A publication of Michigan Realtors®

MICHIGANREALTOR®

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AUGUST 2016
Volume 15 | Number 4

transaction history BUILDS TRUE market value

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THE CONVENTION
Event Guide Inside!

PLUS: Community Documenting Continuing Education Capitol Report All About Agency Disclosure

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SPECIAL SECTION

COVER STORY

MICHIGANREALTOR®

Features

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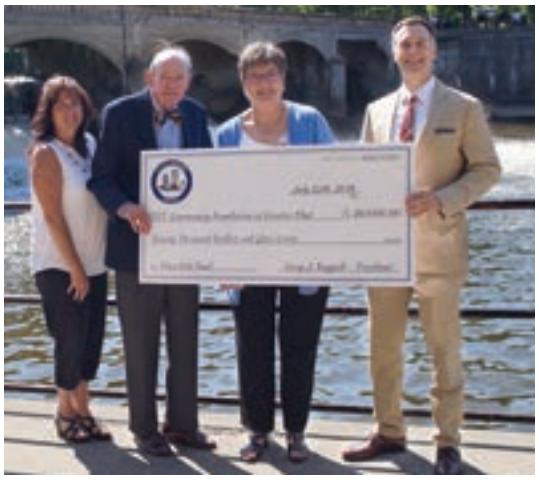
08.16

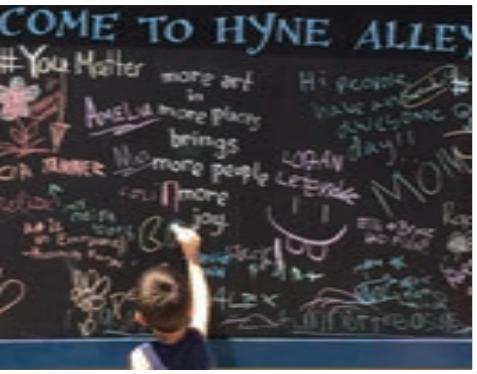
{ August | Two Thousand & Sixteen | Volume Fifteen | Number Four }

BY GARY J. REGGISH, CRS, SRF

RE-Engagement Community

As we all know, this is the year of *Engagement*; a time where we take a look at all we have been doing and re-commit to making a difference in all aspects of our businesses and how we impact the community. I am so proud of the work all of you have been doing. Many of you, in concert with your local associations, are impacting the community in ways that will truly leave the "Realtor®" positively stamped on the lives of those that make up those communities. I am so proud of the work being done that I wanted to dedicate this month's issue to acknowledging the impact we as community members are having.





Placemaking is a multi-faceted approach to the planning, design and management of public spaces. Placemaking capitalizes on a local community's assets, inspiration and potential, with the intention of creating public spaces that promote people's health, happiness and well being.

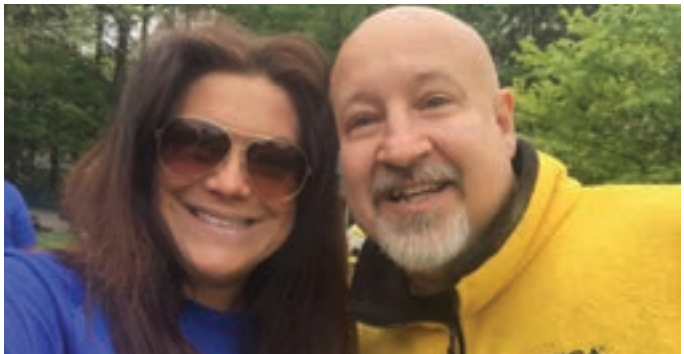
Lighter, Quicker, Cheaper (LQC) is a DIY approach based on taking incremental steps, trying low cost experiments and tapping into local talents (e.g. neighbors, entrepreneurs) to quickly translate a community's vision into reality and to build momentum for further improvements.

Michigan Realtors® is offering micro grants to assist local associations and their communities in strengthening their LQC Placemaking initiatives. LQC Placemaking Projects are happening in Brighton, Detroit, Flint, Novi, Jackson, Kalamazoo, Manchester and Marquette. Check out projects here: *www.mirealtors.com/Education-Events*.

The Michigan Realtors® Relief Fund was established this year to support and expedite the receipt and donation of charitable aid from Michigan Realtors® and supporting organizations in response to the water crisis in the City of Flint. Thank you to all the members and local associations for their generous donations. Last month, we were pleased to present a check for $20,000 to The Community Foundation of Greater Flint, helping the children of Flint. See who donated and learn more about the foundation here: *www.mirealtors.com/relief-fund*.

Many local Realtor® associations are working with the Boys & Girls Clubs of America by way of Back Pack, Back to School Drives and other coordinated events to help the children of our communities. To view some of the success stories across Michigan, visit *www.mirealtors.com/Education-Events/Boys-Girls-Clubs*.

I have said before and it is worthy of saying again… we at Michigan Realtors® are way more than just negotiators of the best possible price for a client's home. We are advocates for property ownership and community. We ARE community! I acknowledge you and am proud to work along side you as Michigan Realtors® ●



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COMING EVENTS

October 5-7, 2016
The Convention
Soaring Eagle Casino & Resort, Mt. Pleasant

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

This, that and the other

Music has always played a big part in my life. The first half of this year took from us a lot of the great singers and songwriters that we remember fondly. I figured I would use this opportunity to update on the Michigan Realtors® 2016 legislative accomplishments while paying subtle tribute to some of those music idols that we have lost this year. (All apologies to Merle Haggard, I couldn't figure out how to work "Okie from Muskogee" into the column).

Flat Recoding Fees are Hunky Dory

There will be "*Changes*" ahead at your local Register of Deeds office after the House and Senate finished off a series of bills aimed at creating a statewide flat filing fee for all recordings. Senator Peter MacGregror (R- Rockford) took on the lead sponsorship of this package of bills aimed at limiting liability of title companies and lenders. Upon securing the support of the Michigan Association of Registers of Deeds (MARD) for a new $30 flat recording fee, the bills moved easily to the Governor.

Michigan Realtors® worked with Senator MacGregor and the Michigan Land Title Association (TRID) on these bills as a response to the new TRID rule issued by the Consumer Financial Protection Bureau. Since TRID places a premium on accurate reporting of all charges to the consumer, recording fees are one of the charges that is monitored and tracked by federal regulators. Michigan's current system of filing fees is based on the number of pages, which means that counting errors can result in the rejection of a filing, or miscalculated fees to the consumer. This new $30 fee for all documents serves to make the process simpler for lenders required to provide recording fee information to the consumer three days after the application is made, and for settlement service providers who must provide accurate recording information for the creation of the closing discloser document.

For some documents containing fewer than 10 pages, this will result in a modest increase in the filing fee. For other, more lengthy documents, $30 will be a price break. According to MARD's internal audit of their registers' offices, this amount should be satisfactory to support their current operations. Beginning October 1, 2016, you can expect your client's paperwork to begin reflecting the new $30 charge.

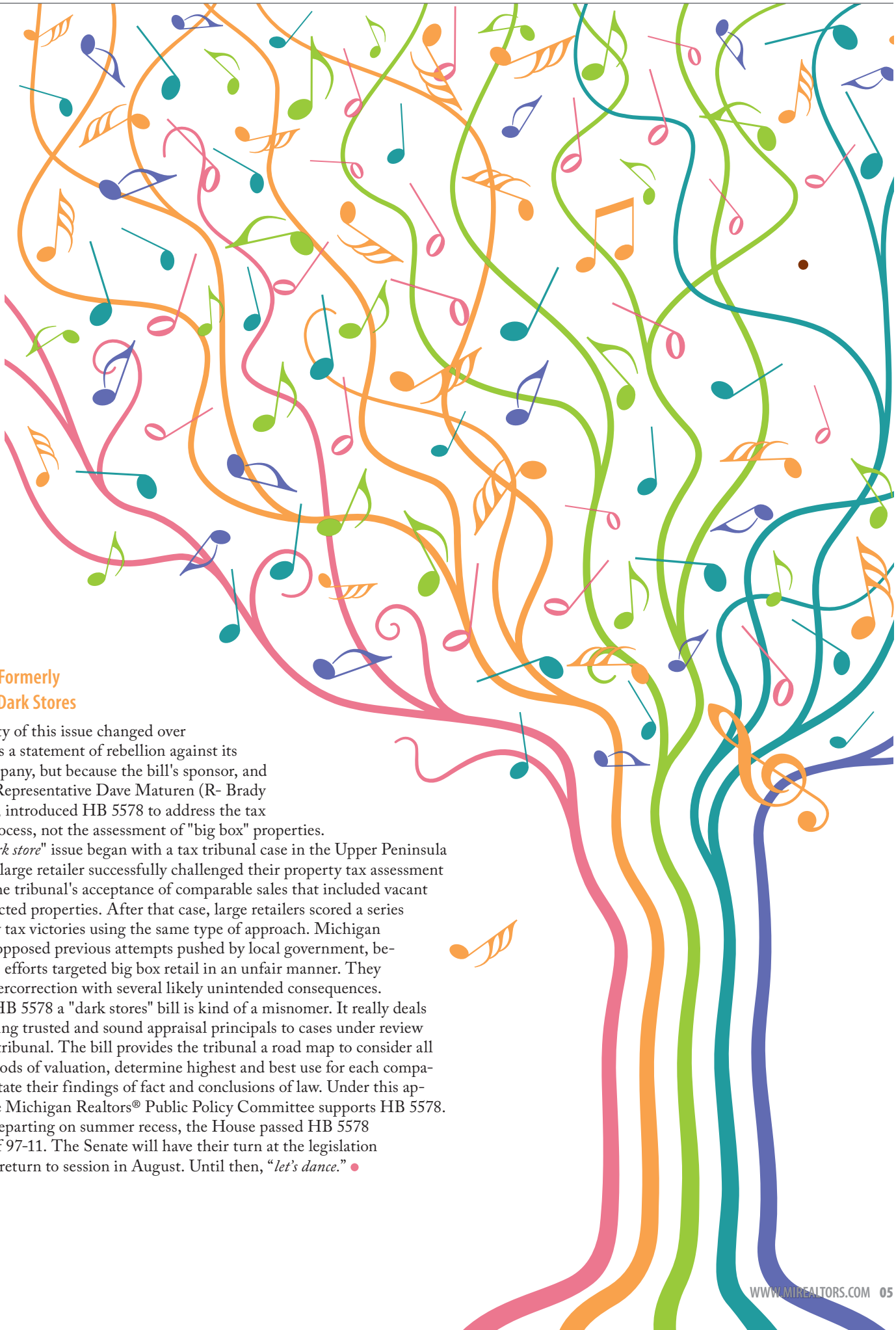
Condominium Reversions, Take it Easy

From time to time we work on legislation that would leave the average person scratching their head as to how it applies to Realtors®. Much like Glen Frey was more than "just an Eagle," we're more than just the real estate industry. Senate Bill 610 is an important property rights issue sponsored by Realtors®, and State Senator, Margaret O'Brien (R- Portage).

Before the Governor signed SB 610, Michigan's Condominium Act included a provision by which undeveloped land from a project would automatically revert to the association of co-owners after a period of 10 years. As we all know, condo development significantly stalled during the economic downturn and many of these 10 year provisions will be coming due in the next couple of years. The issue is that while a number of these revisions have occurred, the statute never laid out a clean transfer process that required notice to the developer, allowed the homeowners a say as to whether or not they wanted the property to revert to common area or provided a recording requirement to reflect the transfer.

Senator O'Brien's bill, as signed by the Governor on July 13th, now allows for all parties involved to have a say in the reversion process. Under the new law, the developer will have to make a decision before the 10 year period ends to either withdraw the land, or convert the "need not be built" units into "must be built." If the developer does not act within the 10 years, the association can take the undeveloped land over as common elements by a 2/3 majority vote. Not only will the association have a say in whether or not they want the land (notice that the reversion is no longer automatic), but the developer will also get notice that the association seeks to take over the land, and then have 60 days to withdraw that land or convert the undeveloped land into "must be built."

While many condominium developments will never have to face this decision, it is our hope that the hard work put in by the legislature, Michigan Realtors®, the Michigan Land Title Association and the Community Association Institute will make sure that both the developers and co-owners are protected through a clearly defined process.



The Artist Formerly Known as Dark Stores

The identity of this issue changed over time, not as a statement of rebellion against its record company, but because the bill's sponsor, and Realtor®, Representative Dave Maturen (R- Brady Township), introduced HB 5578 to address the tax tribunal process, not the assessment of "big box" properties.

The "*dark store*" issue began with a tax tribunal case in the Upper Peninsula in which a large retailer successfully challenged their property tax assessment based on the tribunal's acceptance of comparable sales that included vacant deed-restricted properties. After that case, large retailers scored a series of property tax victories using the same type of approach. Michigan Realtors® opposed previous attempts pushed by local government, because these efforts targeted big box retail in an unfair manner. They were an overcorrection with several likely unintended consequences.

To call HB 5578 a "dark stores" bill is kind of a misnomer. It really deals with applying trusted and sound appraisal principals to cases under review by the tax tribunal. The bill provides the tribunal a road map to consider all three methods of valuation, determine highest and best use for each comparable and state their findings of fact and conclusions of law. Under this approach, the Michigan Realtors® Public Policy Committee supports HB 5578.

Before departing on summer recess, the House passed HB 5578 by a vote of 97-11. The Senate will have their turn at the legislation when they return to session in August. Until then, "*let's dance.*"

Are You Utilizing the Perks of Change?

Did you know that in December, 2014 the State of Michigan stopped tracking the continuing education courses you were taking each year? That means you are now solely responsible for holding onto any class certificates as well as an outline of each class you take from now on. Not only that, you will be expected to produce this documentation for up to six years after completing the course should you get audited! UNLESS, you are taking CE Marketplace certified classes.

www.cemarketplace.net

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That is right! If you take classes that have been certified by CE Marketplace, the classes are audit proof. CE Marketplace reviews proposed courses for compliance with statutory requirements and the Michigan department of Licensing and Regulatory Affairs' (LARA) interpretations to ensure all classes meet the standards expected of a licensed professional. This means less paperwork for you to keep track of for years to come! We understand that, as a Realtor®, you are constantly on the go and the last thing you need is more paperwork!

So, what's the catch?

There isn't one! This is a complimentary service to the licensee that is supported by LARA and offered to all members of Michigan Realtors®. The only cost you may incur as a Realtor® is the fee that could be attached to registering for CE Marketplace certified classes. Each class is unique, so not all that are offered will have a fee attached. Certified course information, registration fees (if any) and registration links can be found on the CE Marketplace website. You can search the calendar for upcoming classes in your area or browse the listings of online classes at your convenience.

Have a favorite instructor? You can even search for courses that will be taught by a specific instructor.

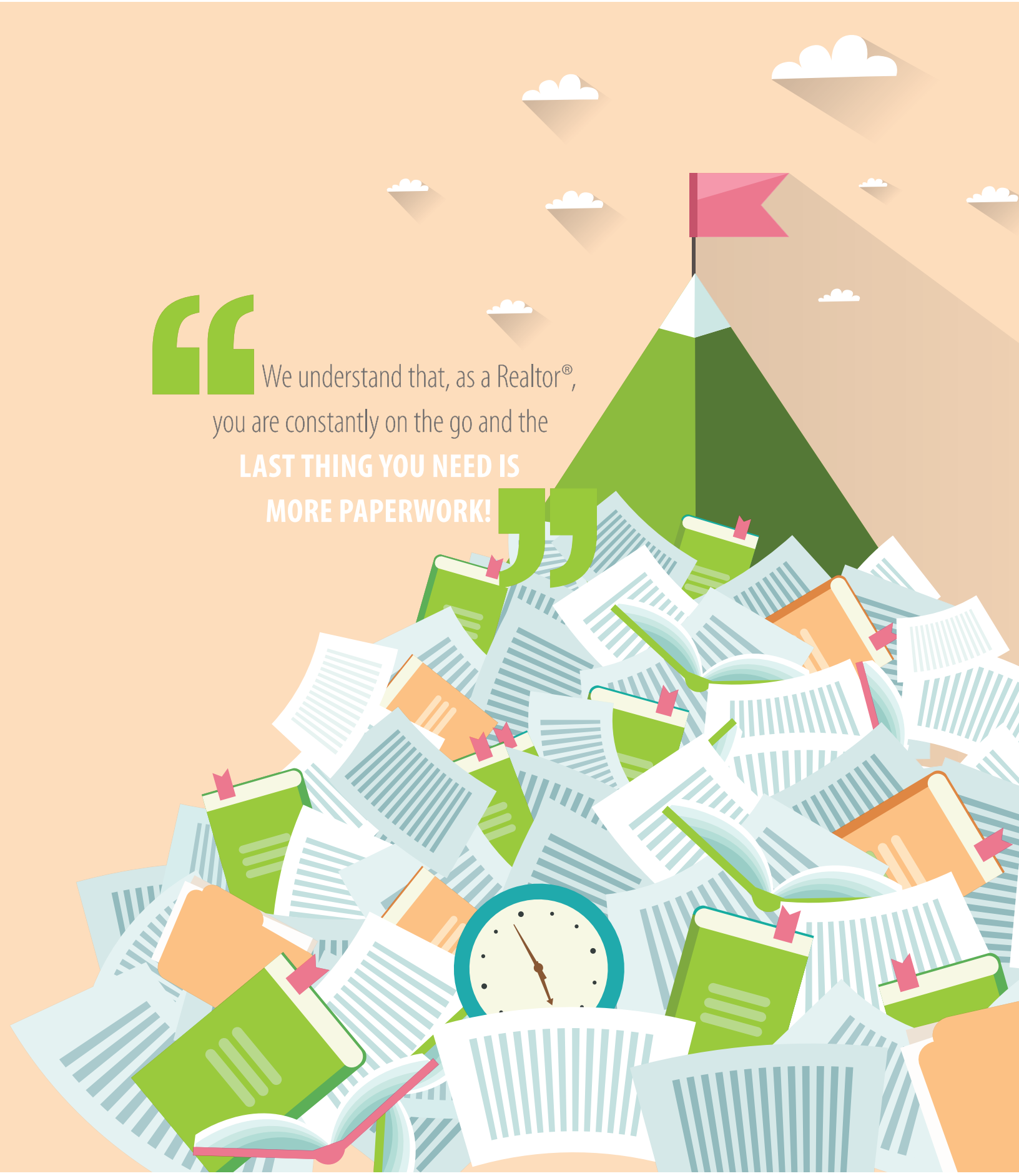
As you approach the year's end, do you ever find yourself thinking, "Have I fulfilled my legal update requirement for this year?" Finding out is easier than ever now! Log in to your personal profile on CE Marketplace to view all the classes you have taken throughout the years, so you are always on track and ready for renewal when the time comes.

Still not convinced? Michigan Realtors® has made the recording process as simple as possible at their annual events. By getting your event name badge scanned in and out of each CE Marketplace certified class, you get the credits reported to your record faster, usually within one to two business days after the end of the event. Badge scanning allows you to focus more on the information you are there to hear and less on trying to remember what your NRDS number is! When attending CE Marketplace certified classes, outside of a Michigan Realtors event, you will need to provide the course sponsor: your name, email address (for certificate of completion to be emailed to you), NRDS ID, license number and last four digits of your social security number. All this is necessary to be sure we are giving credit to the correct licensee.

Have you taken classes that are not CE Marketplace certified? No problem! Uploading your own self-reporting credit information is simpler than ever with the step-by-step online form. Don't be intimidated by this paperless system which was created to make tracking CE easier for you!

CE Marketplace staff offers assistance over the phone during normal business hours, Monday-Friday, 9:00am-4:00pm, at 844-642-6633. Or you can view the How-To PDFs located on the website with directions on how to navigate various aspects of the site.

You have offers to write and deals to close, so why add anything else to your to-do list? Let the continuing education experts handle tedious, yet necessary, tasks for you. Take advantage of the perks being offered to you by CE Marketplace! Take educational, CE Marketplace certified classes from some of the best in the industry and receive the audit protection you deserve! All of these great benefits can only be provided by CE Marketplace certification!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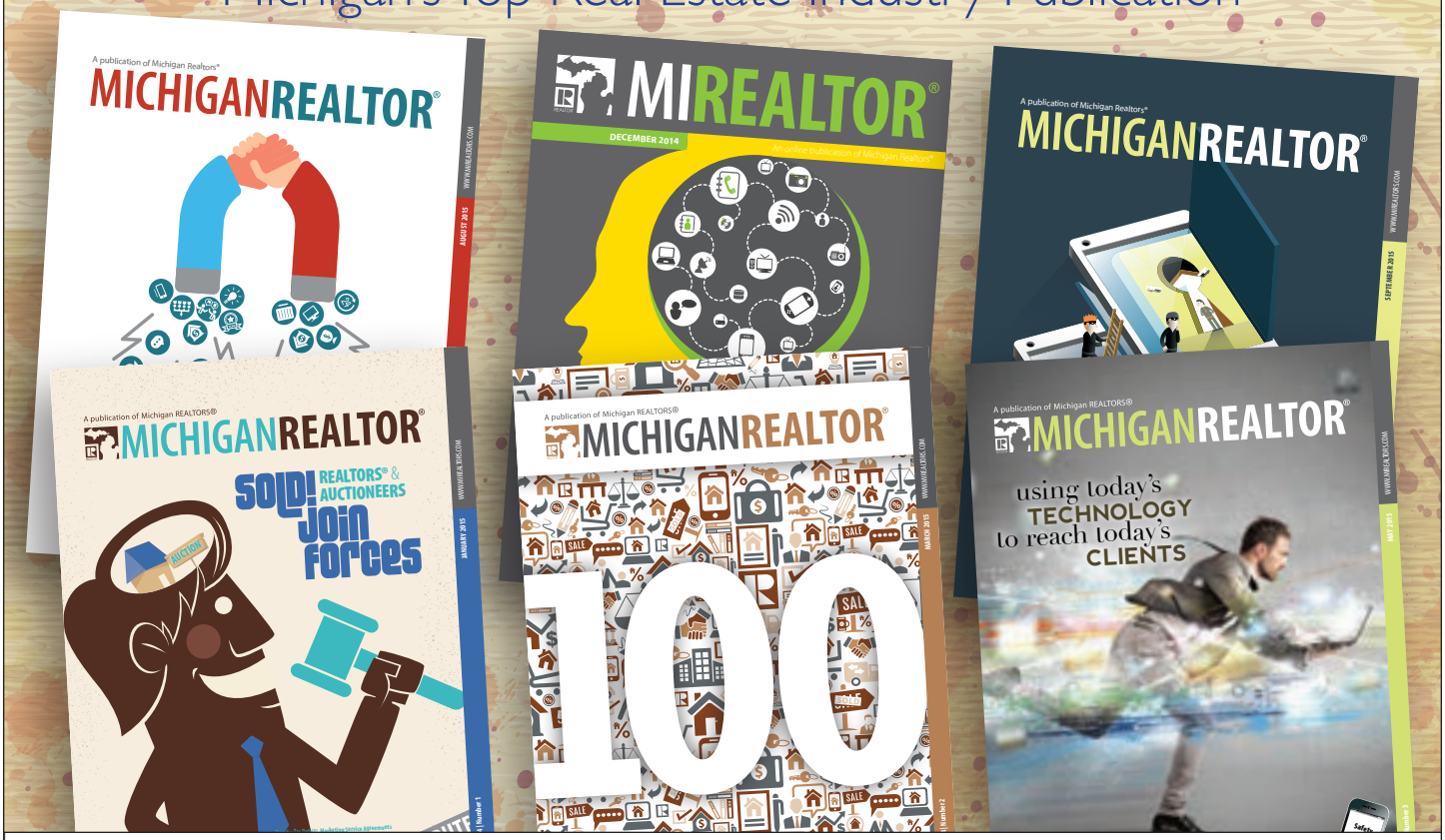

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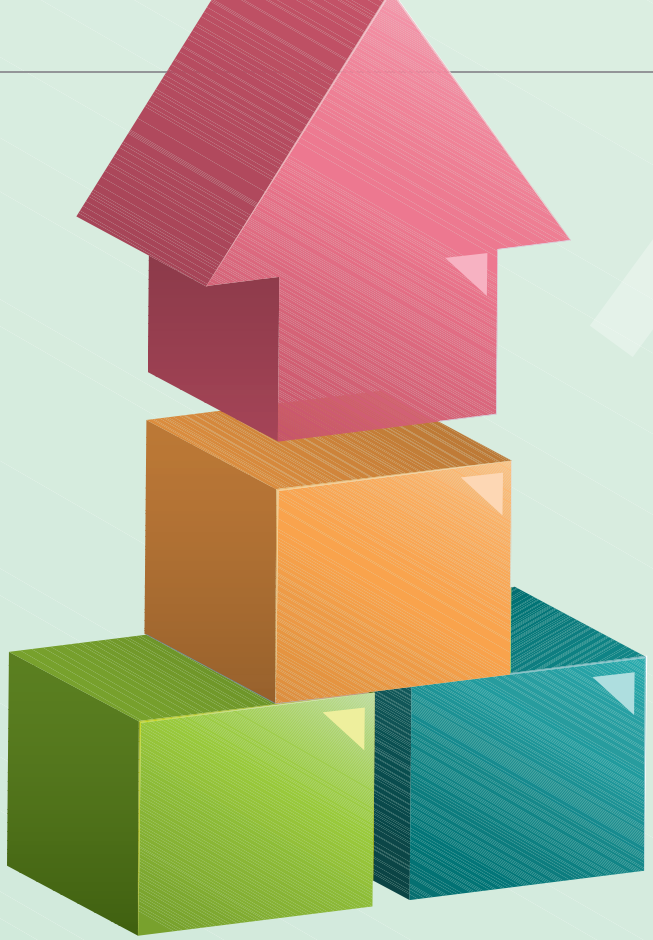
Analyzing the SUBJECT PROPERTY'S TRANSACTION Activities

One area often reported deficient by state regulatory agencies, review appraisers and users of appraisal services is the lack of analysis pertaining to a subject property's transaction activity. It's an important part of the appraisal process to identify and report the different types of subject property transaction activities.

When an appraiser is developing an opinion of *market value*, Standards Rules 1-5(a) and (b) of *The Uniform Standards of Professional Appraisal Practice*, 2016-17 ed. (USPAP) requires an appraiser, if such information is available to the appraiser in the normal course of business: SR 1-5(a) states "analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and" SR 1-5(b) states "analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal."

These two requirements are consistently reflected in the appraiser's reports. Standards Rules 2-2(a)(viii) of an Appraisal Report and 2-2(b)(viii) of a Restricted Appraisal Report require all written appraisal reports to include sufficient information to adhere with SR 1-5(a) and 1-5(b), as follows: "When reporting an opinion of market value, a **summary** of the results of analyzing the subject **sales**, **agreements of sale**, **options**, and **listings** in accordance with SR 1-5 is required. If such information is unobtainable, a **statement** on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required." (Emphases added in bold). The following list breaks down the main points of these requirements.



> When reporting an opinion of **MARKET VALUE**, a summary of the results of **ANALYZING THE SUBJECT SALES, AGREEMENTS OF SALE, OPTIONS** and **LISTINGS** in accordance with SR 1-5 is required.

Subject Property

The requirement to analyze transactions pertains to the *subject property* not the *comparable properties* used. Many clients and user groups have requirements for the appraiser to analyze comparable sales in a similar fashion, but those are requirements beyond USPAP and are requirements based on appraiser-client agreement.

Sales History

The subject property's sales history must be researched for *three years prior* to the effective date of appraisal. Many appraisers mistakenly stop after the first sale they find, but the requirement is to research three years. So, if there is a sale within the past twelve months, then that price is analyzed. If another sale is researched and closed within 24 months, then that price is also analyzed. Any and all sales within the preceding 36 months must be analyzed. Keep in mind the three-year rule is just an arbitrary minimum length of time. For many properties, such as large commercial and industrial properties the relevant time frame for research sales may be as long as five years, ten years and more.

The *effective date* is often referred to by appraisers as the *date of value*. It's the date that reflects the context of market conditions in which the appraiser's opinion of value is valid. The requirement is to analyze the sales history of the subject property for three years preceding the appraisal's *effective date* of appraisal.

Many appraisers have been found guilty of researching sales history going back three years from their *date of report*. Although there may be client requirements to research a property's sales history from its date of report, this is not a requirement of USPAP. Instead, this would be a client-driven requirement. If a client requests the appraiser to analyze the sales history from the date of report, be sure to ascertain the legitimate use of such information as the date of report. The date of report reflects the appraiser's perspective on the assignment, not the market data, highest and best use conclusions or any of the valuation methods, so it's questionable what legitimacy analyzing any subject sales history data from the date of report would bring.

This story is brought to you by MiCREA

The Michigan Council of Real Estate Appraisers was created in 2004 with one purpose: to serve Michigan's Realtor®-appraisers through advocacy, benefits, data resources, and educational offerings. The Council, steered by a committee of fifteen appraisers representing more than 2800 members, is Michigan's strongest voice for the rights and needs of appraisers in the state. The services and value MiCREA provides to its members complement in numerous ways the services provided to members by their local associations and appraisal organizations.

MiCREA COUNCIL of REAL ESTATE APPRAISERS

Agreements of Sale

Agreements of sale are often referred to as pending sales. *Pending sales* are frequently considered some of the best information, second only to close sale transactions. That statement may or may not be true, so I would not automatically assume it so. When an appraiser analyzes a pending sale, there are a few options available for their use.

1. Use the last known listing price (i.e., pending price) and apply adjustments from it reconciling weight on the unadjusted pending price for lack of final sale price. So in other words, put less weight on it.
2. Develop a list-to-sale price ratio and apply that to your pending prices, then apply adjustments.
3. Try to gain knowledge of what the contract price is and then adjust from that.
4. Do not use the pending transactions in your direct analysis, unless required by assignment requirements, but instead detail it in your market/neighborhood analysis and use it as a basis for tempering your final reconciliation.

Options and Listings

Options to purchase a property may provide an indicator of market pricing. Negotiated sale prices built into contracts are prices anticipated to occur sometime in the near future. Although they are forecast, they provide a prudent meeting of the minds between a buyer/user and seller for the direction they anticipate the value of the property to be. One caveat is that the price is based on presumed changes in the market, which may or may not have occurred. A second caveat is that often a discount in the price negotiated is made because the buyer is a user for the property prior to the option to purchase. They are usually found in leases with options to buy.

Active listings may reflect valuable market pricing for a property. If a property is listed by a willing seller, properly priced with respect to competing properties and provides ample market exposure, the listing may provide sound evidence for the direction of the property's market price. It's important for the appraiser to research the motivations of the seller in analyzing active listing prices as sometimes properties are price too high because of lack of full knowledge of the market, and other times they are listed too low because of a urgency or duress incurred by the current owner.

Reporting the Analysis

Appraisal reports are often found deficient for a lack providing any information regarding analysis of the above transaction activities. USPAP requires the analysis to be summarized, but if that information is not available, then provide a statement for the reason it could not be obtained, such as when purchase agreements are withheld.

One of the questions I receive from other appraisers is *what do they summarize*. Well, it is actually quite simple. Relate your analysis of each of the transactions analyzed to a market value level pricing. Then compare it to the value at which you are coming in.

Assume you have three sales, which provide an indicated value for the subject property from $118,000 to $140,000. The contract price is $135,000 and you are providing a final value of $130,000. Relate the contract price of $135,000 to your final value opinion. If you feel strong in the value at $130,000 you may still explain that the contract price is still within the indicated value range of the three sales. If, on the other hand, the contract price is $150,000, then indicate the contract price exceeds the indicated value range of the three sales and your final value opinion. That doesn't mean the $150,000 is a wrong price to pay. You may have still found the sale was properly listed, property marketed, exposed for a reasonable amount of time and the transaction resulted from arm's length motivations. Therefore, although outside of your indicated value range, the $150,000 could still be concluded market value level transaction pricing.

I hope this article sheds a little light on an area which many state regulatory agencies, review appraisers and users of appraisal services have found deficient in appraisal reports. Review The Appraisal Foundation's Frequently Asked Questions for additional examples relating to analyzing and report a property's transaction history. ●

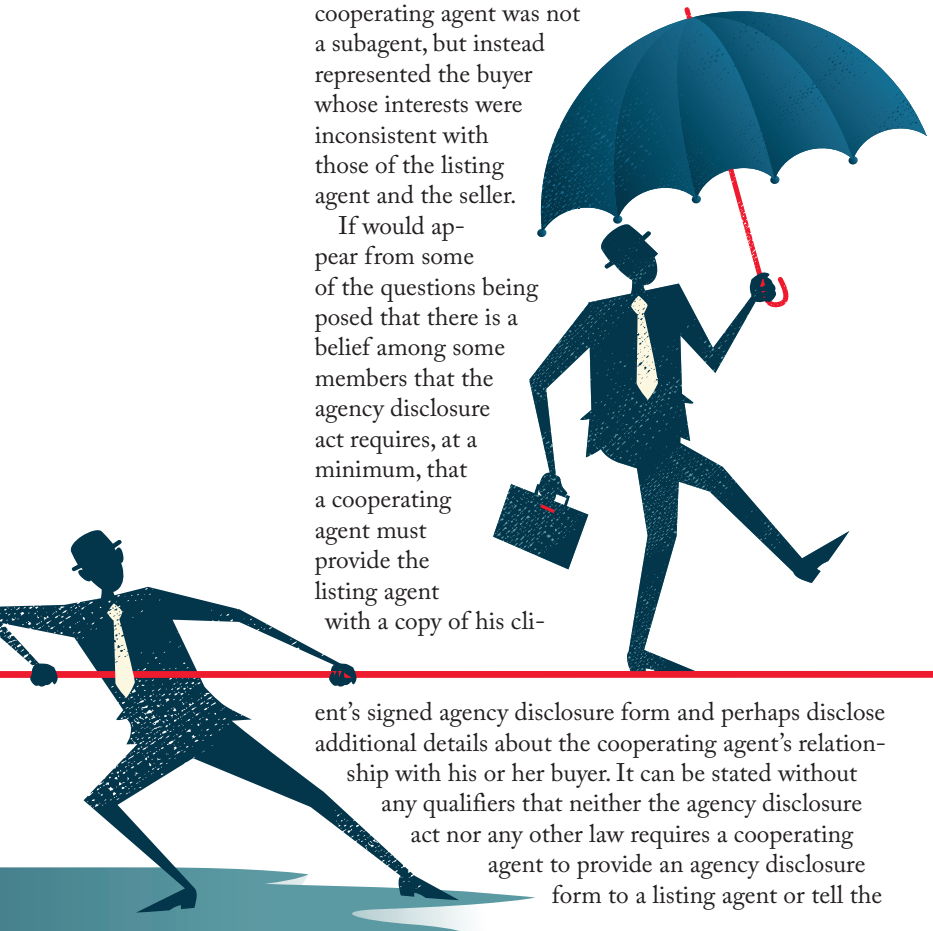
__Micheal R. Lohmeier__, MMAO(4), FASA, MAI, SRA, RES is a certified general real estate appraiser licensed in Michigan and a Michigan Master Assessing Officer(4) as certified by the Michigan State Tax Commission. He currently works as the City Assessor for the City of Auburn Hills where he may be reached for further comment at 248.364.6811, his cell at 248.933.1928 or by email at mlohmeie@auburnhills.org.

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

Agency Disclosure and Cooperating Agents

One barometer of when a specific issue has heated up somewhere in Michigan is the number of calls received by the Michigan Realtors® Legal Hotline on that issue. According to the Michigan Realtors® Legal Hotline barometer, there is now a question as to what information, if any, a listing agent is entitled to know about a cooperating agent's relationship with his or her buyer.

Listing agents first became concerned about the agency relationship between cooperating agents and their buyers in January of 1994. Prior to that time, residential real estate agents always knew the agency status of cooperating agents because they were always subagents of the seller. However, on January 1, 1994, NAR mandated that all MLSs in Michigan provide for cooperation to buyer's agents in addition to subagents. Thus, for the first time there was the possibility that the cooperating agent was not a subagent, but instead represented the buyer whose interests were inconsistent with those of the listing agent and the seller.



If would appear from some of the questions being posed that there is a belief among some members that the agency disclosure act requires, at a minimum, that a cooperating agent must provide the listing agent with a copy of his client's signed agency disclosure form and perhaps disclose additional details about the cooperating agent's relationship with his or her buyer. It can be stated without any qualifiers that neither the agency disclosure act nor any other law requires a cooperating agent to provide an agency disclosure form to a listing agent or tell the listing agent anything about his or her relationship with the buyer. The agency disclosure act only requires that a cooperating agent provide a disclosure form to a seller before the seller provides any confidential information to the cooperating agent. The notion is that the cooperating broker will disclose that he or she is an agent of the buyer and thereafter the seller will not disclose confidential information. If the cooperating agent is dealing solely with the listing agent and does not ever talk, email, tweet, snapchat or otherwise communicate with the seller, then there is no risk that the seller will disclose confidential information to the cooperating agent. Thus in this situation, under the agency disclosure act, the cooperating agent would have no obligation to provide a disclosure form.

Putting the agency disclosure act aside, it is certainly a good practice for a cooperating agent to let the listing agent know in what capacity the cooperating agent is acting. In many situations, it may be necessary for a cooperating agent to make such a disclosure in order to accept the offer of compensation made by a listing agent through the MLS. For example, if the listing agent is only offering compensation to buyer's agents, cooperating agents will wish to demonstrate their status as a buyer's agent in order to be able to accept the offer of compensation. Thus, Realtors® are encouraged to adopt a practice by which a submitted offer is always accompanied by an agency disclosure form indicating the agency status of the cooperating agent. The cooperating agent should not provide the listing agent or a seller with a copy of the agency form signed by his or her buyer. Rather, the cooperating agent should provide the listing agent or seller with a separate form.

It is our understanding that some agents use Michigan Realtors® Form M (Notice of Buyer Agency) for the purpose of advising sellers and/or listing agents of their agency status. Form M was developed a long time ago – prior to the agency disclosure act. Michigan Realtors® developed the form for use beginning in January, 1994 so that listing agents would immediately know whether they were dealing with a subagent of the seller (on their side) or a buyer's agent (on the other side). Once the agency disclosure act was in place, arguably there was no longer a need for Form M. Nonetheless; it is our understanding that this form continues to be used in some parts of the state. There is no problem with continuing to use Form M

so long as it is never used in a situation where an agency disclosure form is required under the agency disclosure act. Form M is not a substitute for the agency disclosure form. Again, an agency disclosure form is always required if there is any chance the cooperating agent acting as a buyer's agent will communicate directly with a seller.

We have become aware of instances where listing agents have conditioned the presentation of an offer delivered by a cooperating agent on the receipt of an agency disclosure form from the cooperating agent. As already stated above, *no Michigan law requires a cooperating agent to provide the listing agent with an agency disclosure form.* Holding an offer hostage until receipt of an agency disclosure form or other information subjects the listing agent to both legal and ethical difficulties. Rule 307(2) requires a listing agent to "promptly deliver all written offers to purchase to the seller upon receipt. . ." Article 1, Standard of Practice 1-6 of NAR Code of Ethics provides: "Realtors® shall submit offers and counter-offers objectively and as quickly as possible." Thus, if a listing agent withholds presentation of an offer to a seller conditioned upon receipt of an agency disclosure form (or other information), the listing agent runs a great risk of running afoul of both the license law and the Code of Ethics.

As a final permutation on this issue, it is our understanding that some firms have adopted a policy by which they deliver a copy of their actual buyer agency contract along with an offer. While we do not necessarily encourage such a practice, it is neither illegal nor unethical to do so. Buyer's agents who wish to adopt this practice are encouraged to get the consent of their buyer-clients before doing so. A buyer-client may claim that the information in the buyer's agency contract is confidential and cannot be disclosed without the buyer's consent. That being said, the only person with standing to object to disclosure of the buyer agency contract to a listing agent is the buyer.

Transaction Coordinators and Dual Agency

Beginning in 1994 with the introduction of buyer's agency in residential real estate, Michigan Realtors® acting as buyer's agents had to deal with the possibility that their buyer-clients may become interested in one of their firm's listings. In this situation, if the firm does not want to act as a dual agent, it must terminate the agency relationship with either the buyer, the seller or both. This last option is presented in Michigan Realtors® Form J (Exclusive Buyer Agency Contract – Traditional Agency) as follows:

> **Broker shall act as a transaction coordinator to facilitate the transaction, and not as an agent for either Buyer or the seller. In such an event, Broker shall be entitled to any fees owed by Buyer pursuant to this agreement.**

Relatively recently, the Michigan Realtors® Form B (Exclusive Listing Contract – Traditional Agency) was revised to provide the same option to listing agents when confronted with a potential dual agency situation. This provision provides:

> **Brokerage Firm shall act as transaction coordinator to facilitate the transaction and not as an agent for either Seller or the buyer.**

The form then provides that the listing firm shall nonetheless be entitled to the compensation provided in the listing agreement. Despite this language, there is always a risk that the seller could claim that he no longer has an obligation to compensate the listing firm as provided in the terminated listing agreement. In order to avoid such a claim, at the time of terminating the listing agreement, the firm may wish to have the seller sign an agreement by which the seller acknowledges the firm will be acting as a transaction coordinator and agreeing that the seller will nonetheless pay the compensation which was set forth in the listing agreement.

Firms who choose the transaction coordinator option should use caution. Applicable case law speaks of a transaction coordinator simply bringing the parties together and letting them put together the deal. In today's world of much more complicated real estate transactions, as a practical matter, it is seldom the case that once introduced, a buyer and seller can simply put the transaction together on their own. Questions often come up as to what additional assistance the transaction coordinator can provide, if any. While it is certainly the case that a transaction coordinator cannot be involved in the price negotiations, are there other, more administrative-type services that a transaction coordinator can provide? For example, can a transaction coordinator order title work? Locate an inspector? As of yet, there are no definite answers to these questions, and it is certainly true that the more assistance that a transaction coordinator provides, the more likely he or she will be deemed to have stepped out of his or her neutral role and have forfeited his or her right to a commission. If a transaction coordinator accidentally slips out of his or her neutral role, then he or she forfeits any right to a commission.

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

"Listing agents first became **CONCERNED ABOUT THE AGENCY RELATIONSHIP** between cooperating agents and their buyers in January of 1994."

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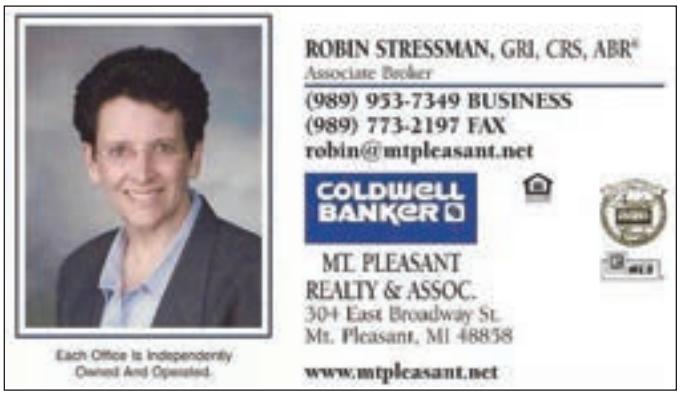

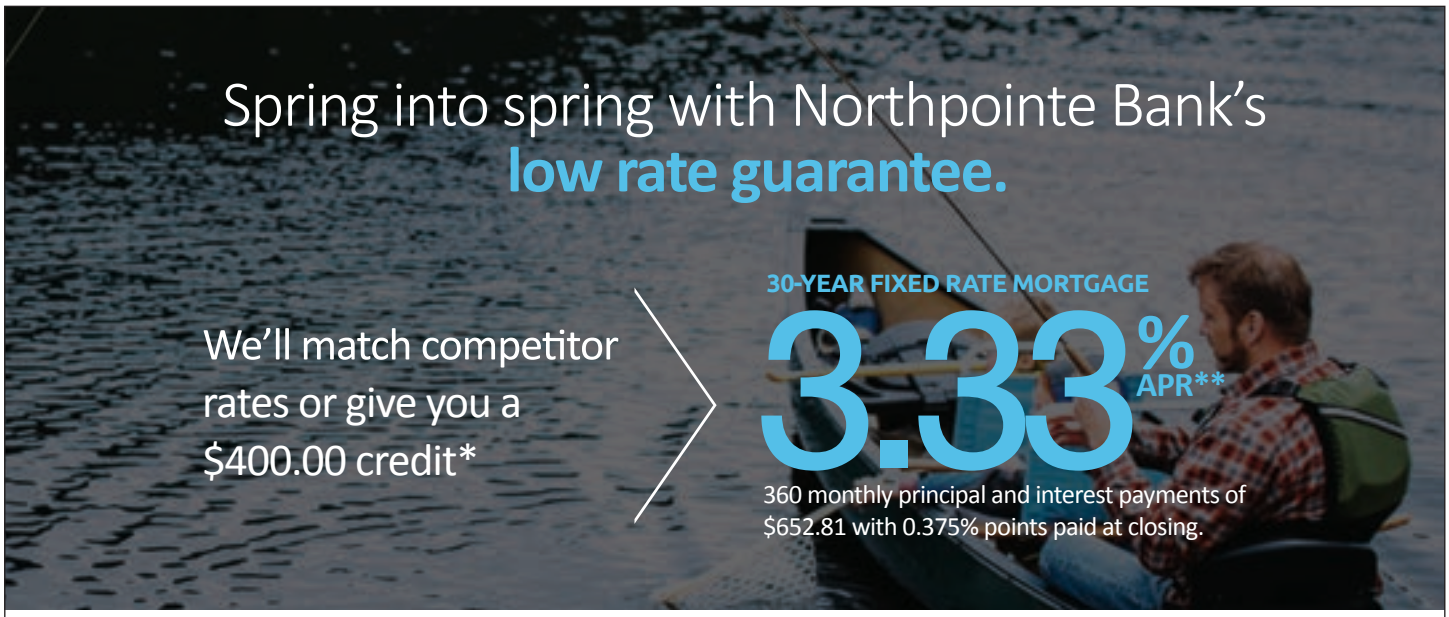

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