

A publication of Michigan Realtors®

MICHIGANREALTOR®



RECRUITMENT & *Retention*

PLUS: Capital Report **Handling Stale Claims** President's Report

Traditional vs Designated
Agencies





LEADERSHIP...



...it's more than what we do,
it's who we are!

From Top Left: Erika Boss Barrett, Membership Committee, Women's Council of Realtors Birmingham Bloomfield Network | Pam Bartling, Recording Secretary, Women's Council of Realtors, State Chapter and President, Women's Council of Realtors 275 | Mike Bowler, Director, Greater Lansing Board of Realtors and for CRB | Kevin Brown, Director, Montcalm County Association of Realtors | Maureen Francis, District 9 Director, Michigan Realtors | Karen Greenwood, President, GMAR | Cindy Hannah, Vice President of Membership Women's Council of Realtors Birmingham Bloomfield Network | Tracey Henny, President, Women's Council of Realtors Lansing | Elinor Holbrook, Enhancement Committee, Greater Lansing Board of Realtors | Pete Holoway, Chair of Public Policy and Leadership Development, Greater Lansing Board of Realtors and Co-Chair, MAR Convention Task Force | Cathy Hoppough, Secretary, Grand Rapids Association of Realtors | Jamie Iodice, District 11 Director, Michigan Realtors | Lori Jaglois, President Elect, Grosse Pointe Board of Realtors | Michael Keven, Broker Advisory Committee, Greater Lansing Board of Realtors | Shana Maitland, President, Women's Council of Realtors 275 | Erica McAvoy, Director, Greater Lansing Board of Realtors | Alex Mistekeyn, NAR Director, Medium Board | Dawn Phillips, Director, Montcalm County Association of Realtors | Patty Roberge, Membership Committee, Women's Council of Realtors Birmingham Bloomfield Network | Jason Seaver, Government Affairs Committee Member, GMAR | George Smale, Director, Grosse Pointe Board of Realtors | Kellie Smith, VP of Membership and President Elect, Women's Council of Realtors 275 | Casey Swindell, Secretary, Montcalm County Association of Realtors | Jeff Thornton, MLS Chair, Greater Lansing Board of Realtors | Chris VanBelle, Recording Secretary, Women's Council of Realtors Lake Pointe



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{ JANUARY | TWO THOUSAND & SEVENTEEN | VOLUME SIXTEEN | NUMBER ONE }



Visions for the Year Ahead

Well, the holidays have passed and the New Year has begun. This is often the time of year for resolutions and setting goals...contemplating ways to make the coming year better or more fulfilling. As your Michigan Realtors® 2017 President, I have a goal of leading our organization into the future with sights set on higher levels of participation. This can be through involvement in leadership at the local, state, and national levels, higher numbers in our very important "calls to action," more members contributing to the ever-growing need for critical RPAC funding or even someone bringing along a first time attendee to conference. There are many avenues from which to inspire increased participation. What is your resolution or goal for the New Year? Something worthy of considering is a commitment to volunteerism; an objective that is easy to obtain as well beneficial to both you and the community at large.

Congratulations to those Realtors® who've been so impressively committed to volunteering this past year and in prior years. Your dedication to our local, state, and national associations is invaluable. I personally consider volunteers to be the root of our strength as an association. Congratulations to those just beginning their journey as well. We're always looking for ways to encourage involvement, and our organization and state can only benefit from your

contributions. If you're having difficulty finding a good place to start, there are a variety of opportunities and resources available for your use at www.mirealtors.com.

While you're there, make sure to check out Achieve, the Michigan Realtors® premiere leadership event. This year Achieve will take place on February 15-16, 2017 at the MotorCity Casino Hotel in Detroit. Realtors® at all levels of involvement; industry leaders, committee members, association executives and those just preparing to start their journey, will come together to network and mingle with the best in real estate. Embrace the opportunity to sharpen your leadership skills with various CE Marketplace certified knowledge sessions and inspiring speakers. We will also be celebrating newly-elected Michigan Realtors® officers and directors as they enter their leadership roles within the association. Online registration for Achieve is open and I look forward to seeing you there.

2017 is your year to reach your goals, both personally and professionally. Whether it's reading more books, selling more houses, or just spending more time with those important to you, no amount of work is too much work when it comes to bettering your life. Also, don't forget the importance of balance! I'm excited to embark on this journey with you all as your President, and I look forward to helping Michigan Realtors® reach its full potential as an organization. Thank you. ●



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Michigan REALTOR® (ISSN 1053-4598, USPS 942-280) is published six times per year (January, March, May, August, September, November) by the Michigan Realtors®, 720 N. Washington Ave., Lansing, MI 48906.

Address letters, address changes and inquiries to: Michigan REALTOR®, 720 N. Washington Ave., Lansing, MI 48906: 800.454.7842: Fax 517.334.5568. www.mirealtors.com: e-mail contact@mirealtors.com. Subscription rates: \$8 per year (included in dues) for members, \$25/year nonmembers. Periodicals postage-paid in Lansing, Michigan 48924 and additional mailing offices. POSTMASTER: Send address changes to the Michigan REALTOR®, 720 N. Washington Ave., Lansing, MI 48906

COMING EVENTS

February 15-16, 2017

Achieve

MotorCity Casino Hotel, Detroit

April 20, 2017

Broker Summit

Somerset Inn, Troy

September 27-29, 2017

The Convention

Amway Grand Plaza Hotel & DeVos Place, Grand Rapids

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Changes to 2016/2017

Nondeductible Dues Language

2016 Nondeductible Dues

In compliance with the Tax Reform Act of 1993, each year the Michigan Realtors® discloses to members, the estimated amount of their dues used for lobbying activities. This amount is not deductible as a business expense for income tax purposes. Initially, the Michigan Realtors® estimated \$20 of your 2016 dues were nondeductible for lobbying activities. Upon clarification on how the IRS categorizes lobbying expenditures, the Michigan Realtors® calculates that 100% of your 2016 membership dues and assessments are now deductible for business purposes. While the Michigan Realtors® is not spending less on advocacy and lobbying activities, we've receive clarification from the IRS on how activities between related entities (Issues Mobilization Fund, RPAC, MARPAC) are categorized and therefore have determined that 100% of your Michigan Realtors® 2016 member dues and assessments are deductible business activities. The nondeductible portion of members' NAR dues can be found on www.realtor.org.

2017 Nondeductible Dues

The Michigan Realtors® estimates that 100% of your 2017 dues are deductible for business purposes. The deductible portion of your NAR dues can be found on www.realtor.org. In compliance with the Tax Reform Act of 1993, the portion of your dues and assessments spent on lobbying activities is disclosed annually and the estimated portion of your dues allocated to lobbying activities is not deductible as a business expense for income tax purposes.



A Resolution of Sorts

This is the time of year that many discuss their New Year's resolutions. No matter the substance of your resolution, making a resolution signals the beginning of something new. It's a clean slate from which to build new routines, new habits and letting new people and experiences into our lives. Every two years, Michigan's state government has a similar fresh start when the newly elected legislators take their oath of office in Lansing. It too is a time of letting go of the old ideas and routines and making way for new people and ideas to help move the state forward.

Michigan's term limit system has cemented this changeover in state government for years to come. Under the current law, members of Michigan's House of Representatives serve for only three 2-year terms (six years) in that Chamber. In the Senate, members are limited to two 4-year terms (8 years). When we voted for this, we the citizens made sure that we would be introducing new personalities and ideas into the legislature with every two-year election cycle.

“

It too is a time of letting go of the old ideas and routines and **MAKING WAY FOR**

NEW PEOPLE AND IDEAS to help

MOVE THE STATE FORWARD.”

”

With only the House of Representatives up in the 2016 election, the results did nothing to redraw the margin of majority in the House. The Republicans maintain a 63-47 seat majority over the Democrats, with each party losing just one seat back in November. However, we will see new leadership at the helm of each caucus.

The Republican caucus is led by new Speaker of the House Tom Leonard (R- DeWitt). Since his election to the State House in 2012, Speaker Leonard has been considered a rising star in his caucus, focused and determined with a good mind for policy. Speaker

Leonard will be joined in the Republican leadership by House Majority Leader Dan Lauwers (R- Brockway Township) and Speaker Pro-Tempore Lee Chatfield (R- Levering). Majority Leader Lauwers most recently served as Chairman of the House Agriculture Committee and Speaker Pro-Tem. Chatfield chaired the House Local Government Committee. All of these names should be familiar to our RPAC investors, as all three candidates have been previously endorsed by RPAC as champions of the real estate industry.

On the other side of the aisle, the House Democrats will be under the new guidance of Minority Leader Sam Singh (D- East Lansing). Leader Singh most recently served as the House Minority Floor Leader and was elected by his caucus to lead them after Representative Tim Greimel stepped down from his leadership post. Leader Singh is currently serving his third and final term in the Michigan House. Joining him at the top will be new House Minority Floor Leader Christine Greig (D- Farmington Hills). Representative Greig was elected to the House in 2014.

Again, both of these names will be familiar to RPAC investors over the years as standout legislators that understand our industry and have good relationships with their local Realtors®.

This past December, the previous legislature adjourned Sine Die (Latin for "without day") signaling the end of the legislative session. At that time, all bills not enacted into law met their proverbial death. These bills will have to be reintroduced by the new legislators if they wish to have another shot at becoming law. This is why the recent "Lame Duck" session was so frenzied with a lot of legislators positioning their bills to move before the legislature

adjourned. There are many bills that will be reintroduced this year, others that were politically ambitious, personal projects or bad policy will be reduced to a web page on a state server never to be thought of again.

Michigan Realtors® was fortunate enough to have our priorities delivered to the Governor before the end of session which means that the Public Policy Committee will be outlining a new list of priorities for this legislative session. This year the Policy Committee will be focused on delivering legislative victories across all facets of the association's membership.

To get **REALTOR®**
PARTY MOBILE ALERTS,
text "Realtor" to 30644 .

For our residential members, efforts are underway to create a new state law to provide for a first time homebuyer savings account. Similar efforts have been attempted in other states to varying degrees but Michigan's efforts will focus on allowing for a state income tax deduction for interest and capital gains earned on designated savings accounts. As low down-payment financing may be threatened in the future, it is important to pursue policy that allows individuals and families to responsibly save for their first home.

For commercial Realtors®, Michigan Realtors® is looking to provide some additional protection within the Commercial Broker Lien Act. Current law allows the court discretion to decide whether or not the prevailing party is entitled to attorney fees. Our desire is to make the award of reasonable attorney fees mandatory for the prevailing party. This will provide brokers seeking to enforce a lien additional incentive to use the lien available to them, and conversely, provide an additional deterrent to a buyer or seller that failed to pay a rightfully earned commission.

Lastly, our appraiser members will be happy to know that legislation is being drafted to address "reasonable and customary fees" in the State's Appraisal Management Company regulation. This bill would allow a state administrative action for failure to pay the federally required "reasonable and customary fees" while establishing an industry standard similar to Veterans Administration requirements. Additionally, there will be another bill introduced to impose an 18-month statute of limitations on regulatory complaints against appraisers licensed under Article 26. This statute of limitations will put appraisers on the same footing as builders and real estate licensees.

This new year will certainly bring about a lot of changes and a fresh perspective in legislative leadership. Michigan Realtors® has taken care to outline our priorities for the year, but like everyone starting a new year's resolution, there will undoubtedly face challenges along the way. Rest assured, Michigan Realtors® leadership is resolved to shape and protect the real estate industry every day. ●



2017 officers and Directors

Officers



President: Jason Copeman, Upper Peninsula

Jason Copeman, GRI, is a broker owner with over 24 years of experience in Marquette and the North Central Upper Peninsula of Michigan. Jason has been active with the Realtors® for many years. At the local level, with the Upper Peninsula Realtors®, he has served on the board of directors and the multiple listing service committee, is a past president, and has twice received the Realtor® of the Year award. At the state level with the Michigan Realtors®, Jason has served on the board of directors for six years, is the 2017 State President, and has served on numerous other committees and task forces. At the national level with the National Association of Realtors®, Jason has a seat on the board of directors, has served on the Multiple Listing Issues and Policies Committee, and has recently been appointed to the Land Use, Property Rights and Environment Committee. Jason is also the Federal Political Coordinator for Congressman General Jack Bergman. Jason married his high school sweetheart, Tammy, and they have four children; Wesley, Joshua, Olivia, and Isaac.



President-Elect: Sara Lipnitz, Greater Metropolitan

Sara Lipnitz, Associate Broker, SFR, PMN, has been involved in the real-estate industry for over 25 years; first in the commercial market, and for the past 15 years in residential sales. She is a top producing Realtor® in the Birmingham/Oakland County marketplace. Sara currently holds the following positions: National Association of Realtors®, RPAC Major Investor Council Representative to WCR, NAR Meeting & Convention Committee and Federal Political Coordinator. Sara serves on the following committees for the Michigan Realtors®: RPAC Trustees, Budget & Finance Committee, Appraisal Management Committee and the Personnel Committee. Locally, Sara sits on RPAC committee and Professional Standards Committee for the Greater Metropolitan Association of Realtors®. Past positions include: Michigan Realtors® Public Policy Committee, Local Chapter President for WCR Birmingham-Bloomfield Chapter, WCR Michigan Ways & Means Committee Chair; GMAR Grievance Committee, GMAR Diversity Committee, GMAR Nominating Committee and GMAR RPAC Committee. Sara is a graduate of the 2014 National Association of Realtors® Leadership Academy, was named the 2012 Realtor® of the Year for GMAR, 2015 Member of the Year for WCR and a Golden R President Circle member with RPAC. She is also the founding member of the Birmingham-Bloomfield Realtor® Network, established in 2006. Sara is also involved with several local charities such as CARE HOUSE, The Humane Society, and Make-a-Wish Foundation.



Treasurer: Matt Davis, Battle Creek Area

Matt Davis, GRI, Associate Broker grew up in Historic Marshall Michigan graduating from Marshall High School in 1988 and then earned a Bachelor of Science from Miami University in Oxford, OH in 1992. Matt, a second generation Realtor® and Broker with Rosemary Davis REALTORS® in Marshall, has been actively involved in both his community and with Realtor® associations throughout his 19-year career. He has served 15 years on the BCAAR Board of Directors including 2 stints as President, was BCAAR's Realtor® of the Year in 2004, 2007 and 2016, and currently serves as Treasurer and is on the MLS, Budget, Government Affairs and Pro-Standards committees. With the Michigan Realtors®, Matt has serves the Michigan Realtors® Public Policy Committee (Past Chair) as well as past stints as the District 7 Director, the RPAC Trustees (Past Chair), the Convention Committee, numerous task forces and was the proud recipient of the Michigan Realtors® Realtor® Active in Politics (RAP) Award in 2005. In 2015, Matt was named State Realtor® of The Year by the Michigan Realtors®. In 2012, Matt was appointed by Michigan Governor Rick Snyder as a professional member of the State Board of Real Estate Brokers and Salespersons. He was re-appointed in 2016 and is the current Chairperson of that licensing board. Nationally, Matt was appointed as the Michigan RPMIC (Realtor® Party Member Involvement Committee for NAR in 2006, and in that position serves as a "whip" for Michigan's 16 Federal Political Coordinators (FPC's) as well as coordinating NAR grassroots activity in Michigan. He was FPC for former Congressman Joe Schwarz (MI-7), and is the current FPC for Congressman Tim Walberg (MI-7), and has also served on the NAR Grassroots Strategic Plan workgroup and the NAR Public Policy Coordinating Committee.

Board of Directors

The Michigan Realtors® 2017 board of directors is made up of 14 district directors (see next page) and six other representatives, which are listed below. District directors are elected during the One Realtor®, One Vote Online Election, which takes place every fall.

Appointed Directors:



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CAR/GRAR
Past President



Stu Elsea
GMAR
Large Office



Jim Fase
GRAR
Large Office



John Francis
CAR
MiCAR



Sandy Covaleski
CBOR
MiCAR



Patty Young
Midland
MRAEC Rep

2017 District Representatives

District representatives serve as liaisons between the Michigan Realtors® and local associations in their region.



Meagan Luce
District 1
Expires in 2018



Gordon Naumoff
District 2
Expires in 2017



Michael L. Bass
District 3
Expires in 2017



Tom Darger
District 4
Expires in 2018



Sue Shangle
District 5
Expires in 2017



Natalie Rowe
District 6
Expires in 2018



Vance Shutes
District 7
Expires in 2017



Marianne McCreary
District 8
Expires in 2017



Maureen Francis
District 9
Expires in 2018



Shelley Schoenherr
District 10
Expires in 2017



James Iodice
District 11
Expires in 2018



Alex Milshteyn
District 12
Expires in 2017

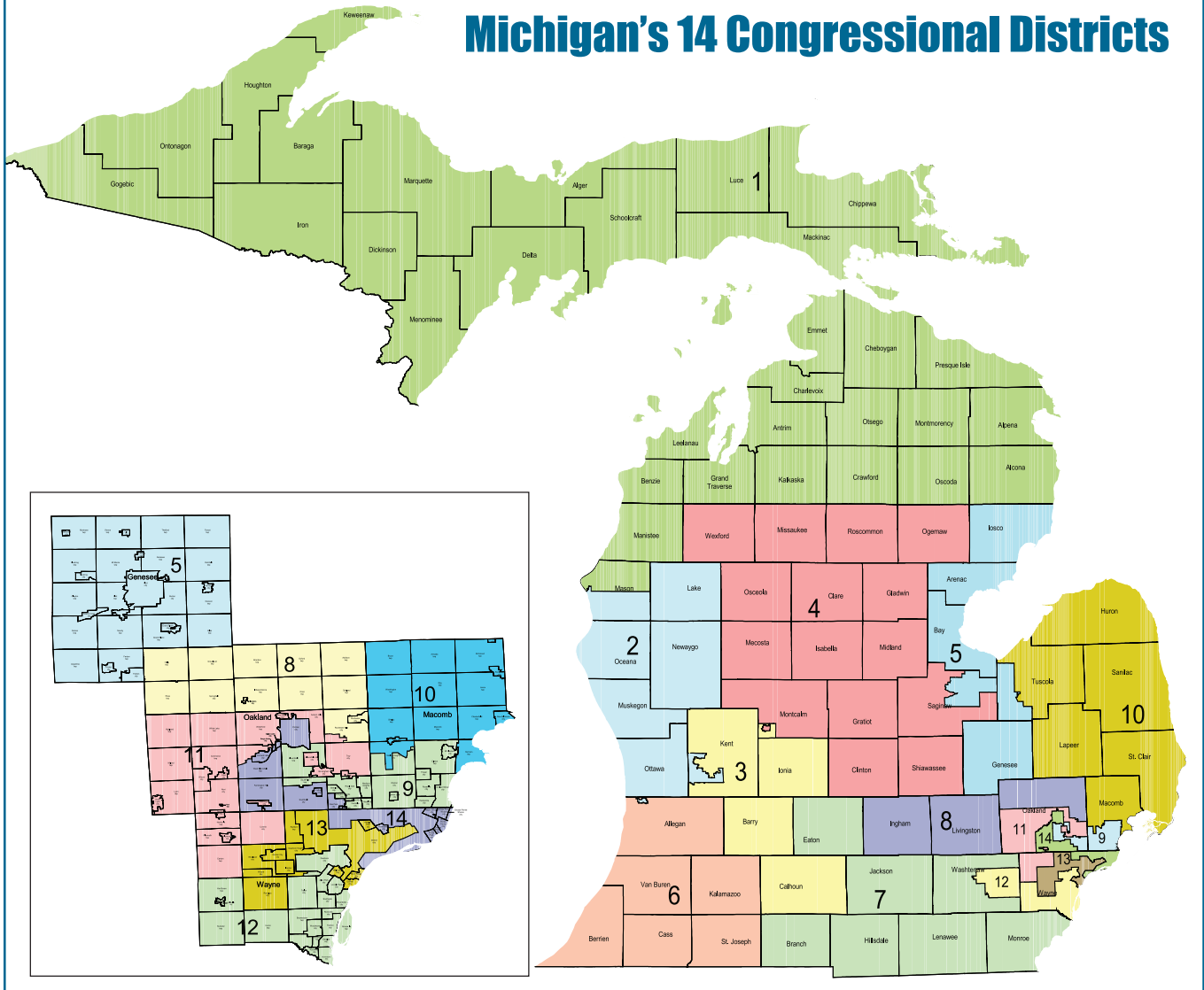


Reggie Fluker
District 13
Expires in 2017



E'toile Libbett
District 14
Expires in 2018

Michigan's 14 Congressional Districts



2016 RPAC Tribute



INVESTORS AS OF 12.5.16

The Realtors® Political Action Committee (RPAC) is the best way a Realtor® can protect their business. RPAC is the only grassroots and issues mobilizing force that exists to promote the tradition of home ownership and real estate investment. By investing in RPAC, you are supporting Realtor®-friendly ballot proposals and candidates for public office that understand your industry. With RPAC, Realtors® become active in one of the state and nation's most powerful and effective advocacy efforts, fighting for private property rights, sound tax reform and less burdensome regulation of your business. We thank these leaders for participating in this powerful network that shapes our business by advancing our issues in Washington, Lansing and in local government.

RPAC HALL OF FAME



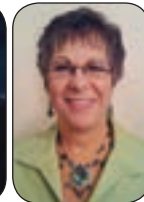
Mark Baker
Lenawee County



Dan Coffey
Southwestern Michigan



Chris Courtney
Greater Metropolitan



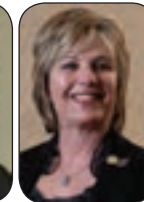
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Bob Taylor
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Greater Metropolitan Association of Realtors®

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West Michigan Lakeshore Association of Realtors®

GOLDEN R



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Debbie DeAngelo
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Beth Foley
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Debra Hall
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Dalene Hamilton
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Beccy Janis
Traverse Area



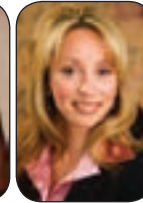
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Robin Pompey
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Kim Pontius
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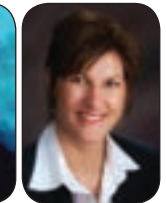
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Grand Rapids



Rebecca Williamson
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Nanci Rands
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Rick Reardon
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Brenda Szlachta
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Bob Taylor
Grosse Pointe

Furhad Waquad
Greater Metropolitan

Katie Weaver
Greater Metropolitan

Rebecca Williamson
Greater Metropolitan

Jeff Young
West Michigan Lakeshore

Dale Zahn
West Michigan Lakeshore

Debbie Zalewski
Greater Metropolitan

Gold, Silver, and Century Circle Investors can be viewed by visiting Mirealtors.com

To get involved with RPAC, visit the RPAC web site: www.mirealtors.com/advocacy-initiatives

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STERLING R



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Grosse Pointe



Dave Arnoldink
West Michigan Lakeshore



Jon Aucutt
Greater Metropolitan



Lola Audu
Grand Rapids



Christopher Ayers
Greater Metropolitan



Gary Bailey Sr.
West Central



Sandra Bailey-Bristol
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Sandy Baker
Livingston County



Michael Balsitis
Grand Rapids



Jeff Barker
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Judith Barker
Grosse Pointe



Robbin Barnes
Greater Metropolitan



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Grand Rapids



Nancy Bierenga
West Michigan Lakeshore



Andrew Boehm
West Michigan Lakeshore



Howie Boeve
Grand Rapids



Lisa Bohlen
Livingston County



Scott Bohlen
Livingston County



Denise Bondoni
Greater Metropolitan



Philip Bouman
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Patricia Boyd
Down River



Mark Brace
Grand Rapids



Dennis Bronson
Greater Kalamazoo



Katherine Brook
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Chad Brown
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Molly Buttleman
Traverse Area



Kathy Byerly
Jackson Area



Bruce Bylsma
Grand Rapids



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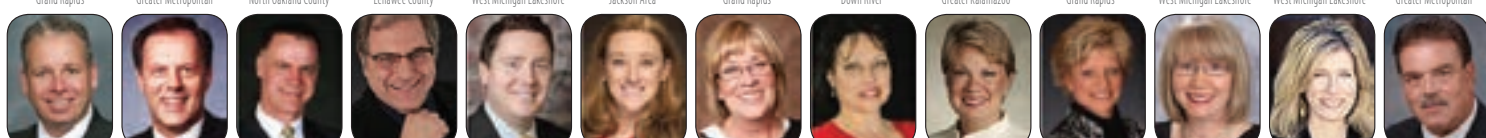
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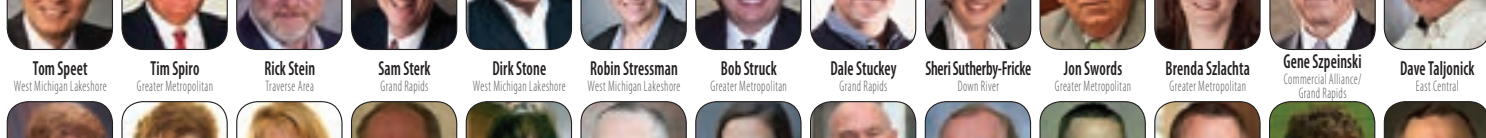
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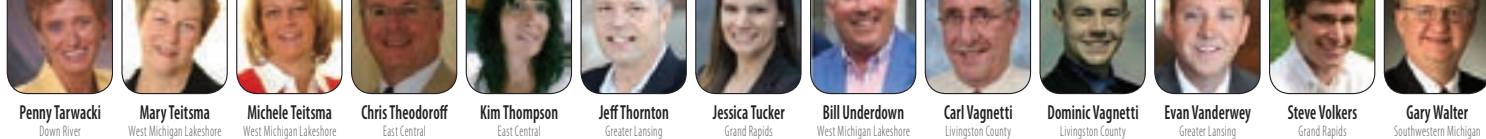
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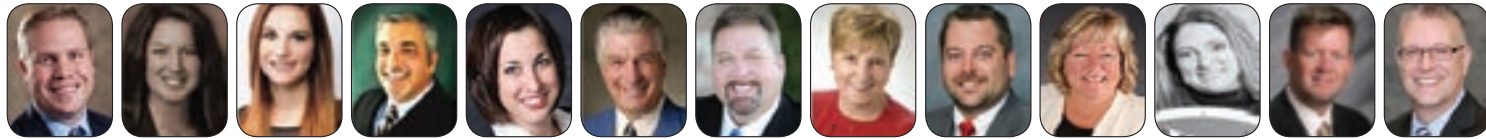
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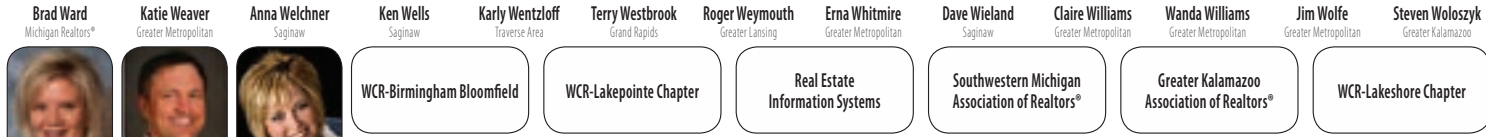
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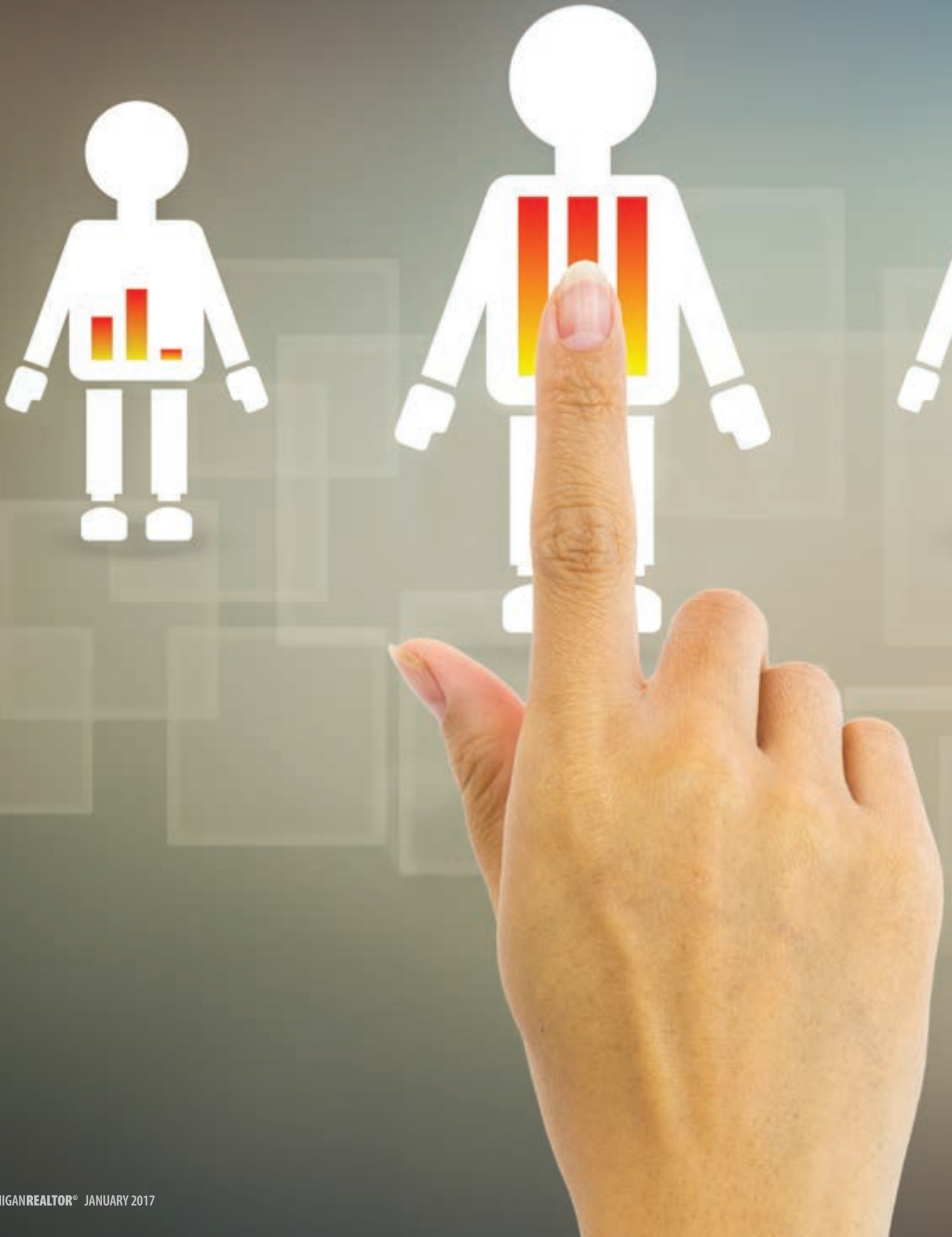
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are
RECRUITMENT
& *Retention*
just a numbers game?

BY NICK GAEDE,
LONE WOLF CONTENT DEVELOPER

A recruit sits in your office—energetic, eager, wearing an Apple Watch. You’ve done your research. You know his numbers. And yet, projecting his success is as fruitless as forecasting the weather. He may be sharp today but what about tomorrow? How does he handle stress? Will he be respected by his peers? How long until he burns out?

To paraphrase Socrates, you only know that you don’t know.

This much you do know; to meet your year-end financial goals, as well as your goals for long-term growth, you need more sales associates. Not just bodies, but productive agents. And, if you lose any of your top performers in the meantime, you’ll need to recruit even more. With these goals in mind, you’re not so much interviewing a person for a position as you’re interviewing a split for your bottom line. You must be thinking:

Are recruitment and retention just a numbers game?

How to Find Good Recruits

There are multiple data providers to whom you can pay big money, but consider this: you don’t work in a vacuum; you have your own data. You have an office and your office has agents. And, your office does business with other offices and their agents. These interactions are rich with data that you can use to find productive, reliable agents.

Take a look at this data. You’ll know the productive agents based on their involvement in multiple deals with your office. You’ll know an agent is active by the sides they’re typically on. You’ll know

this way, the more data you collect and the more recruitment opportunities you’ll have in the future.

How to Retain Top Performers

Agents are salespeople; their love language is money. The best way to keep them on your team is to help them make money and then remind them how you help them make that money (or save it).

One innovative way to do this, though it may seem counter-intuitive, is to share your agency’s value on your agent’s monthly statement. When you issue their monthly expense statements, add in all of the value that you provide for your agents. Value that they don’t think about because it’s there. You can be creative and have some fun with it! Here are a few examples:

- Under their monthly management fee or desk rent, spell out: ‘included in this fee are the costs of our office rent and utilities; Tyron and Jane’s monthly salary (use their names when possible); state-of-the-art copiers and printers; 100% organic fair-trade coffee and tea service’ and so on.
- If you charge a franchise fee, detail the value of the latest national or local marketing campaign, TV commercial, website, tech support, lead generation, etc. Keep in mind: if you can’t articulate the value of your franchise here, then how would you expect your agents to feel it?
- Add in every item that you uniquely provide for your agents for no charge, but share the numbers of the expense. Networking events, cocktail parties,

Every single work-related activity sales associates undertake on a daily basis results is a *treasure trove of data* that you can *trap and prospect for recruitment and retention purposes.*

Agents aren’t numbers; they produce numbers. Leads, listings, commissions and expenses. Every single work-related activity sales associates undertake on a daily basis results is a treasure trove of data that you can trap and prospect for recruitment and retention purposes.

an agent is reliable by the consistency of their commission rate.

And, you’ll already know this agent, personally. This familiarity puts your foot in the door to start a conversation about changing teams. Bonus: think about the pipeline. The more agents that you recruit

breakfast meetings, etc. Take the total cost of the event, divide by agent count, post the item on the statement and then credit them for it.

- Post all leads that you have passed on to your agents, either personally or through your website. These leads may not even have a value yet, but it's a great way to show them the opportunities that your partnership yields.

With the right back-office technology, adding these items to an expense statement is not

only possible, but easy. Doing so will help you turn this perpetual source of conflict into a source of value. Next time a discount brokerage approaches your agents and tries to lure them from under your roof, they'll be at a loss to compete with the specific financial value that you provide.

Are recruitment and retention a numbers game?

Agents are not numbers. Agents are people. Your people. As such, they need to be carefully recruited,

vetted and retained. But agents do produce numbers. And, these numbers have layers upon layers of useful information that you can use to help you recruit better agents and keep your roster intact. ●



Nick Gaede is a content developer with Lone Wolf Real Estate Technologies. He's been writing, filming and editing videos since 2008. Nick enjoys spending time with his partner and two boys, as well as reading, writing and living a healthy, humble life.

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Realtor® Advocacy Update



How has RPAC protected your business?

The 2016 legislative cycle has ended, and we applaud those Realtor®-friendly policymakers in both the State House and Senate for both passing and defeating legislation important to our business. As we move into a new legislative session in 2017, RPAC will continue the fight to protect our industry, protect your pocketbook, and protect private property rights.

RPAC Advocacy accomplishments and highlights of 2016 include:

- ✓ A new law creating a flat filing fee for recording documents
- ✓ A new law enacted that ensures all classes taken through the CE Marketplace are guaranteed to be audit proof
- ✓ Defeated a bill to revise annexation requirements
- ✓ A new law enacted clarifying the condo reversion process to allow for easier FHA lending
- ✓ Defeated a bill that required statewide mandated septic inspections
- ✓ A new law created that allows for easier investment in RPAC through dues billing
- ✓ Protected against changes to the affidavit of fixtures form
- ✓ Created a partnership between Michigan Realtors®, the Attorney General's office, and the Department of Licensing and Regulatory Affairs (LARA) in stepping up enforcement against unlicensed real estate activity.
- ✓ And, defeated a proposal attempting to eliminate the appraiser position on the Michigan Tax Tribunal.

For more information, visit www.mirealtors.com/Advocacy-Initiatives

Contributions are not deductible for Federal income tax purposes. RPAC contributions are voluntary and used for political purposes. You may refuse to contribute without reprisal or otherwise impacting your membership rights. For individuals investing \$1,000.00 or greater, up to 30% of this total investment may be forwarded to the National Association of Realtors® RPAC. All amounts forwarded to the National Association of Realtors® RPAC are charged against the applicable contribution limits under 52 U.S.C. 30016. Nothing herein shall be construed as a solicitation of contributions from non-members. A copy of the federal report, filed by National RPAC with the Federal Election Commission, is available for purchase from the Federal Election Commission, Washington D.C. 20463. State reports are filed with the Michigan Secretary of State, Elections Division, Lansing, Michigan.

A Primer on Agency

BY GAIL ANDERSON, ESQ.,
LEGAL COUNSEL,
MCCLELLAND
& ANDERSON, LLP



We are often asked whether two different agents from the same firm can represent the buyer and the seller in the same transaction. As is so often the case with a legal question, the answer is, “it depends.”

It has traditionally been the case that each and every client of a firm has an agency relationship with every agent in the firm. In these traditional agency firms, a client’s confidential information can be freely shared with every agent in the firm. Even if a client’s information is not actually shared with other agents, as a matter of law, each agent is deemed to know what every other agent in the firm knows. In these traditional agency relationships, if a buyer and seller are represented by two different agents in the same firm, both agents become dual agents, and the buyer and the seller need to consent in writing to the dual agency relationship. In any dual agency situation, if a Realtor® does not have the informed consent of both parties, the Realtor® forfeits his/her right to a commission, even if the parties have not been harmed.

Many Realtor® firms continue to use the “traditional agency” model today. Other firms, particularly larger firms, find the traditional agency model to be somewhat cumbersome. The only way to avoid the “traditional agency” model is to practice designated agency and to do it correctly. If designated agency is not done correctly, a traditional agency relationship is created, whether or not that was the intent of the parties.

In order to practice designated agency, the entire firm must use the designated agency model. A firm cannot have some members who practice designated agency and other members who practice traditional agency. If a firm wishes to use the designated

agency model, then every client of the firm must sign a listing contract or a buyer’s broker contract which specifically names which agent or agents within the firm will be acting as that client’s “designated agent(s).” If the designated agent is a salesperson, then the contract must also name an associate broker who will be acting as the designated agent’s “supervisory broker.” Confidential information about a client may not be shared with any licensee in the firm that does not have an agency relationship with that client. Disclosure of a client’s confidential information to someone who has no agency relationship with that client is likely to be viewed as a breach of the fiduciary duty of confidentiality. Again, a breach of fiduciary duty can result in a loss of a commission, even if a client was not harmed. For these reasons, it may be necessary to name more than one designated agent. If, for example, several licensees in a team will be working with a seller-client, every one of those team members should be named in the listing contract as “designated agents.”

Remember that in order to practice designated agency, every client of a firm must enter into a designated agency contract. If a written contract is silent on the question of “traditional” versus “designated,” agency, a traditional agency relationship is created. If there is no written contract – for example, if a salesperson working with a buyer-client does not have the buyer-client sign a buyer’s broker agreement – that salesperson has inadvertently created an agency relationship between that client and every member of his/her firm.

If designated agency is correctly established, a buyer and seller can be represented by two different agents within the same firm. In this situation, no

dual agency relationship is established. All that the salespersons need to do is to let their respective clients know that another agent in the same firm represents the other side of the transaction. In a designated agency office, a dual agency relationship is created only when the same designated agent represents the buyer and the seller.

Finally, Realtors® should be careful to complete the agency disclosure form correctly. The agency disclosure form asks whether all “affiliated licensees” (i.e., all other agents in the firm) have an agency relationship with a client. This would be the case in a traditional agency firm, but not in a designated agency firm. If the listing contract or buyer’s agency contract names more than one designated agent, it is still the case that not all affiliated licensees have an agency relationship with the client. For clarity purposes, in this circumstance it is recommended that the designated agent signing the form add the names of all other designated agents after his/her signature. For example, “John Smith on behalf of himself and Mary Green.” Not all of a client’s designated agents need sign the agency disclosure form.

Firms may choose to be traditional or designated agency firms. There is no preferred model, and a firm’s choice will depend on if and how the agents in the firm work together. Firms who choose designated agency must make certain that each and every agent within the firm understands (and follows) the proper steps. The worst-case scenario for a broker is where some, but not all, of the agents in the broker’s firm practice designated agency. ●



Stale Claims: How They Are Handled

More than one Realtor® has been faced with a claim that the Realtor® conspired with a seller to conceal defects in a home purchased many years ago. In many instances, the initial response is to panic, as memories have grown dim and files have been destroyed. How do you defend a case for which you have very little recollection and few or no documents? A recent Court of Appeals decision demonstrates how these cases are dealt with under the law.

In this case, the buyers filed a lawsuit on January 27, 2015, claiming that the sellers of their home had engaged in fraud and misrepresentation and in addition, had breached an implied warranty of habitability. All of these claims arose from a land contract sale to the buyers on October 30, 2006. In other words, the buyers were suing the sellers over nine years after closing.

In hindsight, the buyers should have been on notice early on that there could be problems with the home they had purchased. Shortly after entering into the land contract, the buyers were advised by the local building authority that the front deck of the house, which measured 20 x 8 feet, had to be removed because it encroached on public property. The sellers stepped in and cured this problem by removing the existing deck and replacing it with a smaller 4 x 6 foot deck. Further, the buyers discovered that a toilet had been placed on a rotten subfloor that had been covered over by new vinyl flooring. In addition, the toilet was not properly connected to the existing municipal sewer. Again, the sellers stepped in and replaced the bathroom floor and had the toilet connected to the municipal sewer.

Eventually, the buyers decided to remodel the back bedroom addition on the home. It had been their understanding that the sellers had added the bedroom addition to the home shortly prior to the sale. During their remodel, the buyers discovered that the walls to the bedroom addition were not constructed in accordance with the building code. Instead, the walls were placed directly on the ground without a proper foundation or any other means to prevent moisture from entering the walls. There was toxic mold inside the interior walls that the buyers claimed was the result of the lack of foundation. In the lawsuit, the buyers also alleged that in 2014, a building inspector advised them that the bedroom addition had to be completely removed as no permits have been issued for its construction. Ultimately, one of the buyers became very ill and it was his doctor's belief that his illness was due to his exposure to the mold. The buyers

claimed that because of the mold, in 2014 they had been forced to move out of the house and abandon all of their personal belongings. Thus, the buyers sued the sellers claiming that the sellers had covered up the defects in the bedroom addition in a manner that kept them hidden from sight and unable to be discovered by the buyers.

When the buyers sued in 2015, the sellers were faced with the daunting task of defending their conduct in connection with a sale that had occurred over nine years ago. In their lawsuit, the buyers alleged that the sellers had intentionally made misrepresentations as to the lawful construction of the bedroom addition or, alternatively, had innocently misled the buyers as to its lawful construction. In these types of cases, the primary defense is the statute of limitations.

The trial court determined, and the Court of Appeals affirmed, that the buyers' claims for fraud and innocent misrepresentation were both barred by the statute of limitations. Generally, the limitations period for a fraud or innocent misrepresentation claim is six years. Obviously, in order to determine when the six-year statute has run, it is necessary to first determine when the six-year period starts to run. The Court of Appeals noted that years ago in a different case, the Michigan Supreme Court expressly rejected the argument that the six-year period does not start until the fraud or misrepresentation is discovered. Instead, the Michigan Supreme Court made it very clear that the six-year limitation period begins to run when the misrepresentations are made. In this specific case, the buyers claimed that the misrepresentations had been made "at the time of sale," *i.e.*, on October 30, 2006; thus, the statute of limitations period started running on the date of closing and expired six years later in 2012. Since the buyers filed the lawsuit on January 27, 2015, their claims were well outside the six-year limitation period.

There is an exception to the six-year statute of limitations if the defendant has fraudulently concealed the existence of the claim. Because of the "fraudulent concealment" by the sellers, the buyers argued that they were entitled to bring an action "at any time within 2 years after [they] discovered, or should have discovered, the existence of a claim or the identity of the person who is liable for the claim..." In reviewing this issue, the Court of Appeals went to great pains to emphasize that fraudulent concealment which extends the time beyond the statute of limitations requires a showing that the sellers

concealed the fact that the buyers had a cause of action, as opposed to a showing that the sellers concealed the fact that they had not constructed the bedroom addition according to code. Simply put, the buyers would need to demonstrate that the sellers had engaged in affirmative acts to prevent the buyers from discovering that they had a potential lawsuit against the sellers for misrepresentations made regarding the bedroom addition.

Both the trial court and the Court of Appeals determined that the buyers could not meet the requirements for demonstrating fraudulent concealment and thereby avoid the six-year statute of limitations. Although it was clear that the defendants had engaged in affirmative acts, none of those acts could provide a basis for fraudulent concealment. The Court determined that the sellers' acts to correct the problem with the deck on the front of the house, the toilet and the bathroom floor did not conceal from the buyers the fact that they had a claim in connection with the bedroom addition. Instead, the Court of Appeals found that, if anything, the sellers' repairs of the front deck, the toilet and the bathroom floor arguably should have made the buyers more aware of possible claims against the sellers as to the condition of the property. Given that the buyers had control over the entire property for several years, repairing the items did not hinder the buyers' ability to acquire information that would have disclosed a potential claim against the sellers regarding the bedroom addition.

The Court of Appeals went on to provide that even if the sellers' correction of the problems with the front deck, toilet and the bathroom floor did constitute fraudulent concealment, those actions still would not have prevented the six-year statute of limitations from barring the buyers' claims. The Court of Appeals held the buyers could and should have discovered the problem during the six-year statute of limitations period when

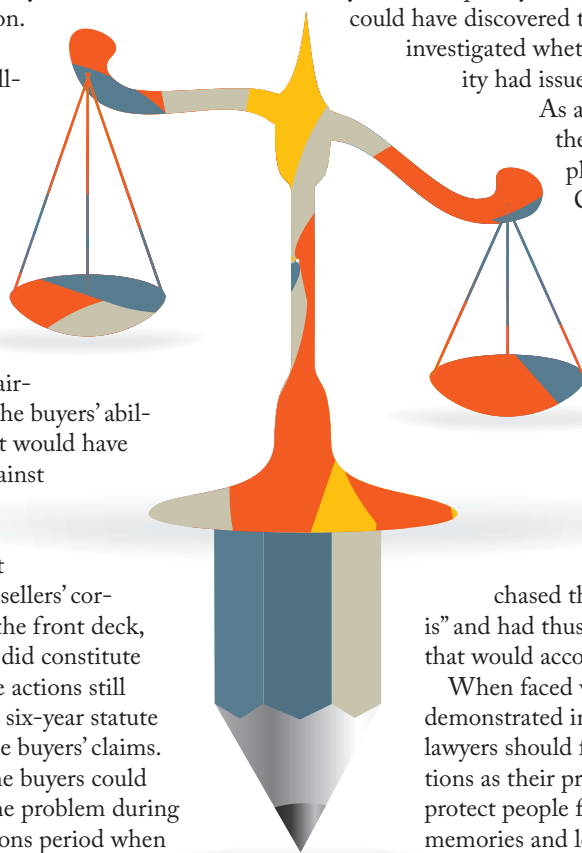
they were in complete control of the property. The Court of Appeals determined that this principle was particularly applicable in this case, where the relevant public records relate to a significant financial purchase and because it is well known, if not common knowledge, that such records are maintained by the local building authority.

The Court found that the buyers were aware that the bedroom addition had been recently constructed by the sellers, as one buyer testified that the entire house had been recently remodeled and the bedroom addition had been built by the sellers just before 2006. Thus, the Court of Appeals concluded that the buyers claim that they "could not have discovered the issues with the mold or walls of the addition without destructive testing, as the siding on the outside of the house went down the wall and below grade level, and from the inside, one could not determine that it had been constructed improperly," was completely nullified by the fact that the buyers could have discovered these issues if they had simply investigated whether the local building authority had issued a permit for the addition.

As a side note, the buyers also sued the sellers for a breach of an implied warranty of habitability. The Court held that this claim was not available to them against the sellers, as an implied warranty claim is limited to purchases of new homes. Obviously, the home sold by the sellers in this case was not a new home. Further, the Court of Appeals determined even if an implied warranty of habitability extended to the sale of the house in

this case, the buyers had purchased the property on land contract "as is" and had thus waived any implied warranties that would accompany the sale of a new home.

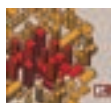
When faced with a stale claim like the one demonstrated in this case, Realtors® and their lawyers should first look to the statute of limitations as their primary defense. It is designed to protect people from the risks resulting from dim memories and long-dead paper. ●





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A hand holding a black pen points towards a word cloud graphic. The word cloud features various terms related to leadership and business, including: **ACHIEVE**, **LEADERSHIP**, **TEAM**, **TRAINING**, **SKILLS**, **PHILOSOPHY**, **MISSION**, **STRENGTH**, **COMMITMENT**, **INNOVATION**, **MOTIVATION**, **RISK**, **GROUP**, **CONDUCT**, **EMOTIONAL**, **DIRECTING**, **BUSINESS**, **SOLUTION**, **LEADER**, **VISION**, **GOAL**, **RESPECT**, **MEMBER**, **ABILITY**, **TRUST**, **PEOPLE**, **DISCIPLINE**, **POWER**, **COMMITMENT**, **COACHING**, **COMMERCE**, **ASSessment**, **LIABILITY**, **COMPANY**, **LABORATION**, **MANAGEMENT**, **ENVIRONMENT**, **MANAGER**, **EDUCATION**, **GROUP**, **CONDUCT**, **EMOTIONAL**, **DIRECTING**, **BUSINESS**, **SOLUTION**, **LEADER**, **VISION**, **GOAL**, **RESPECT**, **MEMBER**, **ABILITY**, **TRUST**, **PEOPLE**, **DISCIPLINE**, **POWER**, **COMMITMENT**, **COACHING**, **COMMERCE**, **ASSessment**, **LIABILITY**, **COMPANY**, **LABORATION**, **MANAGEMENT**, **ENVIRONMENT**, **MANAGER**, **EDUCATION**.

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