

## Help is at your fingertips

Each year, MAR invests six-figure amounts in legal work on behalf of our members, our associations, our industry, and the property rights of our clients. This includes litigation, research, legislative analysis, Legal Lines articles in Michigan REALTOR® magazine the REALTOR®, Advocate newsletter, the Legal Hotline and information available on the MAR Web site. We know legal assistance is a valuable tool we provide our members.

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 related matters. This service is only available to MAR members. This is not a public service. The service is provided through member dues and amounts to \$3 per year per member.

The Legal Hotline number is 800.522.2820.

The MAR Legal Hotline is operated six hours per day (9 a.m. to 3 p.m.), five days a week, Monday through Friday. This makes the MAR Legal Hotline available to members approximately 250 workdays a 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.

With the help of McClelland and Anderson, L.L.P., MAR is pleased to present its members with the most frequently asked questions in 2007. MAR hopes that members will find this information useful and will utilize the Legal Hotline, as well as other legal services MAR provides in the year to come.

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

NO. The nine-day right of rescission under the Condominium Act is only applicable to the initial sale of a condominium unit from the developer to the first buyer, i.e., the sale of a brand new unit. Even with resales, however, buyers should obtain copies of the master deed with the bylaws and site plan attached. In addition, buyers should provide the Association with notice of the pending purchase and obtain a written statement as to outstanding assessments.

**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?**

NO. An agent is not required to disclose this type of occurrence unless the prospective buyer

was to specifically inquire. Section 339.2518(b) of the Michigan Compiled Laws 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.”

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.

**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?**

NO. Rule 315 from the Administrative Rules for Real Estate Brokers and Salespersons forbids this. The rule specifically states the following:

“When buying or acquiring, directly or indirectly, an interest in property, a licensee shall disclose the fact of his or her licensure as a real estate broker, associate broker, or salesperson clearly, in writing, to the owner *before the owner is asked to sign the purchase agreement.*”

Remember also that Rule 317 requires the express written permission of the seller if the buyer/licensee will be collecting a commission on the purchase. The easiest place to obtain this written consent is in the purchase agreement.

**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?**

YES. Rule 315 of the Administrative Rules requires disclosure 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.

**Does the buyer or seller get to choose the title company?**

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 prohibition does apply if a seller requires the buyer to purchase the lender's policy from a particular title company.

**My client recently bought a home and remodeled it significantly. He never lived in the property. Is he exempt from the Seller Disclosure Act?**

NO. Such a circumstance does not fall within the narrow exceptions from the Seller Disclosure Act. The exception in the Seller Disclosure Act for sellers who have never lived in a home states:

Transfers made by a person licensed under article 24 of Act No. 299 of the Public Acts of 1980 (*residential builders*), being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, of *newly constructed residential property that has not been inhabited*.

**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?**

NO. There is no exemption from the licensing requirement for attorneys. The only exemption from the prohibition is contained in MCL 339.2512b which deals with paying existing tenants for the referral of other tenants.

**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?**

NO. The statute of frauds (MCL 566.108) 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.

**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 was dissatisfied with the inspection report he could 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 buyer's deposit. I'm of the opinion that I can release the money to the buyer based upon the clear language of the purchase contract. Am I correct?**

NO. Rule 339.22313(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 seller is 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. **MAR**

**The MAR  
Legal Hotline is  
open 9am–3pm,  
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