays per year. Recognized holidays are excluded. If the Legal Hotline is busy; an answering machine will take calls. Calls are returned within 24 hours, usually during the same day.

## 2014 Legal Update Video Series

MAR will release its 6th edition of the Legal Update Video Series in December. This video series features MAR Legal Counsel Greg McClelland & Gail Anderson as they cover the hottest legal issues in the real estate industry. Visit the MAR Legal Reference Library to view videos as they are released. [MAR](#)

# Your Million Dollar PR STRATEGY

BY EDWARD SEGAL, E-PRO, RCE, CAE

If a picture is worth a thousand words, then the value of a video in promoting yourself or your listings can be priceless.

“Using video to market a real estate listing is a smart and savvy way for real estate agents to differentiate themselves,” says Jessi Hall, a former real estate broker and investment property manager. Hall currently writes about real estate for Veterans United. She notes, “Video gives a sense of space and proportion to an otherwise flat image.”

YouTube.com provides a spectrum of real estate videos (both good and bad). However, while learning from the successes and mistakes of others is important, learning from the experts can significantly help reduce your learning curve.

Here’s what media and video marketing professionals have to say on how REALTORS® can put their best foot forward when they are ready to put themselves or their listings on camera.

## BE DIFFERENT

“Everyone’s video is essentially the same; Very commercial. Full of hyperbole and superlative, and extensive use of the words ‘quality’ and ‘customer service’” says Rob Gelpman of Gelpman Associates. “Of course, these are important, but close your eyes and it could be anyone’s video.”

So, how can you stand out from the competition? Gelpman recommends that REALTORS® carve out distinctive characteristics and attributes that benefit the customer. One way to do that, he says, is to use the videos to educate and inform the home buyer.

## BE PROFESSIONAL

“The quality of your video is critical,” says Corey Wright, co-founder and CEO of Wright Brothers Communications, a real estate marketing technology company. “You don’t need to spend a lot of money on top-notch equipment to have a video look professional. But if your video looks cheesy, you’ll lose your audience,” he notes.

Wright recommends using a tripod to prevent a shaky video, finding well-lit places to shoot your videos, and avoiding shooting inside in the direction of windows. To ensure good sound quality, find locations with good acoustics and little background noise.

“If you or your clients have the money, then consider hiring a professional videographer,” says Hall, “especially for high-end listings. Luxury buyers expect a higher level of service, so give your more expensive listings the white glove treatment,” she advises. Depending on your area, you can expect to pay from \$100 - \$1,000 for a professionally produced listing video. “But if that investment results in a 5-figure commission, it’s certainly worthwhile,” Hall observes.

## BE CLEAN

When filming listings, REALTORS® should take steps to make them spotless according to Hall. What you show is just as important as what you don’t show. “Don’t include a shot of the seller’s dirty socks or a pile of unwashed dishes. Pay attention to the details. One overflowing trash can ruin the image you’re trying to present,” she says.

Hall says you should not let your ego get in the way of the property you are marketing. “Agents don’t need to be on camera for a listing video. Buyers want to see the home, not you. Step aside, and let the home speak for itself.”

## WHEN YOU’RE IN THE SPOTLIGHT

If you are equally interested in using video to promote yourself as in marketing your listings, consider the following advice from Chris Jahnke of Positive Communications and author of the recently published book, *The Well-Spoken Woman*:

When you step in front of the camera:

- Have a compelling story to tell
- Be sure the lightening is adequate; avoid shadows on the face
- Make sure the backdrop isn’t distracting
- Project confidence with an open mouth smile
- Wear solid jackets and shirts, avoid patterns, keep accessories to a minimum

Jahnke also recommends that you choose and learn from a role model from whom you can emulate techniques for an effective on-camera delivery. She singles out Suzy Orman, “who has an engaging personality and shares compelling real life stories.”

## COMMUNICATE EFFECTIVELY

I spent years as a PR and media trainer before going to work for the Marin Association of REALTORS®. I would counsel my corporate clients to have no more than three key messages to convey in television news interviews. Why? Because the more things that you have to say, the less people will remember what you said. And if people don’t remember what you said, what is the point in doing the interview in the first place? This advice applies whether you are standing in front of the camera of a national news program or making video recording yourself on a smartphone.

When communicating through video or on television, don’t forget to use visuals to further promote your listings. Just like a network television news program, the pictures you use should look professional, be interesting and help tell the story about the property.

Corryn Muench with The Eisen Agency in Newport, Kentucky says that when talking on camera, you should be conversational and friendly: “Don’t come across as ‘salesy’ with phrases like ‘buy now!’ or ‘properties are going fast.’ You will end up sounding like a used car salesman and that won’t help you build trusted relationships with your clientele.”

## HAVE VALUABLE CONTENT

You need to have something worth talking about. The good news is that there are plenty of important and interesting real estate-related topics for REALTORS® to choose from, some more timely and relevant than others.

Be careful not to bore your audience. Once they tune you out, it is very hard to get them to tune back in.

## FREQUENCY MATTERS

Gelpman does not think that a REALTOR®’s video should be considered a one-time only production project. “Think in terms of a series of videos, each about a minute long,” he says. Why? “It makes viewership more likely and it is easier to send to others. You do not have to produce a video every week, but may consider every other month.”

## PROMOTE YOUR VIDEOS

Wright says REALTORS® should post their videos on as many different social media and Web site as possible. “The more places you post, the bigger your audience becomes. And, be sure to tag your videos properly so they can be searched and found organically,” she says. It’s easier and more affordable than ever before to put video to work for yourself and your clients. Thanks to a wide range of affordable technologies and the abundance of free advice, you don’t need a million dollar budget to have a million dollar impact. **MAR**



*Edward Segal, e-PRO, RCE, CAE, is the chief executive officer of the Marin Association of REALTORS® in San Rafael, California. He is the author of two PR handbooks including *Getting Your 15 Minutes of Fame* (Wiley & Sons) and *Profit by Publicity* (iUniverse). Contact him at [publicrelations.segal@gmail.com](mailto:publicrelations.segal@gmail.com)*



There is both an  
**art and a strategy** to  
pricing a property correctly!



With most of the markets around the US in full recovery, we now find it more critical than ever to price properties to sell. But there is a fine art to correctly pricing a property... one that involves not pricing it too low, yet not over-pricing, for those negatives certainly outweigh the positives when we follow this path.

Let me explain. To succeed in real estate, you must become the proactive, trusted real estate advisor. This can be accomplished by learning to price properties correctly even when the market is moving up quickly and you may need to re-adjust your thinking on a weekly, or even daily basis based on supply and demand.

With stronger and more solid market conditions, the appraised values on some residential properties are falling below the negotiated price. Real estate professionals should take a proactive approach to the appraisal, providing information and data to support the contract price. In my local market, I have had quite a few of my transactions come back with low appraisals. Not because the property is not worth the value the buyer is willing to pay, but because the local market is moving faster (increasing values) than comparables (closed sales) can support.

I recently had a property appraise for \$75K below the contract sales price. The contract sales price was \$425K and the appraisal came back at \$325K. The buyer was paying cash but wanted an official appraisal to justify her purchase. When the lower appraisal came in, she wanted this unique historical home so bad, she moved forward with the sale and paid cash... bringing \$75K more to the table than the local appraiser said the home was worth.

Keep in mind that any appraisal is not an exact science, but just one person's opinion on a given day based on past (closed) sales. The

major difference being that appraisers always use closed data... which is akin to driving by looking in the rear view mirror of your car. Where we, as the local leaders, look both backward and forward to see where the market is going and determine value based also on demand versus supply. In the downtown historic district, there were no properties selling for under \$400K that were turnkey and in mint condition like this home was, and that was the buyer's reasoning for proceeding with the sale. And, she paid cash, so I have a new, higher comp to use for my next transaction. This is exactly how a local market's value increases.

The basic approach to pricing a property correctly is one in which detailed homework is performed. This homework that we call our CMA (current market analysis) takes into consideration the homes that are most similar to our subject that are currently on the market for sale. When looking and researching homes that are ACTIVE, we look closely at the number of days on the market to determine if the current home is priced competitively. When a new listing hits the market, the first 30 days of marketing time are most critical. So, I judge someone else's listing by this key factor. If the home has been on the market for less than 30 days, I think positively about using the comp. If the home/property has been on the market for more than 30 days, I begin to think the property is over-priced and I rarely give it much value as a comparable to my listing.

I also pay close attention to the listing broker to see if it is someone that I have known for years and would consider this listing agent to be a seasoned veteran... someone who knows the business and is successful. I don't put a lot of stock into a comparable if I am not familiar with the listing agent and his/her credentials. Don't be afraid to pick

up the phone and call the other agent and ask them some specific questions about the property. "How many showings have you had so far? Have you had any offers thus far?" If the answer is yes on offers, never ask what the dollar amount of the offer was, as this is stepping over the line and you do not want to abuse your fellow REALTOR® kindness.

Make sure you ask, "did you pick the price or did the sellers choose the list price? What kind of condition is the property in? Has it been upgraded? What is the curb appeal? How does the property look? Smell? Etc..."

I also pay very close attention to the photos that are uploaded in the MLS, and I have also been known to drive by the listing to make sure the pictures in the MLS accurately reflect what the property looks like today.

Now remember, anyone can ask a certain price for a property, so take that into consideration as you give weight to a list price. What really matters is the price for which the property ultimately ends up selling.

The next part of my homework is to look closely at the sales... the closed transactions. These closed sales are the most accurate, but also can be a detriment of whether or not the market is moving quickly upstream. Values increase on a monthly, weekly, daily and hourly basis if your market is ripe, demand outweighs supply and buyers are willing to pay cash for a property regardless of the appraised value. This was the specific example of which I wrote above. NAR statistics show that homes with renovated kitchens and bathrooms also sell for higher sales prices as these two areas are ones buyers are willing to shell out the extra dough for.

Garages are also a determining factor for many buyers along with homes that are all on one level. These are contributing factors to a



## The basic approach to pricing a property correctly

greater per square foot value/price.

Values also tend to increase for unique properties faster than for properties where multiple opportunities exist for about the same property and price. Uniqueness can command a higher value... like waterfront properties and properties that are few and far between.

But look out for low appraisals in a recovering market. Many markets are seeing a re-emergence of a problem with appraisals not supporting the purchase price ne-

gotiated between the buyer and seller. In late 2012, NAR survey stated that 11% of sales professionals said a contract had been cancelled because an appraised value came in below the negotiated price, 9% reported a contract had been delayed and 15% said a contract had been renegotiated to a lower sales price as the result of a low valuation.

These situations occur when lower priced foreclosures and short sales are used as comparables to market-priced homes/properties. They also

occur when inexperienced or out of town (out of area) appraisers are used who may not be familiar with local market conditions/specifcics.

Another factor to having a low appraisal may be not adjusting values to reflect changing market conditions, such as rising prices, the presence of multiple offers and low inventory. This was definitely my case with the historic property I just sold.

Long turnaround times by both appraisers and lenders and delayed closings can also have a bearing



## is one in which detailed homework is performed.

on creating a low appraisal value.

As we know, the real estate appraiser's ultimate customer is the lender, not we in the business, the buyer or seller. Remember that an inflated sales price (value) could expose the lender to default on the loan.

If challenging an appraisal becomes necessary, stick to the facts and provide additional information rather than taking a confrontational approach. Include information that may not be readily

available from other sources such as other offers (multiple) and how quickly the property went under contract. Have a documented file folder showing strong demand as a solid reason for the higher value.

Work with appraisers and return their phone calls when they inquire about values or are in need of our help. They are part of our team and we must always give them quick service to allow them to help us in-turn. We are a valued source of information to

them and they look to us as we look to them to help real estate remain a solid investment! **MAR**



*Marcus Wally is the founder and broker of New World Realty, which also manages coaching and facilitation of education classes around the world. Marcus earned his MBA from the University of North Florida in Jacksonville. Marcus can be reached at +1-904-669-1081 or by email at [marcus@newworldrealty.com](mailto:marcus@newworldrealty.com). For more information, visit [www.newworldrealty.com](http://www.newworldrealty.com).*



# Largest Real Estate Gathering Cruises to Success

The MAR Convention & Expo was again a huge hit for more than 715 attendees as well as a sold-out expo hall with 295 exhibitor attendees who were “all aboard” the Cruise to Success at the Soaring Eagle Casino and Resort. The three-day event was filled with over 25 fascinating and functional educational sessions, as well as social events, awards and a range of industry meetings providing something for everyone.

At the Grand Assembly, attendees were welcomed by 2013 & 100th MAR President, Bill Milliken, a Commercial Board of REALTORS® member. Nominees from across the state waited in anticipation for the presentation of the prestigious REALTOR® of the Year Award. The 2013 recipient was Gordon McCann, GRI, E-Pro, Associate Broker with Coldwell Banker Weir Manuel and member of the Greater Metropolitan Association of REALTORS®.

Gordon is a veteran REALTOR® and has also served Michigan’s real estate industry in many elected and appointed capacities. At MAR, he was District 11 Director in 2009, 2010, 2011, and 2012, chaired the Lock-Box Task Force for 2004-2005, was a member of the Technology Committee for 2002-2003 and the Building Task Force in 2005.

He is currently a Golden R RPAC Investor, was appointed to the Finance Committee from 2009-2011 and was MAR liaison to the 2010 Brokers Summit and 2013 MAR Presidential PAG. At GMAR Gordon, was also instrumental in the formation of the new association, has served on the Finance and Government Affairs committees and on the Building Task Force.

Accepting the Award, Gordon said, “I am very grateful and honored to

be chosen by so many people that I know and admire to receive this award. I believe strongly that if each of us does our part, we will all prosper, and I think our industry exemplifies that much more than most. It has been and will continue to be my pleasure to work with MAR, NAR, my local association, and many dedicated REALTORS® and I sincerely thank you for the opportunity.”

In addition, Gordon was the National Association of REALTORS® (NAR) Director for Michigan in 2009 and 2010 and the GMAR appointed NAR Director for 2007-2008 and 2012-2013. He was also President of the Western Wayne and Oakland County Association of REALTORS® (WWOCAR) in 2007 and 2008, President-elect in 2006 and Treasurer in 2005. Over the years Gordon also participated in successful initiatives to address such things as restructuring association member dues and increasing awareness of REALTOR® Etiquette and Professional Courtesies and the creation of GMAR.

Together, Gordon and his wife Sharon have almost 40 years of real estate experience serving southeast Michigan. Gordon holds a B.S. in marketing from Ferris State University and an M.B.A. in marketing from

Michigan State University's Eli Broad School of Management. In addition to his real estate industry work he enjoys golfing, high-performance driver education, and autocross.

Following the award ceremony was the installation of Carol Griffith as the 2014 MAR President. Carol is co-owner of ERA Griffith Realty in Livingston County and a third-generation REALTOR®. Her career spans more than three decades and she has served MAR in many capacities including as current chair of Public Policy as Director, Treasurer Elect, RPAC trustee, finance committee member and is. In her business role she has twice been named Livingston County REALTOR® of the Year and has held many voluntary positions with her local Rotary, Chamber of Commerce, St. Joseph Mercy Hospital, Cleary University, and the Livingston County Hunger Council. Carol is also serving her second term as an elected Livingston County Commissioner.

“Sand Story” artist, Joe Castillo, then captivated the crowd with a memorable performance to lead attendees into the opening of the expo.

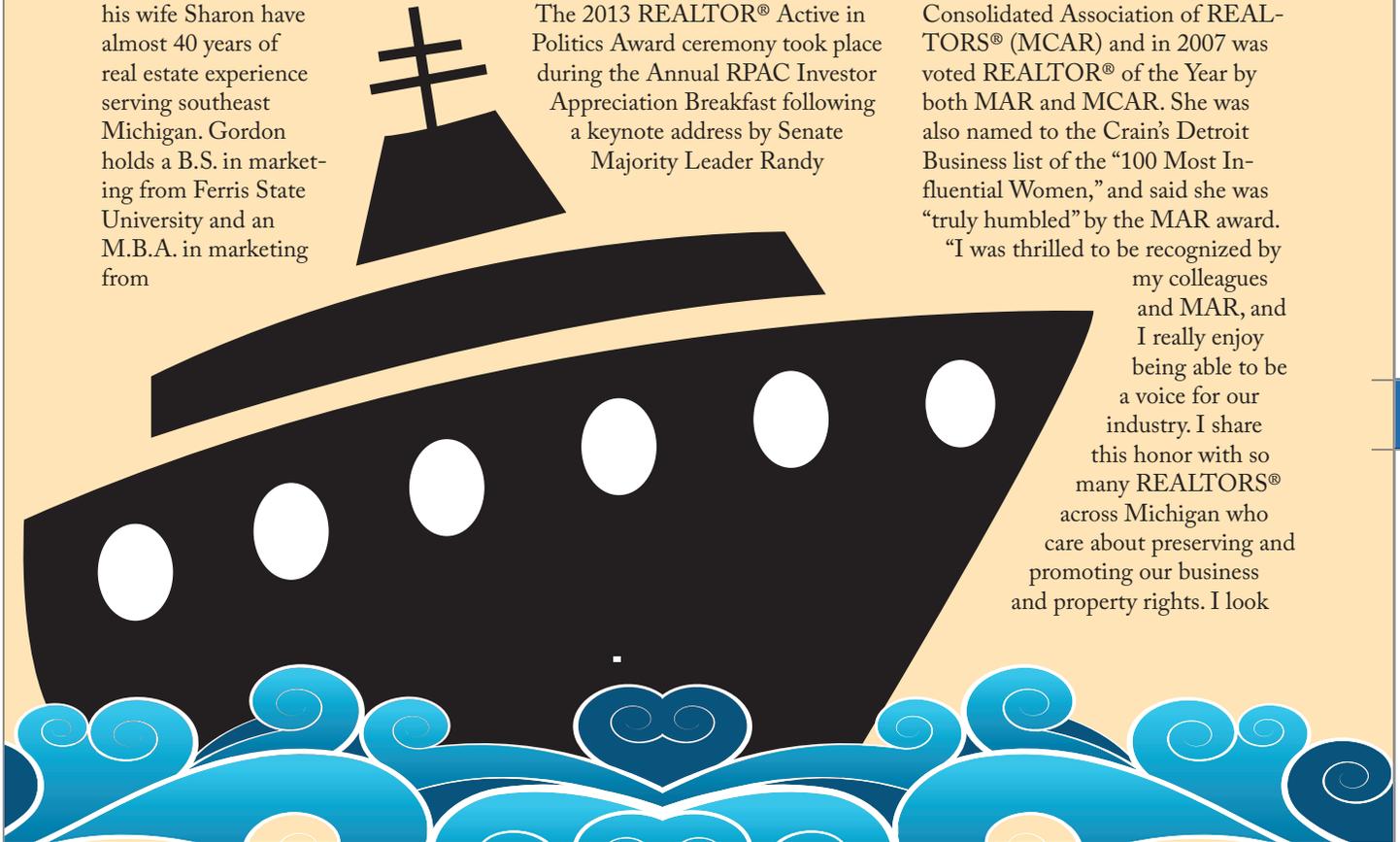
The 2013 REALTOR® Active in Politics Award ceremony took place during the Annual RPAC Investor Appreciation Breakfast following a keynote address by Senate Majority Leader Randy

Richardville, who highlighted the fact that the housing market is making a strong comeback in Michigan. This year's RAP Award recipient was Nanci Rands, an Associate Broker with Hall and Hunter, Christie's Great Estates in Birmingham and an active REALTOR® for more than 40 years.

Nanci has been an integral part of industry politics for years, cultivating bi-partisan relationships on Capitol Hill with Senators and Representatives. She currently serves NAR in several capacities including as Chairman, National Trustee of the NAR Political Action Committee, liaison to Michigan Senator Carl Levin, RPAC Trustee, member of the Board of Directors, Federal Disbursement Committee Chair, Public Advocacy Advisory Group/CORE member, and Federal Independent Expenditure Advisory Board Chair.

In addition, she served as the MAR RPAC Chair in 2008, Major Donor Whip in 2009 and was the NAR RPAC Trustee representing District 6 (Michigan and Ohio) for 2010-2011. In 2006, Nanci was President of the Metropolitan Consolidated Association of REALTORS® (MCAR) and in 2007 was voted REALTOR® of the Year by both MAR and MCAR. She was also named to the Crain's Detroit Business list of the “100 Most Influential Women,” and said she was “truly humbled” by the MAR award.

“I was thrilled to be recognized by my colleagues and MAR, and I really enjoy being able to be a voice for our industry. I share this honor with so many REALTORS® across Michigan who care about preserving and promoting our business and property rights. I look





forward to continuing to work on behalf of our very important interests in Michigan and Washington, D.C.”

Nanci is very involved in several community and charity organizations including as the immediate past National Chairman of Project Interchange, a non-profit organization that sends influential people from around the globe to Israel for educational and fact-finding seminars. She is also a member of the Board of Governors of the American Jewish Committee and has chaired events for the Crohn's and Colitis Foundation, the Eye Research Foundation and the Orchard Children's Service. Nanci is a graduate of the University of Michi-

gan and a six-year board member of the Franklin Hills Country Club.

In addition to winning the 2013 RAP Award, Nanci was elected as a 2014 NAR Director during the Delegate Body Meeting on Friday morning.

RPAC also held two other events, the Annual Silent Auction and the “REALTORS® of the Caribbean: An RPAC Photo Treasure Hunt» where teams vied to win fabulous prizes. Combined, the two events collected donations of more than \$15,000 for the RPAC, exceeding last year's contributions by more than \$1,000!

In addition to these popular award events, members also had plenty of other entertainment choices to attend with friends and peers. These included the not-to-be-missed Welcome Reception, the Grand Gathering with keynote speaker and real estate coach Verl Workman, Happy Hour events

in the Expo each day, and the REALTOR® Royale where everyone had a fun and relaxed evening just enjoying great company with drinks, music and dancing. Closing the show were two outstanding speakers, Doug Smith, Senior Vice President of Strategic Partnerships and Government Affairs with the Michigan Economic Development Corporation (MEDC), and Jason Abrams, REALTOR® and host of HGTV's Scoring the Deal.

As always, the Convention also offered a very diverse selection of Knowledge Sessions for members to gain new skills, learn how to maximize technology and earn essential continuing education credits. This year's sessions were truly cutting edge and included extremely knowledgeable speakers discussing topics from successful marketing with Pinterest to 2014 business trends to utilizing the REALTORS Property Resource. **MAR**





**Above Left:**

NAR Director Candidates meeting with attendees near the Expo Knowledge Hub.

**Above Center:**

Senate Majority Leader Randy Richardville was the guest speaker at the RPAC Recognition Breakfast.

**Above:**

2013 & 100th MAR President Bill Milliken (right) with 2013 MAR REALTOR® of the Year, Gordon McCann, GMAR (left) and 2013 REALTOR® Active in Politics, Nanci Rands, GMAR.

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# INBREEDING DATA may lead to WRONG CONCLUSIONS

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



Real estate appraisers collect market data to use in several different types of analyses including developing market analysis and market studies, highest and best use analyses, and the three approaches to value (i.e., cost, sales, and income).

Although the analyses used by appraisers may be considered interrelated, they all reflect unique perspectives on the property being appraised. For example, for an improved property, the sales comparison approach uses comparable improved property sales to compare to the subject property with adjustments applied to the comparable sales' prices for any relevant dissimilarity. The cost approach involves using comparable land sales to compare to the subject property, with adjustments applied to the comparable sales' prices for relevant differences. The income approach uses comparable property rentals to compare to the subject property, with adjustments applied to the comparable properties' rental prices for relevant differences. The adjustments applied to the comparable property transaction prices are identified as *elements of comparison*.<sup>1</sup>

Although each valuation approach reflects a different underlying motivation between market participants, it's important for appraisers to recognize the analyses' independence from one another. It is this independence that strengthens the need for the appraiser's final reconciliation of the approaches into a final value conclusion for the subject property.

Equally important for the appraiser is to recognize that multiple uses of any comparable property transactions will diminish those analyses' independence and weaken the results. This inherently lessens reliability. The multiple use of comparable property transactions is often referred to as *inbreeding data*.

**Inbreeding data** is described as follows, in pertinent part: "*When the appraiser derives all adjustments from within a limited data set, a single erroneous sale price or figure can cause errors in the adjusted sale prices of all the comparable sales, leading to an erroneous indication of value for the subject prop-*

*erty. This sort of situation in which the independence of the sales data is lost is known as inbreeding.*"<sup>2</sup>

For example, when an appraiser develops a land valuation, the final sales used by the appraiser should not be the sales used in developing the adjustments for dissimilarities. Assume adjustments are needed for market conditions (i.e., time, location, site size and zoning). In this case, the adjustments should be extracted from sales other than the final sales to which the adjustments are going to be applied. If four adjustments are going to be extracted from the market, then it should ideally be from at least four sets of paired sales using different comparable properties. The same is true for improved property sales and property rentals.

The paired sales and/or rentals should also not be used multiple times. For example, assume an appraiser is relying on four final sales for its improved property sales analysis, identified as Improved Property Sales (IPS) #1, IPS #2, IPS #3, and IPS #4. For an appraiser to have an opportunity to reconcile a final adjustment for changing market conditions, using paired sales, then it would need, at a minimum, four additional sales to develop two paired sales sets, such as IPS #5, IPS #6, IPS #7, and IPS #8.

If the next adjustment the appraiser needs to extract is location, then the appraiser should identify four different sales, isolating location as the single difference, such as IPS #9, IPS #10, IPS #11 and IPS #12. It would not be proper to use IPS #1, #2, #3, and #4 for this adjustment or to reuse IPS #5, #6, #7 and #8. However, it should be noted that the results of a market conditions adjustment is often applied to other paired sales analyses to be able to isolate different elements of comparison.

The concept inbreeding is extended into other data used by the appraiser. For example, in extracting gross rent/income multipliers and capitalization rates, the appraiser should avoid using any sales and rentals that are used already in its other analyses.

## This story is brought to you by MiCREA

The Michigan Council of Real Estate Appraisers was created in 2004 with one purpose: to serve Michigan's REALTOR®-appraisers through advocacy, benefits, data resources, and educational offerings. The Council, steered by a committee of fifteen appraisers representing more than 2800 members, is Michigan's strongest voice for the rights and needs of appraisers in the state. The services and value MiCREA provides to its members complement in numerous ways the services provided to members by their local associations and appraisal organizations. For more information on MiCREA, visit [www.mirealtors.com/content/AppraiserResources.htm](http://www.mirealtors.com/content/AppraiserResources.htm).



The author recognizes that in many cases an appraiser is not always provided with a great amount of data to have the luxury of avoiding inbreeding data in every individual case. Appraisers are often left with less than perfect paired-transactions and less than perfect number of pairs. Professional judgment and experience will enter into many appraisals where information is lacking, or void. This doesn't imply that the appraiser is guessing due to the lack of market information, but interpreting and interpolating adjustments from other market information that are serving as barometers for the missing data. This may invoke an *extraordinary assumption* in some cases.<sup>3</sup>

Over time appraisers will develop databases of paired rental and sale transactions that can be used for interpreting the market and interpolating adjustments. **MAR**



**Michael R. Lohmeier**, MMAO(4), FASA, MAI, SRA, is an Appraiser Qualifications Board certified USPAP Instructor. He currently serves as the City Assessor for the City of Auburn Hills.

- 1 See previous article *What Are Comps?*, Michigan REALTOR, May 2010 Ed., (Lansing: Michigan Association of REALTORS), p. 23.
- 2 *The Appraisal of Real Estate*, 13<sup>th</sup> Ed., (Chicago: Appraisal Institute), p. 304.
- 3 See USPAP for identification and requirements on invoking extraordinary assumptions.

## Property Managers Alert

On July 30, 2013 the Michigan Supreme Court released an opinion that appears to expand the legal duties that owners and property managers of residential real estate owe to their tenants and their guests. Usually, when a Michigan appellate court makes a decision that changes the law for a large number of people, it garners a fair amount of publicity. Very little has been said about this case, which may be due to the fact that it is hard to tell the potentially affected persons (i.e., owners and property managers of residential real estate) and exactly how they are to deal with this new duty imposed on them by the Michigan Supreme Court.

The facts of this case are fairly straightforward. There is an apartment complex known as Evergreen Regency Townhomes (“Evergreen”) located in Flint. Evergreen is owned and managed by Radney Management & Investments, Inc. (“Radney”). Radney had a contract with a security company, Hi-Tech Protection (“Hi-Tech”) to provide security guards to patrol Evergreen.

Devon Bailey visited Evergreen on August 4, 2006 to participate in an outdoor party in the common area of Evergreen. Two security guards of Hi-Tech, Baker and Campbell, were patrolling the area in a golf cart. At some point during the party, a tenant of Evergreen, Laura Green (“Green”), told the Hi-Tech security guards that Steven Schaaf was “brandishing” a revolver and threatening to kill someone (The written opinion of one of the Supreme Court Justices suggests that Schaaf had actually waived his gun in front of the security guards). In any case, the security guards did nothing. Later, after Green had advised the security guards that Schaaf had a gun and was threatening to kill someone, the security guards heard two gunshots. Schaaf had shot Devon Bailey twice in the back. Devon Bailey is now a paraplegic.

The legal issues in this case were whether Radney or its agents, Baker and Campbell, had any duty to do anything to protect Devon Bailey from Schaaf and, if so, what they were required to do in order to protect him. Many REALTORS® may be surprised to learn that up until the decision in this case, generally no duty was owed to Devon Bailey; thus, the owner and the property manager who managed the property were not required to do anything.

It has long been true that generally, under the common law there is no duty that requires one person to come to the aid of or to provide protection for another person. The exception to this general rule is when a “special relationship” exists

between two parties. An example of the exception to the general rule would be the duty an owner of property owes to invitees on that property to warn them of any dangers present on the property. In this instance, the owner of the property is deemed to have a “special relationship” with the invitee based on the fact that the owner controls the property and is thus in the best position to maintain the physical premises and to warn of any dangers.

In the past there was also a general rule that merchants and landlords owed no duty to protect tenants or invitees from the criminal acts of others. This general rule made some sense, inasmuch as neither a merchant, nor a landlord, nor a property owner can control the occurrence of crime in the community in which they are situated. Crime can occur at anytime and anywhere. If merchants, landlords or property owners were deemed to owe a duty to prevent criminal acts from occurring on their properties, presumably they would be required to provide armed guards. Such a duty would require property owners to provide a safer environment for their invitees than their invitees would have in the community at large.

In the recent case, it would appear that the Michigan Supreme Court case chose to change this established the common law. In its decision, the Supreme Court determined that a landlord and its property manager might continue to presume that tenants and their invitees will obey the criminal law. The Court also reaffirmed the continued unpredictability and irrationality of criminal activities, e.g., appearing at a party in an apartment complex and shooting a stranger twice in the back. However, the Supreme Court stated that this general assumption “. . . should continue until a specific situation occurs on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable [tenant] invitee.” When the landlord receives notice of this type of situation, the Supreme Court found, the landlord and its property manager are required to make “reasonable efforts to expedite police involvement.” In other words, in this case, the two security guards, Baker and Campbell, would have satisfied the duties Radney owed to Devon Bailey if one of them had simply called 911 and requested immediate assistance from the Flint police. However, they did not do so; thus, Radney will now bear the burden of the injury done to Devon Bailey by Steven Schaaf if the claims made in this case ultimately prove to be true.

The fact that the injury took place in the com-



mon area was a significant factor in the Court's decision. The Michigan Supreme Court made it clear that a landlord or property manager does not owe a duty to respond to criminal acts occurring within the leased premises of a tenant. In other words, had the party at Evergreen been held inside a tenant's apartment and Schaaf shot Devon Bailey in the apartment; there would be no claim against Evergreen. Obviously, Evergreen has no ability to control what goes on in a tenant's apartment.

The new rule announced by the Michigan Supreme Court in this case works very well on the facts of this case. A man was in a common area at an apartment complex waving a revolver saying he was going to kill someone. Further, another tenant gave notice of the situation to two security guards who apparently were in a position to also witness the man waving or brandishing the gun.

at ACE Realty received notice of a specific situation occurring on the property that would cause a reasonable person to recognize a risk of imminent harm to an "identifiable tenant" or invitee? Arguably not, as the tenant in Unit 3 cannot tell whether any of the young men are tenants or invitees of tenants, if the young men actually have any weapons or if the loud voices are anything more than the typical noises of celebratory young men on a Saturday night. Nonetheless, it would appear incumbent upon the property manager at ACE Realty to immediately call 911 and ask that a police car be dispatched to the property.

As another example, assume that ACE Realty manages an eight-unit apartment building. It receives a call from the tenant in Unit 5 that there is loud yelling and the sounds of things breaking in Unit 6. The tenant in Unit 5 also advises that

the persons in Unit 6 started partying at 3:00 p.m. and are still going strong at 11:00 p.m. What does the property manager at ACE Realty do with this information? According to the decision by the Michigan Supreme Court, since neither the owner nor the property manager has any

**"Usually, when a Michigan appellate court makes a decision that changes the law for a large number of people, it garners a fair amount of publicity. Very little has been said about this case..."**

Unfortunately, REALTORS® who act as property managers or who are owners of residential rental properties are going to have to figure out what to do in situations which are not quite as crystal clear. For example, assume ACE Realty manages a property that is an older, larger home that has been divided into four apartments. The common areas for the property are the porch, front yard, and driveway and parking area. Assume that ACE Realty receives a call at 9:30 on a Saturday night from the tenant in Unit 3 whose second floor apartment overlooks the driveway and parking area. The tenant in Unit 3 advises ACE Realty that a group of young men are in the parking area, and that the young men are yelling at each other and making threats. One of the young men is continually sticking his hands in his jacket as if he has a gun in the pocket. The tenant cannot tell the property manager whether any of the young men in the driveway and parking area are tenants or guests of tenants. Has the property manager

control over the goings on in Unit 5, they have no duty to do anything. However, there is certainly a chance that 15-20 minutes later, the participants will leave Unit 6 and take their fight outside to a common area. As a matter of good practice, should the property manager attempt to preempt that possibility by immediately calling 911 and asking that a police car be dispatched to Unit 6? The answer could well be yes.

This decision by the Michigan Supreme Court may be very workable as a practical matter in large apartment complexes where the owners and property managers provide security guards who patrol the premises. It would appear that it is going to be much more difficult for those owner-managed properties that have only a few tenants and no security guards, but presumably the same possibility for large damages in the event of a death or major injury to a tenant or invitee. It does not seem unreasonable to assume that the police will be receiving a lot more calls in the future. **MAR**

**Michigan REALTORS® can stay informed of legal issues with updates through our Legal Lines.**