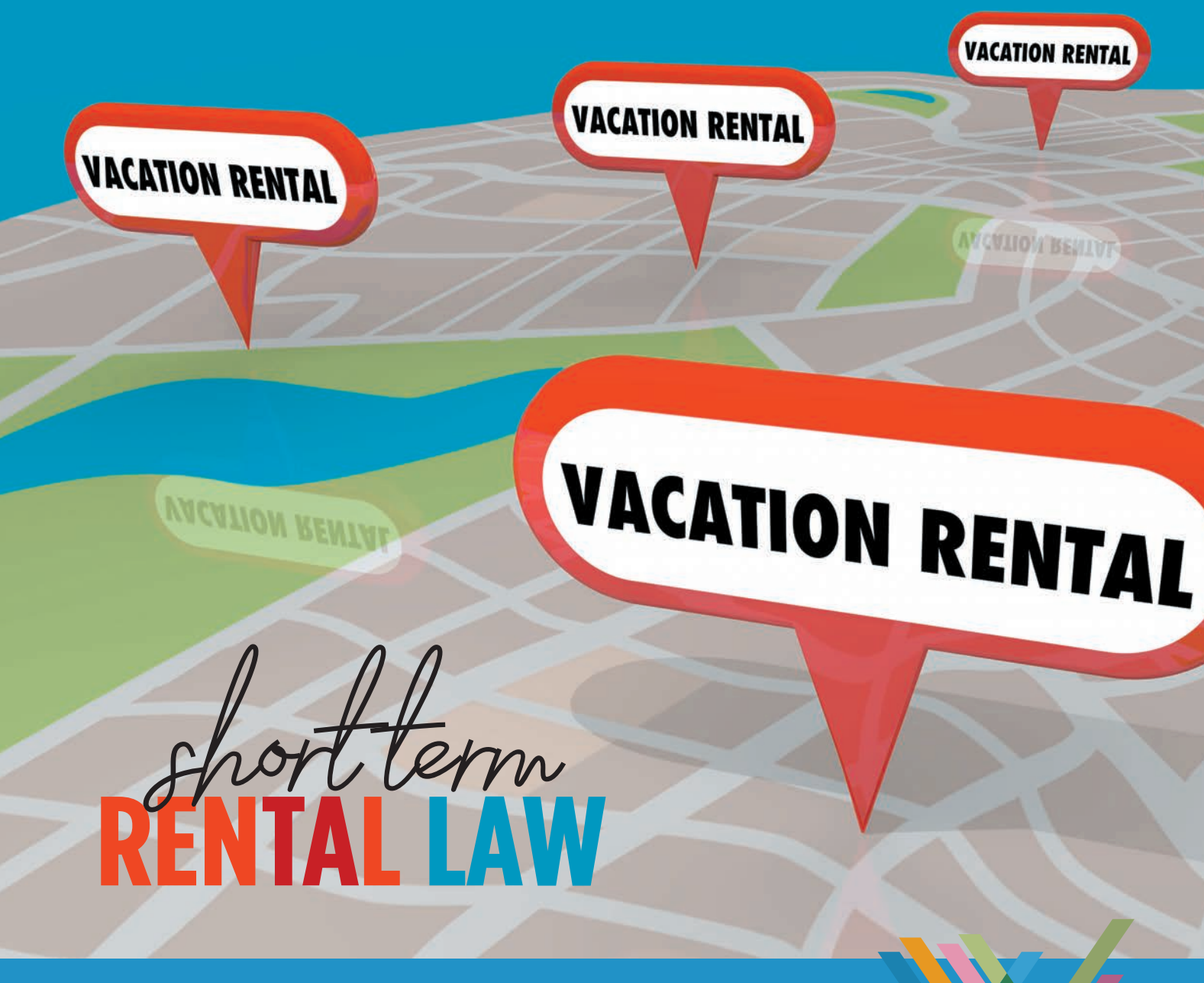


A publication of Michigan Realtors®

# MICHIGANREALTOR®

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NOVEMBER 2023



PLUS

Pop-up Taxes

Convention Recap

President's Report

Legal Review

Volume 22 | Number 4



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## It's All About The Journey

One thing that I'm certain that every Michigan Realtors® President can attest to is that during their presidential year, time flies. This year has gone so quickly, which makes writing this article incredibly bittersweet.

Over the time of this leadership journey, it has been a great honor to work with the best and most generous volunteer leaders and staff. Together, we've navigated one of the most volatile and unpredictable real estate environments we've ever seen, we've collaborated on the optional provision of statewide professional standards, started the process of revising Michigan Realtors® forms to better serve our entire state and we blanketed the city of Lansing with Realtor® blue on Capitol Day.



Our in-person events and monthly e-communications continue to grow as strong platforms to educate, inform and inspire our membership. *Michigan Realtors® E-News* sustained a strong 40% open rate, more than doubling the national average. *Within The Law* and *From The Mailbag* video series on YouTube offer legal updates on specific topics in an easy to digest format. *Policy Matters* with Brad Ward, gives Realtors® timely summaries of developments in real estate related legislation alongside our lobbying efforts in Lansing. The list goes on.

When you're *in the moment* and you're working to accomplish the many goals we set for one another, it is truly a blur. When you're in this moment, you don't really want it to end! I don't say that because I want to be President for life, I certainly am ready to join the Past-Presidents of the Michigan Realtors® and in the words of Sara Lipnitz, become Citizen 2024.

Being part of a team with Sandi, Christopher, Jamie, E'toile, Maureen and Rob over the last several years has meant so much to me. What we've accomplished and what we've faced together – my life is richer for having worked with each of you!

I would be remiss if I didn't thank my parents; without them I wouldn't have been able to embark on this journey. They've made so many sacrifices to allow me this opportunity to serve. And, of course, I can't forget Mike (and our adventure dog, Otis) who helped me stay balanced and focused while offering lots of laughs! As this phase of my journey comes to an end, I can't wait for our next adventure!

Together, we've **navigated** one of the **most volatile** and **unpredictable real estate environments** we've ever seen. . .

As 2023 comes to a close, I'm incredibly excited to turn the reins over to Sandi and her team. Sandi's passion and sense of what is right is remarkable; I'm completely certain that you will be in for a fantastic ride with Sandi in the driver's seat in 2024!

Lastly, to all of you who volunteer; thank you for stepping up and standing tall for our profession. Your engagement and your willingness to share your time and talent is the foundation for what makes our Association so great!

It has been an absolute honor and privilege to serve you; and now I look forward to my next adventure! ●

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# COMING EVENTS

## January 24, 2024

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# ANNOUNCEMENTS

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## Pop-up Tax Pops-up Again

I understand it is not property tax season. Assessment Day in Michigan is December 31st, winter property tax bills are due in February and the summer bill is due in July (with a few exceptions). However, with the rising property values that we have seen over the past few years, calls to legislative offices and new ideas on legislation are starting again. The common refrain from these phone calls... “I just bought a house and didn’t know that my property taxes were going to go up that much!”

What these new homeowners are experiencing is the uncapping of the taxable value on the home under Proposal A, or the “Pop-up Tax” as people call it. Let me take you all the way back to the passage of Proposal A by Michigan voters in 1994. When the ballot measure passed to establish Michigan’s current property tax system, we traded volatility in our property taxes for predictability.

When a property is purchased in Michigan the taxable value of the property is capped.

Its taxable value cannot increase more than the rate of inflation or 5%, whichever is less. This means the longer the owner stays in the property, the more the value increases, the more the gap between its taxable value and SEV (assessed value) grows. So, an owner may see a sharp increase in the value of their home but only be paying taxes

on a fraction of that increase. This is great for the current property owner, but when they sell the home, the new buyer’s taxable value increases to the full SEV (assessed value). Hence, “pop-up” tax.

I can almost guarantee that every legislative office has received at least one call from a constituent to complain that they did not know their tax bill was going to increase so significantly. As a result, we have seen a few legislative proposals introduced over the years aimed at better informing buyers of what might be in store for them after they purchase a home. There have been bills that require the Realtor® to perform the calculation, and there have been bills requiring the seller to make the calculation for the prospective buyer.

When buyers say they “didn’t know” that their taxes would increase – typically a buyer’s monthly mortgage payment is calculated based on the tax bill of the current owner and their property taxes are escrowed accordingly. The next December 31, when the taxes are uncapped, the property taxes rise, and the escrow is short. The buyer will then get a letter from the mortgage company letting them know that their monthly payment is going up to make up the needed difference in the property tax escrow account. This is what prompts their call to their elected official.

There are two ways to educate buyers on the pop-up tax. The first is through the Seller Disclosure Statement. Every Seller Disclosure Statement includes a line, **IN ALL BOLD AND CAPITAL LETTERS**, that alerts them to potential changes in property tax liability.

...every **legislative office** has received at least one call from a **constituent** to **complain** that they **did not know their tax bill** was going to **increase so significantly**.

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**BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE  
TAX BILLS ON THE PROPERTY WILL BE THE SAME AS  
THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN  
LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE  
SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.**

This line appears directly above the buyer's signature line, so it should not be hard to see or point out to the buyer. When combined with the preceding sentence on the form, it directs the buyer to contact the local assessor's office for property tax information. Assessors will have the most up to date information on millage rates and special assessments that affect the tax bill.

The other way to work with buyers is to direct them to the State of Michigan Property Tax Estimator. You can find the tax estimator at [michigan.gov/taxes/property/estimator](https://michigan.gov/taxes/property/estimator). Using the estimator, the buyer can put in the SEV or the purchase price of the property and calculate the millage rate (based on 2022 millage rates) down to the local school district. While this calculator does not give them their exact future taxes, it can get close.

I'm fully aware that many brokers and agents already

work with their buyers to understand the pop-up tax, and that some multiple listing services incorporate the Michigan Property Tax Estimator into their sites, but this is a common occurrence regularly reported to legislators. To resolve these complaints and avoid any future onerous and punitive legislative bills, we need to do a better job as an industry in working with our buyers to make sure they understand Michigan's uncapping and where possible, provide them with a more accurate picture of potential tax liability. ●

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# A Year In Review: 2023 Legal Q&A

As we wrap up 2023, your Michigan Realtors® Legal Team has found themselves, once again, reflecting on another year of legal education. And what better way to reflect on legal lessons learned than to revisit the top Legal Hotline Questions of 2023? Join us as we review this year's most popular legal questions and answers.





# OFFER & ACCEPTANCE

**QUESTION:** Do I have to present my seller-clients with additional offers once there is a binding purchase agreement in place?

**ANSWER:** This is one of those few areas where the law conflicts with the Realtor® Code of Ethics. The Michigan Occupational Code says that you do not need to present additional offers unless you agreed to do so in the listing agreement. The Code of Ethics says you must present additional offers unless the seller has expressly waived that obligation. Most listing agreements in Michigan include language whereby the seller waives their right to receive additional offers after there is a binding purchase agreement in place. If your listing contract does not contain such language, then you should continue to present all additional offers, or else violate the Code of Ethics.

**QUESTION:** A buyers' agent submitted an offer, the sellers countered, and the buyers accepted the sellers' counteroffer. The buyers' acceptance was sent to the listing agent who notified the sellers via telephone. The sellers then received a better offer from another buyer. Are they bound by the first purchase agreement? They have not bottom-lined the first contract and, in fact, have never received an actual copy of the accepted counteroffer.

**ANSWER:** Yes, the sellers are bound by the first purchase agreement. Delivery of the buyers' acceptance to the listing agent is effective delivery to the sellers. The first purchase agreement would be binding even if the listing agent had not called the sellers to let them know they had received the signed acceptance. Bottomline signatures are not required in order for there to be a binding agreement.

# SELLERS

**QUESTION:** My seller suffers from dementia and her daughter has power of attorney. Should the daughter fill out a Seller's Disclosure Statement on her mother's behalf?

**ANSWER:** No. The power of attorney gives the daughter the authority to act on her mother's behalf; it does not give her the authority (or the ability) to make representations on her mother's behalf. The mother is also not able to complete the form. While the Seller Disclosure Act does not contemplate this situation, if you are aware that a seller is not competent, then you should indicate in the MLS that a Seller's Disclosure Statement is unavailable and (very briefly) explain the situation verbally to potential purchasers. The legal analysis is simply that in this situation, compliance with the Seller Disclosure Act is impossible.

**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 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. Michigan law does provide a list of exemptions that excuse a seller from completing the statutory disclosure form, but "never having occupied the property" is not one of those exemptions.



## RESPA

**QUESTION:** I am a licensed real estate agent. Can I buy an interest in a title company and refer business to that title company?

**ANSWER:** Yes, but only if you get an Affiliated Business Arrangement Disclosure form signed for each referral. Remember, however, that this form does not allow you to receive a referral fee from your title company. Your compensation from the title company must be tied directly to your ownership percentage in the title company. Your compensation may not be tied to the amount of business you refer to the title company.

**QUESTION:** A local title company is offering salespersons membership interests in the title company based on the number of referrals that a salesperson sends to it each year. Is this permissible?

**ANSWER:** NO. RESPA states that there can be no “value” given in exchange for the referral of business. It does not matter if there is an actual written agreement or if there is simply an “understanding” that the salesperson will be rewarded for their referrals. In either case, it is a violation of RESPA.

## TEAMS

**QUESTION:** Can the brokerage pay my Team, which will, in turn, pay the salespersons who belong to the Team?

**ANSWER:** No. Under the Occupational Code, salespersons can only receive a commission (or other compensation) from the broker through whom they are licensed. Team members can direct the broker as to how the commission should be allocated among the Team members, but the payments must come directly from the broker.

**QUESTION:** Should I insert the name of my Team in my listing contract?

**ANSWER:** No. Listing contracts and buyer broker contracts should not list the Team as a party or be signed by an agent as a representative of a Team. Agency contracts should be signed by individual licensees as representatives of the Broker.

**QUESTION:** Should I use my Team name on the agency disclosure form?

**ANSWER:** No. Agency disclosure forms should not be filled out in the name of the Team. If more than one Team member will be working with a particular client, each licensee should be listed by name in both the designated agency agreement and the agency disclosure form. This is not necessary in a traditional agency office because, as a matter of law, every agent within the firm has an agency relationship with the client.

# AGENCY

**QUESTION:** I am representing a buyer in the purchase of a home. The listing agent said that, by law, I am required to provide him with a copy of the agency disclosure statement I furnished to my buyer-client. Is this true?

**ANSWER:** No. The law does not require you to provide the listing agent with a copy of the agency disclosure statement you furnished to your buyer-client. But you should submit a new agency disclosure form to the seller – through the listing agent –notifying the seller that you are acting as a buyer's agent.

**QUESTION:** If I get an agency disclosure form signed, do I still need a buyer's agency agreement? I will be paid through the offer of compensation in the MLS.

**ANSWER:** Buyer's agency contracts cover much more than agency status and compensation. For example, they disclaim responsibility for matters requiring a professional (e.g., attorney, inspector, appraiser). They provide protection in conflict of interest situations that may arise. And, if you are practicing designated agency, they are critical in preventing an office-wide agency relationship with your client.

**QUESTION:** I am working in a designated agency office. Is it true that so long as I check "buyer agency" on the agency disclosure form, a buyer agency agreement is not necessary?

**ANSWER:** No. Under the law, unless a buyer signs a buyer agency agreement acknowledging his/her agent's designated agency status, the buyer will have an agency relationship with every agent in the office.

**QUESTION:** I represent buyers who terminated a purchase agreement after discovering black mold in the house. I now have another interested buyer who would like to make an offer on the same home. The listing agent said that I cannot tell my buyer about the prior buyers' discovery of mold because I obtained that information during a prior agency relationship. Is this true?

**ANSWER:** No. As a buyer's agent you have a fiduciary duty to notify your current client of any issues that you know of about the property. While most buyers' agency agreements expressly provide that the agent will not disclose confidential information learned through another agency relationship, the discovery of black mold is not "confidential" as to the first buyer. Information known to both a seller and a potential buyer is not "confidential" as to either.

Your Michigan Realtors® Legal Team is continually seeking ways to help you navigate your transactions in a way that reduces as much legal liability as possible. We strive to develop resources that provide thorough legal analysis for both trending and evergreen issues that Realtors® are likely to face in the industry. If you like the question-and-answer format of this article, be on the lookout for the newest edition of the Michigan Realtors® Legal Hotline Companion which will be available in late 2023. If you have any questions or suggestions for future articles, please reach out to Becky Berke at [bberke@mirealtors.com](mailto:bberke@mirealtors.com). ●



**VACATION RENTAL**

**VACATION RENTAL**

**VACATION**

**SHORT-TERM  
RENTALS**  
*a permissible use?*





**VACATION RENTAL**

**VACATION RENTAL**

**VACATION RENTAL**

BY GAIL A. ANDERSON, ESQ. AND DAVID E. PIERSON, ESQ.,  
MCCLELLAND & ANDERSON, LLP

Michigan law permits owner occupancy requirements or other limitations on leasing in subdivision restrictions and in condominium master deeds. Even where the restrictions are silent on the question of leasing, the Michigan Court of Appeals has held that a covenant restricting the use of property to residential use means that short-term rentals are prohibited. As the Court of Appeals is fond of quoting:

*The act of renting property to another for short-term use is a commercial use, even if the activity is residential in nature.<sup>1</sup>*

The Court of Appeals took this analysis one step further in a case decided late last year.<sup>2</sup> In that case, Jason and Trystin Vanderstadt had purchased a home in a subdivision in Pentwater. The Vanderstadts took title to the home in the name of a limited liability company, named the home “Hazelnut Haus” and advertised it as a short-term rental property. According to the Vanderstadts, they bought this particular home, in part, because the subdivision’s restrictive covenants expressly permitted leasing.

The homeowners association objected to the Vanderstadts’ use of the home, taking the position that permissible “leasing” did not include short-term rentals. After the Vanderstadts ignored its demand that they cease and desist, the homeowners association filed a lawsuit asking the trial court to order the Vanderstadts to stop using the home as a short-term rental. The trial court ruled in the Vanderstadts’ favor because the restrictive covenants specifically allowed renting and did not prohibit commercial use. The trial court also found that the lawsuit was frivolous and ordered the homeowners association to pay the Vanderstadts’ attorneys’ fees. The homeowners association filed an appeal with the Michigan Court of Appeals.

The Court of Appeals’ focus was on the following three provisions in the subdivision’s restrictive covenants:

*A. Each lot in the Premises shall be used only for a single family private residence. Only one structure may be used as a dwelling on any such lot, except that additional living quarters, to be occupied only temporarily or seasonally, may be constructed over a garage.*

*No business of any sort, other than home office activities, shall be conducted from or on any lot within the Premises, and no signage advertising any such business shall be placed on a lot.*

*B. A lot owner may lease his/her property to a third party, but he/she has full liability for any breach by the tenant of these covenants.*

The Vanderstadts pointed out that the provision that specifically allowed them to lease the home to third parties contained no restriction on the duration of a lease. The Court of Appeals rejected this argument. The Court pointed out that while the restrictions allow leasing, they also provide that a home can only be used for a “single family private residence” and that “no business of any sort” may be conducted.

As to the “single-family private residence” requirement, the Court focused on the fact that the Vanderstadts’ lease terms allowed a maximum of 16 people which included “spouses, parties, children, family members and other friends.” The Court held that it did not appear that the Vanderstadts’ renters were required to be members

The act of *renting property* to another for short-term use *is a commercial use*, even if the activity is residential in nature



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of a single family and, therefore, the house was not being used as a “single-family private residence.”

The Court found that the Vanderstadts’ use of the property also violated the “no business of any sort” restriction. The Court held that use of the property to provide temporary housing to transient guests was business activity operated for a profit, and therefore not “residential.” (The Court of Appeals did not address the fact that a long-term residential lease also involves activity operated for a profit.) The Michigan Supreme Court denied the Vanderstadts’ request that it review the Court of Appeals’ decision.

A number of Michigan municipalities have applied the same analysis when interpreting their zoning ordinances. In many communities, short-term rentals have been allowed for years. Michigan zoning law “grandfathers” existing uses when a zoning ordinance is changed to prohibit an existing use. Instead of amending

an ordinance to expressly prohibit short-term rentals, many municipalities have instead interpreted their existing ordinances to prohibit short-term rentals in residential zoning districts. If the municipality does not amend its ordinance, then existing short-term rentals are not protected as nonconforming uses. Many Michigan lower courts have accepted this argument, applying the same type of analysis that the Michigan Court of Appeals has applied in cases involving subdivision restrictions. In a number of cases, renting property for short-term use has been deemed to be a commercial use not allowed in a residential zoning district (even if the renters use the property for residential purposes).

The courts of most other states have held to the contrary as to both property restrictions and zoning: They reason is that the fact that the owner may make a profit does not change the residential nature of the activities occurring on the property. In Michigan,

legislation has been introduced in every legislative session since 2016 to prevent local governments from using zoning to prohibit short-term rental in residential zoning districts. Although the unfairness of reinterpreting existing zoning ordinances to prohibit what has long been allowed has helped drive support, none has passed. Associations representing local governments and many legislators who have been local officials resist any limits on local zoning power. Michigan Realtors® has supported balanced legislation, allowing local regulation, but preventing local governments from using zoning to take away basic property rights. ●

<sup>1</sup> *Eager v Peasley*, 322 Mich App 174 (2017)

<sup>2</sup> *Apache Hills Property Owners Ass’n, Inc v Sears Nichols Cottages, LLC*, unreported decision of Michigan Court of Appeals, docket no. 360554 (December 22, 2022)



# Realtors® Drive Their Success at Annual Convention in Detroit

The 2023 Convention, hosted by Michigan Realtors®, was recently held at the Detroit Marriott at the Renaissance Center in late September. Over 900 real estate professionals and affiliates attended the 3-day event filled with knowledge, networking and recognition. Highlights of Day one included:

- *Grand Assembly keynote speaker, Paul Epstein*
- *The swearing in of 2024 Michigan Realtors® President, Sandi Smith of the Ann Arbor Area Board of Realtors®*
- *The announcement of the 2023 Michigan Realtor® of The Year, James Dewling of the Livingston County Association of Realtors®*

Another highlight of Day one was the 2023 RPAC Appreciation Luncheon. The winner of the 2023 Michigan Realtor® Active in Politics award was announced: George Lucas of the Southwestern Michigan Association of Realtors®.

Day two began with the Rise & Refocus Morning Keynote with Jake Thompson. The session included the announcement of the 2023 Michigan Realtor® Good Neighbor, Deanna Coleman of the Southeastern Border Association of Realtors®.

The RPAC LIVE and Silent auctions were once again a crowd favorite in the Expo. Local Realtor® associations from across Michigan generously contributed unique items and gift baskets in

all price points to raise money that will be used to safeguard the real estate industry. Participants were also able to bid on items through a virtual platform all week. The auctions raised over \$36,000!

Day three concluded with the Michigan Realtors® *Within The Law* Legal Team giving an overview of timely topics followed by audience Q&A. “Legal Friday” continues to be one of the most interactive and informative opportunities for attendees. Knowledge session handouts are available by visiting <https://convention.mirealtors.com>.

The Convention is an absolute must for real estate professionals with a dedication to their industry, their career, their business, and themselves. Mark your calendar now for next year’s event!

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**James Dewling**  
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2023 Michigan  
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**ROCKET** Mortgage

## A POWERFUL MORTGAGE PARTNERSHIP.



Our Verified Approval<sup>1</sup> provides you and your client confidence to get to the closing table.



Our wide variety of mortgage options provides flexibility to meet your client's unique needs.



Our dedicated team supports you and your client through the entire financing process.

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<sup>1</sup>Participation in the Verified Approval program is based on an underwriter's comprehensive analysis of your credit, income, employment status, assets and debt. If new information materially changes the underwriting decision resulting in a denial of your credit request, if the loan fails to close for a reason outside of Rocket Mortgage's control, including, but not limited to satisfactory insurance, appraisal and title report/search, or if you no longer want to proceed with the loan, your participation in the program will be discontinued. If your eligibility in the program does not change and your mortgage loan does not close due to a Rocket Mortgage error, you will receive the \$1,000. This offer does not apply to new purchase loans submitted to Rocket Mortgage through a mortgage broker. Rocket Mortgage reserves the right to cancel this offer at any time. Acceptance of this offer constitutes the acceptance of these terms and conditions, which are subject to change at the sole discretion of Rocket Mortgage. Additional conditions or exclusions may apply.

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