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Volume 15 | Number 6

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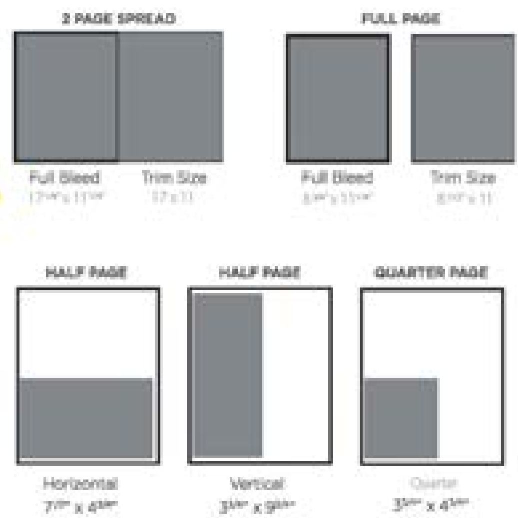

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MICHIGAN REALTOR®

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BY GARY J. REGGISH, CRS, SRF

ReEngagement is a Reality in 2016

As my tenure as Association President draws to a close, I am pleased to reflect upon what a great year it's been for the Michigan Realtors®. We have made some excellent progress this year, not only by introducing new events and programs, but also by improving upon the classics!

A large part of our continued success is owed to the prevalence of volunteering. There is no better way to ReEngage in your communities and with each other than by donating your time to your association. Plant a garden! Clean a park! Volunteering is not only good for your career, but good for your community and your fellow Realtors®.

The Lighter, Quicker, Cheaper program has done an excellent job of facilitating Realtor® community ReEngagement. Placemaking projects are a small and inexpensive way to make a big impact, and they have been implemented all over the state in cities such as Flint, Jackson, Marquette and many more. Michigan Realtors® is offering LQC placemaking grants in 2017, so visit Mirealtors.com for more information if you wish to get involved.

Speaking of ReEngagement, the first ever Michigan Realtors® Leadership Academy has done some great things this year. The goal of the academy is to develop leaders who have demonstrated leadership potential through job-related and community activities, creating a network of industry experts across the state who are actively involved in improving our association and profession. We had an amazing class of 2016 and we look forward to continuing the academy in 2017. See our graduates below.

RPAC participation in Michigan was strong this year, with new initiatives such as "Phone a Friend for RPAC" geared towards ReEngaging members with investing. Major Investor events around the state have been highly successful as well! RPAC continues to be a focal point of many local associations by coordinating fundraising events statewide.

Adding to the success of The Convention, the RPAC Silent and Live Auction was able to bring many investors into the fold. Local Realtor® associations from around Michigan generously contributed items, vouchers, and gift baskets to these exciting events! This year's items included vacation get-away packages, home and office decor, electronics, and other virtual reality headsets. The hard work that local associations put in to this year's auction is truly appreciated. Together with RPAC, our voice is strong on the steps of capitol hill.

I would also like to extend my best wishes to the 2017 officers led by President, Jason Copeman. How exciting for you, being the first president in our association's history from the Upper Peninsula! I hope that your time at the Michigan Realtors® is as exciting and fulfilling as mine has been. I would also like to thank my family for all the support and Michigan Realtors® staff for making ReEngagement a reality. Enjoy the holidays and thank you for the opportunity to serve as your association president.

MICHIGAN REALTORS® LEADERSHIP ACADEMY

CLASS OF 2016

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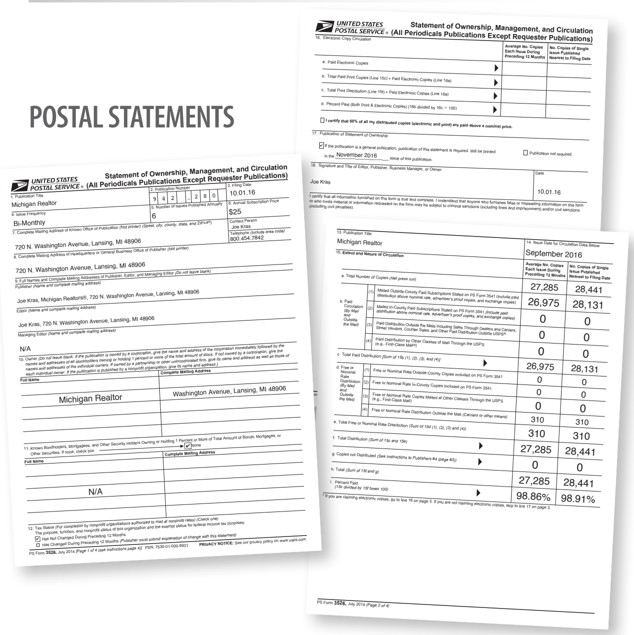

BY BRAD WARD, VICE PRESIDENT
OF PUBLIC POLICY AND LEGAL AFFAIRS

Who you calling "lame?"

I heard your collective sigh at the end of the campaign season. After the November election is the time when we government affairs professionals take a deep breath as the Michigan Legislature enters what is commonly referred to as "lame duck" session. A misnomer to say the least, because lame duck is usually a fast-paced time when stagnant issues can move forward with little notice, or concern of an upcoming election. This is especially true in Michigan because we have term limits. The fact that State Representatives are limited to only 6 years in the House means that approximately 1/3 of the 109 members currently serving, will no longer be in office come January.

The good news for you is that your Michigan Realtors® Public Policy staff is putting in the long hours along with the legislature to make sure that we're protected from any harmful legislation. Lame duck is also a time when hard work and lobbying efforts throughout the legislative session pay off. The following is a list of pro-Realtor® legislation that is most likely to find its way to the Governor's desk before the end of the year.

REAL ESTATE LICENSING CHANGES - SENATE BILL 26

This bill has been a lot of things over the last several months as Michigan Realtors® continues to work with the Department of Licensing and Regulatory Affairs (LARA) on improvements to our licensing law to protect both the public and real estate licensees. This bill creates a number of efficiencies and safeguards from something as small as allowing the department to communicate with licensees through e-mail, to codifying advertising and branch office rules.

The Michigan Realtors® Public Policy Committee pushed to protect licensees from new changes in the market that have limited the ability to comply with the law. One of the biggest changes is to the requirement that under Rule 311 a broker must review, approve and provide a complete and detailed closing statement to the buyer and seller. Many brokers have found it difficult to comply with this provision since regulations from the Consumer Financial Protection Bureau (CFPB) have prompted a number of lenders to withhold information on the buyer's side of the transaction from sellers and their agents. The changes in Senate Bill 26 would waive this requirement if the closing is conducted by a title company.

This bill is a top priority for the association and is teed up to pass through both the Senate and the House before the end of the year.

DOWER RIGHTS - SENATE BILLS 558-559 AND HOUSE BILL 5520

After the United States Supreme Court-legalized same-sex marriage, Michigan's Dower Rights statute came under scrutiny by outside groups and the legislature. The *Obergefell v. Hodges* decision did more than just legalize same-sex marriage, it also called into question the constitutionality of all gender-based laws. Since Michigan's Dower is one-sided and limited to the "wife," the preferred approach by the legislature and stakeholder groups like Michigan Realtors was to pursue elimination of Michigan's arguably unconstitutional approach to Dower.

This package of bills is split between the House and Senate, but each has a fair amount of support making their pathway to law fairly certain. This change should also provide needed clarity with regard to the treatment of Dower in real estate transactions involving a same-sex couple.

DARK STORES - HOUSE BILL 5578

This bill is probably more accurately described as valuation guidance for the Michigan Tax Tribunal. For those of you unfamiliar with the dark store issue, it is a theory where big box retailers have challenged their property tax assessments using comparable sales of "dark," heavily deed-restricted stores, that in some cases are not truly comparable.

This bill originated out of work group discussions on the issue and is specifically aimed at providing the Michigan Tax Tribunal with a road map of sound real estate appraisal principals to determine truly comparable sales. The unique approach is significantly different from previous legislation aimed at this practice because it seeks to provide a fair and equal valuation process to all properties that come before the tax tribunal; it's not a money grab for local governments, and it does not codify the "dark store" theory at the expense of other tax payers.

The bill passed the House by a vote of 97-11 and is currently in the Senate Finance Committee. Michigan Realtors® staff continues to meet with Senators to express our support for the bill. This bill often gets lumped

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in with the past versions of "Dark Store" legislation, so it is important to clear up a lot of misinformation about the bill. The fate of HB 5578 is a little less clear than others on this list, but as I said before, it's lame duck.

TRANSFORMATIONAL BROWNFIELDS - SENATE BILLS 1061-1065

Michigan law currently contains a handful of tax incentive programs to lower the cost of redeveloping in the state's urban cores. These “tax increment financing” (TIF) programs allow a developer to bridge the gap between the required financing of a project and the market rate for rent in the area. A developer can then use the creation of the TIF district in applying for financing to get the project off of the ground because it's always cheaper to build in a green space. The number of these programs is fewer since Governor Snyder took office and created the Michigan Corporate Income Tax, favoring a low rate for all business taxpayers instead of tax credits to individual projects.

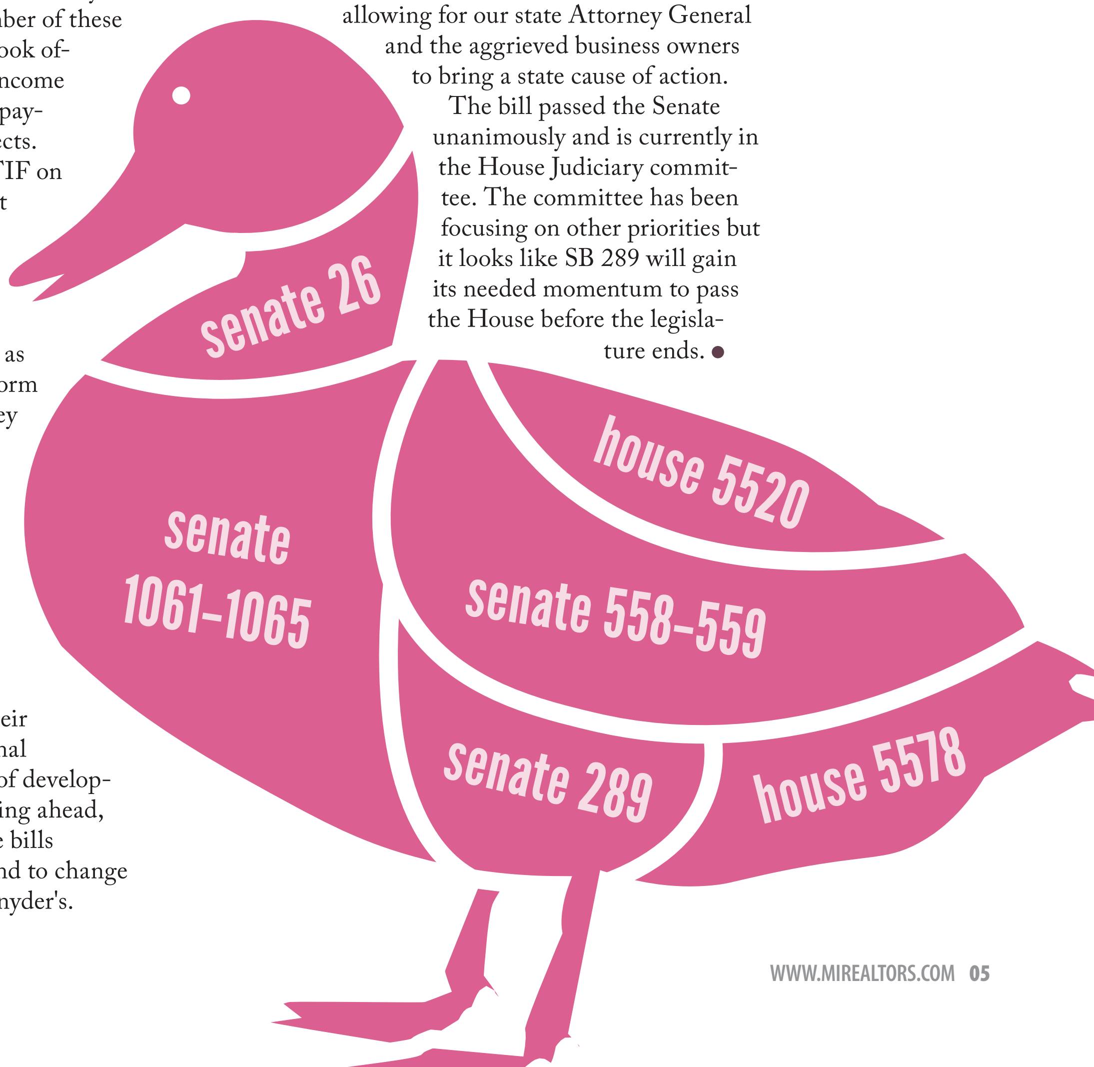
This new set of bills would work like a TIF on steroids. The tax credits that currently exist are useful for smaller projects, but there is nothing in current law to provide a similar mechanism to finance large-scale "transformational" projects. The bill defines these transformational projects as mixed-use developments that would transform a community based on the amount of money invested. The credit would be available in municipalities across the state with the investment level determined by population. The Michigan Strategic Fund board would have the ability to approve up to 5 projects a year based on these criteria.

Michigan Realtors® is supportive of these bills that just recently pass the Senate Economic Development Committee. The stakeholder group working towards their passage includes the Michigan and a regional chambers of commerce and a wide variety of developers with large scale projects in mind. Looking ahead, there will be a lot of work done to get these bills through the legislature, but the biggest mind to change on the TIF philosophy will be Governor Snyder's.

PATENT TROLLS - SENATE BILL 289

Realtors® and other business professionals around the country have increasingly found themselves subject to demand letters from entities seeking quick monetary settlements based on broad patent infringement claims. These letters typically site a program or a process being used on the Realtor®'s website, for example mapping a location of a property. While patent infringement is a serious issue, there are a number of bad actors out there making fraudulent or non-specific claims in search of a business owner that will pay them to go away, rather than litigate. The National Association of Realtors® has battled these claims nationwide and is also seeking similar patent litigation reforms at the federal level. This bill would put Michigan in line with several other states in allowing for our state Attorney General and the aggrieved business owners to bring a state cause of action.

The bill passed the Senate unanimously and is currently in the House Judiciary committee. The committee has been focusing on other priorities but it looks like SB 289 will gain its needed momentum to pass the House before the legislature ends. ●



Engagement Counts at THE CONVENTION

The Convention, held at the Soaring Eagle Casino & Resort in Mt. Pleasant on October 5th through the 7th, drew over 1,100 real estate professionals (175 first time attendees) and was an engaging event. Here are some of the many highlights.

The Convention not only offered attendees the perfect forum to engage with and learn from their peers, but also provided them with the opportunity to attend CE Marketplace certified knowledge sessions conducted by some of the best and brightest experts in the real estate industry and their respective fields. The subjects and sessions ran the gamut of critical subjects for Realtors®, encompassing technology, marketing, sales, legal issues and much more.

Kicking off The Convention, as the Grand Assembly Keynote Speaker was Greg Schwem. The Chicago Tribune recently proclaimed Greg Schwem "king of the hill in the growing world of corporate comedy." His comedic take on the 21st century workplace and work/life balance has landed him on XM/Sirius Radio, FOX News, Comedy Central and the pages of Parents Magazine. Other important highlights of the Grand Assembly included the graduation ceremony of the Michigan Realtors® Leadership Academy Class of 2016 and Jason Copeman being installed as 2017 President of the Michigan Realtors®. Jason is the first ever association president from the Upper Peninsula, having served many leadership roles at the Upper Peninsula Association of Realtors®.

Thursday during the Grand Gathering, Paul Bishop, the Vice President of Research at the National Association of Realtors®, gave an economic forecast for 2017. Dr. Bishop participates in the Harvard Industrial Economists Roundtable and has served on the editorial board of the Journal of Housing Research. He is also a contributor to the McKinsey Quarterly Online Executive Panel.

On Thursday, the Broker Idea Exchange invited brokers from across the state to participate in a group think tank on issues impacting the industry. Special guests included Mark Allen from Realtor.com and a leadership behaviors panel moderated by Jack O'Connor of the Denver 100. This was an invitation-only event, as the Michigan Realtors® continues to provide programs valuable to brokers.

In addition to providing a forum for Realtor® interaction and education, The Convention provides a platform for the recognition of individuals who have demonstrated outstanding performance in the real estate industry.

Beth Foley of the West Michigan Lakeshore Association of Realtors® was awarded the 2016 Realtor® Active in Politics Award. The RAP Award recognizes a Realtor® who serves their profession, association and community through political involvement. Beth is a past president of the Michigan Realtors® and serves as a federal political coordinator for Bill Huizenga in congressional district 2. She is an associate broker with Summit Properties in Holland, Michigan and has been practicing real estate since 1986.

The 2016 State Realtor® of the Year award went to Gene Szpeinski of the Grand Rapids Association of Realtors®. The ROTY Award is the highest honor bestowed upon a Michigan Realtor®. It stands for integrity, leadership and service to

the general public. Gene is also a past president of the Michigan Realtors®, is a broker at Keller Williams in Grand Rapids and has been practicing real estate since 1986.

As is normally the case, the Trade/Expo was once again sold out. Over 80 exhibitors attended, ranging from insurance companies, financial institutions, utilities, marketing and collateral services, technology and state agencies.

The RPAC Appreciation Breakfast featured speaker was Lansing Capitol Correspondent, Tim Skubick. Mr. Skubick spoke on the presidential election and the importance of knowing your local elected officials. Unannounced special guest, Attorney General of Michigan, Bill Schuette, also surprised attendees. This was an invitation only breakfast to RPAC investors of $200 or more.

Once again, Convention attendees promoted the real estate community by supporting RPAC during both the live and silent auctions. Bidders had their choice of a number of different items in all price points, including a Disney vacation getaway, propane fire pit and a virtual reality head set. In total, a record of over $22,000 was made with both the RPAC Live and Silent Auction combined!

Wrapping up The Convention and presenting the Closing Keynote was professional speaker Terry Watson. Watson posed the question, why be normal in today's business and day-to-day culture. Terry Watson is the "AHA guy," who makes people, companies and organizations large and small aware of the conscious and unconscious ways they sabotage their businesses and their lives.

The Michigan Realtors® want to thank all of the exhibitors, sponsors and attendees for their support… and mark your calendars for next year as the engagement continues in Grand Rapids for The Convention taking place September 27-29, 2017. •

"...subjects and sessions ran the gamut of critical subjects for Realtors®, encompassing **technology**, **marketing**, **sales**, **legal issues** and **much more**."

MICHIGAN REALTORS®

THE CONVENTION

Soaring Eagle Casino & Resort, Mt. Pleasant • Oct. 5-7, 2016

Engagement Counts

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{WIRE FRAUD}

it can happen to YOUR CLIENT

BY GREGORY L. MCCLELLAND, ESQ.,
LEGAL COUNSEL, MCCLELLAND & ANDERSON, LLP

For at least a year, NAR has been warning Realtors® to beware of wire fraud schemes perpetrated as part of a typical closing on a single-family residence. Unfortunately, the incidents of wire fraud appear to continue to be on the rise. While it is often said that any computer system can be hacked, there are certain basic steps that Realtors® can take to help fend off wire fraudsters.

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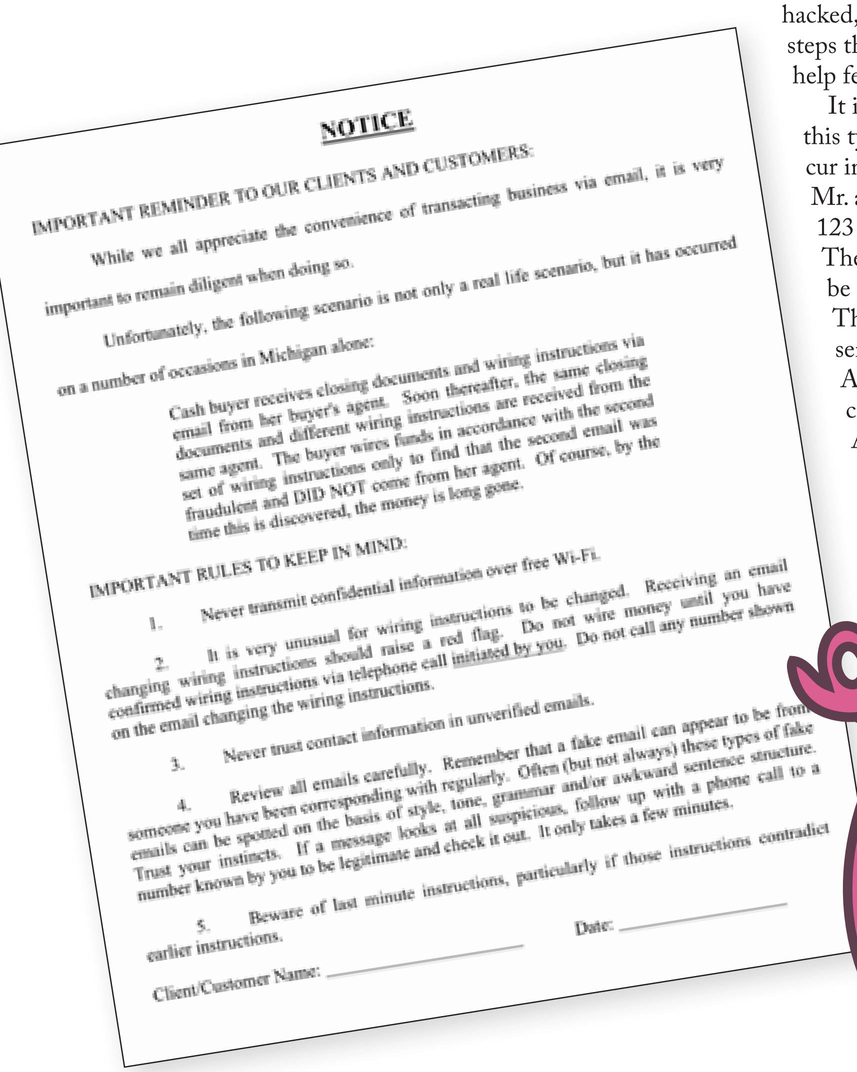
It is easiest to describe how this type of wire fraud can occur in a form of a hypothetical. Mr. and Mrs. Smith are buying 123 Elm Street for $250,000. The Smiths are fortunate to be in the position to pay cash. The Smiths have been represented by Realtor® Jones of Acme Realty throughout the course of the transaction. As the closing approaches, Realtor® Jones works with Ace Title Agency to get the proper documentation in place for the Smiths' wire transfer of $250,000 to Ace Title Agency at closing. Ace Title Agency emails wire instructions to Realtor® Jones who in turn, emails the wire instructions to the Smiths.

Low and behold, on the day before closing, the Smiths receive an email purporting to be from Ace Title Agency advising them that there has been a change. Instead of wiring the funds to Red Bank in Grand Rapids, Michigan; they are to wire the funds to Blue Bank in Naples, Florida. The next day the Smiths dutifully wire the funds to Blue Bank in Naples, Florida. It is only later in the day when the funds do not arrive at Red Bank that Ace Title Agency, Realtor® Jones and the Smiths learn of the fraudulent email. When the parties immediately contact Blue Bank, they discover that, while the funds were indeed received by Blue Bank, they are no longer there.

In this hypothetical, it is apparent that the email system of Ace Title Agency, Acme Realty or the Smiths has been hacked. The wire fraudster was able to obtain sufficient personal information about the Smiths and the



NOTICE

IMPORTANT REMINDER TO OUR CLIENTS AND CUSTOMERS:

While we all appreciate the convenience of transacting business via email, it is very important to remain diligent when doing so.

Unfortunately, the following scenario is not only a real life scenario, but it has occurred on a number of occasions in Michigan alone:

Cash buyer receives closing documents and wiring instructions via email from her buyer's agent. Soon thereafter, the same closing documents and different wiring instructions are received from the same agent. The buyer wires funds in accordance with the second set of wiring instructions only to find that the second email was fraudulent and DID NOT come from her agent. Of course, by the time this is discovered, the money is long gone.

IMPORTANT RULES TO KEEP IN MIND:

1. Never transmit confidential information over free Wi-Fi.

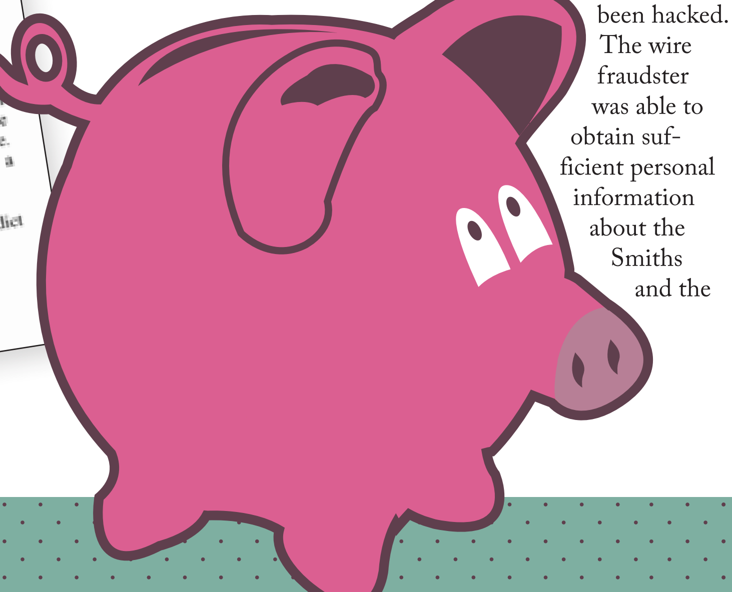
2. It is very unusual for wiring instructions to be changed. Receiving an email changing wiring instructions should raise a red flag. Do not wire money until you have confirmed wiring instructions via telephone call initiated by you. Do not call any number shown on the email changing the wiring instructions.

3. Never trust contact information in unverified emails.

4. Review all emails carefully. Remember that a fake email can appear to be from someone you have been corresponding with regularly. Often (but not always) these types of fake emails can be spotted on the basis of style, tone, grammar and/or awkward sentence structure. Trust your instincts. If a message looks at all suspicious, follow up with a phone call to a number known by you to be legitimate and check it out. It only takes a few minutes.

5. Beware of last minute instructions, particularly if those instructions contradict earlier instructions.

Client/Customer Name: ____________ Date: ____________



transaction to compose an email to the Smiths convincing them that the email was from Ace Title Agency.

There are technology experts available to Realtors® who can implement safeguards to protect their systems from electronic hacking. In addition, there are a number of practical steps that Realtors® can take to attempt to head-off this type of wire fraud.

First, each Realtor® firm or title agency should make certain that every agent and employee in their firm is aware of this type of scam. Distribution of a copy of this article or a similar article at a firm meeting would be a good starting place.

Second, Realtors®, particularly when representing cash buyers, should make their clients aware of this type of scam. Realtors® should consider providing some type of advisory notice to their clients, such as the notice which is part of this article.

Third, Realtors® should keep in mind that the best way to avoid having any information hacked from their system is to not have it on their system in the first place. In other words, in the hypothetical, if the wire instructions had not been sent from Ace Title Agency to Realtor® Jones to the Smiths and back, but instead had been exchanged directly between Ace Title Agency and the Smiths, there would be no possibility that the information was hacked from Realtor® Jones' system. The bottom line is if Realtors® do not need personal, identifying information such as wire instructions in order to carry out their role in a transaction, they should not collect it. A Realtor® making sure that the transaction is moving forward smoothly can verify that wire instructions have been provided to the buyer and that the buyer is in a position to carry them out without the Realtor® actually having to see the instructions.

Fourth, if a Realtor® must collect information electronically which can personally identify a client, the Realtor® should only keep it on his or her system as long as necessary. If there is no longer a need for the information, it should be disposed of in a way where it is actually deleted from the system. Technical advice may be necessary to make certain the information is truly gone.

Finally, everyone within a Realtor® firm should know the drill if they become aware that money has been wired based on false wiring instructions. Any bank or financial institution that could possibly put a stop to the wire should immediately be notified. Further, the crime should be reported to the local police and the FBI through the Internet Crime Complaint Center. Finally, the local association, Michigan Realtors® and NAR should be contacted so that the associations can send out alerts, if appropriate.

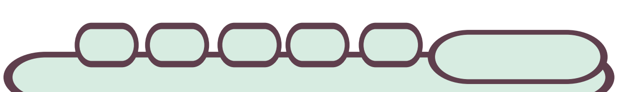
Realtors® have inquired as to whether there are any federal or state laws which require them to take certain steps or implement certain security measures to help prevent wire fraud. Currently, there are no federal laws regarding data privacy that specifically apply to real estate associations or brokerages. Realtors® should be aware that the FTC takes the position that the failure of a business to maintain reasonable and appropriate data security may constitute an "unfair and deceptive trade practice," in violation of the Federal Trade Commission Act. In pursuing such a claim against the Wynham hotel chain in federal court, the FTC focused on the following behavior on the part of the hotel chain:

- **Stored credit card information in clearly readable text**
- **Used easily guessed passwords**
- **Failed to use firewalls**
- **Did not restrict employee access to information**
- **Did not set up any monitoring**
- **Falsely advised guests that they were using "industry standard practices" to safeguard personal information**

There are 29 states, including Michigan, that have laws that cover the disposal of personal data held by businesses. Michigan law requires that data be destroyed by "shredding, erasing, or otherwise modifying the data so that they cannot be read, deciphered, or reconstructed through generally available means." Further, 46 states, including Michigan, have laws requiring notification of victims of security breaches involving personal information. Michigan also has a "social security number privacy act," that requires businesses who obtain social security numbers in the ordinary course of business to enact a privacy policy to protect that information.

We are aware of no reported cases where a buyer has sued a Realtor® or a title company for the loss of a buyer's funds claiming the Realtor® and/or the title company were negligent or breached their fiduciary duty by failing to implement safeguards which allowed the system to be hacked or warn the buyer about the dangers of hacking. It is reported that cyber insurance is available, but NAR advises Realtors® to use caution when purchasing this insurance.

In summary, while wire fraud is not a daily event, it is usually catastrophic when it happens. A buyer may never recover his or her funds. While Realtors® should not undertake to be the guardians of their clients' funds or undertake a duty to safeguard their buyers' funds or information, they should take *reasonable* steps to protect their clients' interests.



*NINJA*NOMICS – Creating the Value Driven Organization

Focus on the investments that give you the greatest return.

BY LARRY KENDALL, AUTHOR OF *NINJA SELLING* AND CHAIRMAN OF THE GROUP, INC.

"Our true worth is determined by how much more we give in value than we receive in payment." This is the Law of Value from Bob Burg and John David Mann's book *The Go-Giver,* and it serves us well whether we are an owner, manager or sales associate.

OWNERS

As an owner, adopt the mindset of what we call *Ninjanomics*. There are four rules:

1. **There are no expenses.**
2. **There are only investments.**
3. **Every investment must have a return on investment.**
4. **Focus on the investments that give the greatest return on investment.**

Don't look at your employees, marketing or facilities as expenses. Instead, look at them as investments and expect a return on those investments. Invest in them and expect a return. If you aren't getting a return, they are expenses, and there should be no expenses, only investments.

MANAGERS

As a manager, adopt the *Ninjanomics* mindset, as well. Your owner is investing in you, and you need to provide a return on that investment. It is how you make yourself valuable to the organization.

Are you generating more gross commission income (GCI) in the form of referrals, builder accounts or relocation accounts than your salary? How about recruiting? Are you recruiting more GCI each year than your salary? How about coaching your sales associates to higher levels of productivity? Your true worth is determined by how much more you create in value than you receive in payment.

In recruiting, sales associates are attracted by value. Can you articulate your value proposition? Typically, they value and are willing to pay money for two things: to solve a problem (pain); and to feel good (pleasure). Two great questions to discover their pain and pleasure are:

1. **"What is your greatest challenge in your business right now?" (Solve their pain.)**
2. **"If you could wave a magic wand and have your business just the way you want it, what would that look like?" (Help them achieve their goal—pleasure.)**

SALES ASSOCIATES

Unfortunately, there's a group of customers who do not care about value. About 15 percent of the U.S. population make all buying decisions based on lowest price—period! They don't care about value. As a sales associate, we recommend you let this group work with someone else. These customers tend to be grinders and will steal your time and energy as they try to squeeze every drop of money out of you and the transaction.

Instead, focus your attention and marketing on the other 85 percent who value what you bring to the game. Learn to articulate your value proposition in just a few words. How do you create more in value for your customers than they are paying you?

In my experience, most sales associates need help in this area. You bring tremendous value, but you may not necessarily know how to articulate your value to a customer—specifically to a seller who asks you to discount your fee.

When everyone (owners, managers, sales associates, and staff) have the value creation mindset and actions, your organization will attract and keep the best talent, the best customers, and be highly profitable as well. You have created a value driven organization. ●

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> Don't look at your employees, marketing or facilities as expenses. Instead, **LOOK AT THEM AS INVESTMENTS**. . .

Linking Market Analysis to HBU to Sales Approach

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

In my last article, I addressed the connection between performing a proper market analysis and how it is useful in developing a property's highest and best use and applying it to valuation approaches. I received several calls and emails from appraisers wanting a little narrower perspective using a specific example. I believe studying an example involving a property's legal influence will be helpful in showing the natural synergy between an appraiser's observation within its market analysis, the application in highest and best use analysis and the contribution or detraction recognized in its sales comparison approach.

Market Analysis Observation

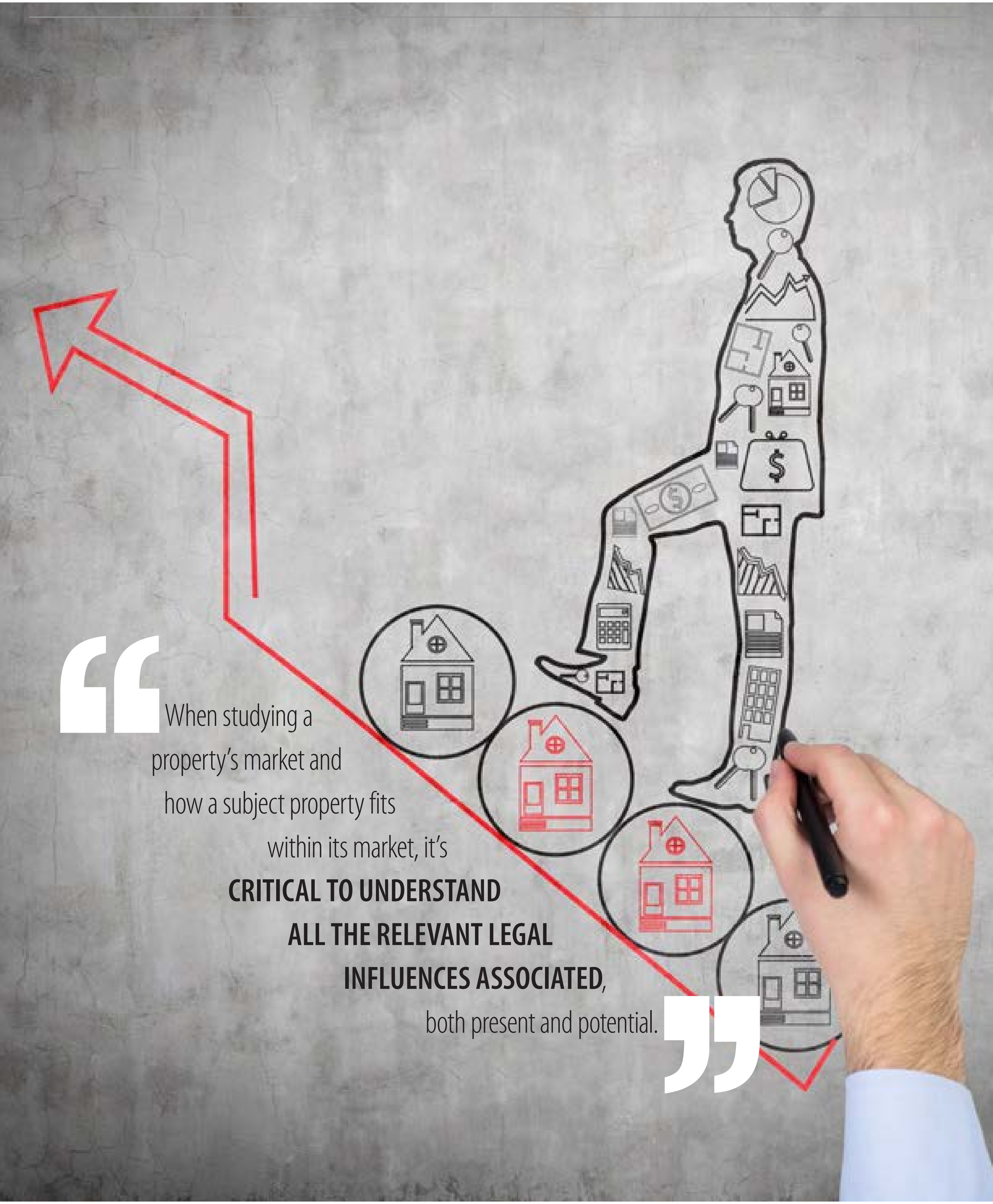
When studying a property's market and how a subject property fits within its market, it's critical to understand all the relevant legal influences associated, both present and potential. Potential influences include those that may reasonably be changed. This includes private restrictions, zoning, building codes, historic district controls and environmental regulations that may preclude potential uses of the property. Although public restrictions are often easily available from the local municipality, they require much more investigation and include a good faith communication with the current owner(s) of property.

Private restrictions, deed restrictions and long-term leases may prohibit certain uses of a property, as well as specific continuing uses of a property. An appraiser must NEVER assume a property may be continued in its original intended use as constructed or present. This could be ill fated, as a deed restriction limiting a property's ability to satisfy the full fee simple interests' bundle of sticks may drastically limit its use, and therefore marketability and value.

In *Market Analysis for Real Estate*[i], Mr. Fanning provides a case study involving a shopping center. He identifies his second step as *Analyze the Legal Constraints and Opportunities of the Subject Property*.[ii] He states long-term leases may be detrimental to the marketability and value of a property as well as zoning restrictions.

Take, for example, a parcel of land located within an established single-family residential neighborhood. Based on observations of the properties and area the homes are well maintained, there is a pride in ownership resulting from the quiet enjoyment of the properties, and buyers, sellers, and area owners recognize this as a sound single-family residential neighborhood and market.

Buyers who have built or bought in the neighborhood have done so because of the neighborhood's reputation and services present as single-family residential amenities. Location, location, location holds a strong premise when studying a property's market. Now assume an owner has decided to sell its home. Not because the owner has to sell, but because he/she has decided to move into a newer area. In a typical scenario, the owner would hire a local Realtor® to perform a market analysis comparing the owner's home, as held in fee simple estate, to other homes of similar fee simple interests which have sold, are listed or been on the market but withdrawn for some reason or another. Often, if the home is very unique, the owner will also hire an appraiser who, similar to the sales agent, will



When studying a property's market and how a subject property fits within its market, it's **CRITICAL TO UNDERSTAND ALL THE RELEVANT LEGAL INFLUENCES ASSOCIATED**, both present and potential.

investigate the market for sales, listings and properties that had been marketed but did not sell. This due diligence is part of many definitions of market value, whereas the buyer and seller are well-informed or well-advised and each acting in their own best interests. The home is then listed for sale, buyers are brought together with the seller and a meeting of the minds is established in which the buyer gets the most the market will bear while the seller is paying the least the market will allow. It's a balance between most and least which reflects most probable price.

Realtors® and appraisers should not assume that all properties are sold with the full bundle of sticks of fee simple interest as many fee simple interests are limited by the owners of the property at their time of sale. I've seen properties deed restricted due to sentimental significance, such as any future owner must maintain a small pet cemetery, as in the case of the City of Auburn Hills property. I've seen properties deed restricted where the exterior must be maintained within a certain historic design and finish, as in the case of historical property deeds. And, I've seen functional properties such as large single-occupant retail properties restricted on continuing their original intended and present use because the company opens a new store in a nearby area and the restriction is intended to limit competition.

Not all private restrictions affect marketability and value, such as a restriction that an owner is prohibited from having a basketball hoop on the side of a house, but these have to be studied before that determination is made.

Let's assume now that our single-family home the owner (seller) has decided to privately deed restrict the house and only allow it to be used for 2 to 4 family use, as permitted by zoning, but different than its current single-family use.

HIGHEST AND BEST USE AFFECT

As addressed in earlier articles, when a property is improved, highest and best use involves the following three examinations:

Study 1. Examine the property as vacant and ready to be put to its highest and best use

Study 2. Examine the ideal improvement to construct on the site

Study 3. Examine the property as presently improved

Study 2 is often overlooked but extremely critical to an appraiser's study. When the highest and best use as vacant is concluded to improve the site, the appraiser must develop an opinion of an ideal improvement for the site. The ideal improvement might be as general as a large single-occupant retail building (i.e., just a big box building) having 80,000 to 120,000 square feet. Or, the ideal improvement may be more specifically identified such as a 2,000 to 3,000 square foot single-family home having 4 bedrooms, 2½ bathrooms, full basement and an attached 3-car garage. By comparing the property's ideal improvement with its present improvements, the appraiser is able to recognize potential types of obsolescence.

The steps involved in studying a property as vacant and as improved include:

1. **Testing its legal permissible use(s)**
2. **Testing its physical possible use(s)**
3. **Testing its financial feasible use(s)**
4. **Determining this maximally productive use**

The above four steps are performed in sequential order, with the last two steps always requiring financial feasibility testing. Then, the final step is determining the subject property's maximally productive use. However, because the goal of highest and best use is to narrow a range of potential, or alternative, uses into a single highest and best use of the subject property, the appraiser tries to eliminate the most potential uses as fast as possible. So in this regard, Steps 1 and 2 are done in order, which helps to accomplish this goal. If performing an opinion of legal permissibility will eliminate the most alternative uses, then it is performed first.

Let's look at studying a property's legal permissibility by going back to my earlier example of the single-family home in which the owner has put a self-imposed deed restriction on the property prohibiting continuing existing use. Assume the test of legal permissibility would narrow the appraiser's choices to 2- to 4-family use. When the appraiser then moves onto determining the property's ideal improvement, as a 2- to 4-family home, the financial feasibility analysis would demonstrate large requirements of investment capital to convert the existing structure into a 2- to 4-family home. Sometimes these costs may be so extreme that the property will set idle on the market for long periods of time. Private deed restrictions are critical to study and understand as a part of testing a property's legal permissibility.

APPLICATION TO SALES APPROACH

Let's carry forward our example of the home with the owner-imposed deed restriction limiting the house to 2- to 4-family use. When researching sales, this may be near impossible if the neighborhood is still functional and well regarded with its original amenities. An appraiser would have to find other properties that have sold with similar deed restrictions. When impossible, or use prohibits the sales approach in providing a credible result, the appraiser must look to either the cost or income approach. The income approach will apparently have similar shortcomings so the most likely approach to value in this case is the cost approach, with estimates made for some depreciation and obsolescence.

If the subject market has changed and neighborhood is in the transition of single-family homes being voluntarily changed into 2- to 4-family homes, then the privately imposed deed restriction, although binding, may be a moot restriction, as its highest and best use may have been properly determined as such. If the market is still a well-established single-family market area, then the self-imposed restriction could easily damage the marketability and the value of the subject property. Its market value as limited could require the property go back to its raw dirt state until an alternative use warrants improvement, which could easily take 20 to 25 years. I've personally seen many restrictive use deeds span out 2 to 3 decades depending on the intention of the parties who put in place.

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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.

CONCLUSION

Although this article is limited in scope and depth, I would like to offer the following caveats to the Realtors® and appraisers reading it.

1. **Understand what you are valuing, physically, legally and economically.**
2. **Don't assume. Have some basis for your assumptions of what exists, ask for deeds or other documents to establish what you are being told.**
3. **Don't compare an apple to a banana crème pie. If a property has private restrictions that prohibit continued use then examine the reason, why and find the valuation approach which best will reflect its fair market value.**
4. **We're all in this profession together. Develop friendships with other professionals, including assessing officers. We're all just trying to provide the best service to our clients and customers as we can.**

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[i] Fanning, Stephen K., 2014, Market Analysis for Real Estate, 2nd ed., Chicago: Appraisal Institute.

[ii] Ibid., p. 252

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