

A publication of Michigan Realtors®

# MICHIGANREALTOR®



## FAIR HOUSING *checklist*



PLUS

President's Report

A Legal Quandary

Appraisal Challenges

Capitol Report

Fair Housing & Social Media





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08.20

{ AUGUST | TWO THOUSAND & TWENTY | VOLUME NINETEEN | NUMBER FOUR }



## Heading back to normal, as new as that may be.

2020 has been a year of unimaginable challenges, but our industry has handled them like true professionals. Thanks to the power of the unified voice of over 34,000 Michigan Realtors® members and the hard work of your leadership team and staff, we were one of the first industries trusted to reopen safely during the most challenging of circumstances. Though our return to the field and our offices may look much different as we adjust to new protocols, we are proud to serve our clients while launching new programs and initiatives to help our neighbors and our members. The challenges of 2020 have provided a revitalized sense of what it means to be a Realtor®. These days, being a good neighbor is crucial to ensuring our communities flourish, stay connected and safe.

To do our part, we launched two new programs that help homeowners and Realtors®. In collaboration with the National Association of REALTORS® Relief Fund, the Michigan Realtors® Relief Fund provided swift financial aid for those displaced by Mid-Michigan Flooding. This program provided relief of up to \$1,000 to those who needed assistance with their mortgage payment or monthly rent due to displacement from their home as a result of the Mid-Michigan dam breaches. *As I write this, approximately \$100,000 has been applied for by those affected by the flooding.* This swift mobilization for community relief is a testament to the ability of the state, national and local associations to work cooperatively to provide meaningful help.

Additionally, this year we established the Michigan Realtor® Good Neighbor Award, which recognizes a Michigan Realtor® for providing outstanding work toward improving the quality of life in their community. The winner will receive a \$2,500 grant toward the 501(C)(3) with which they are affiliated.

As we observed changes to the way we do business, local health advisories and new limitations on gatherings in public spaces, our 2020 leadership team had an in-depth discussion regarding the 2020 Convention in Grand Rapids and how it may look. After much consideration, our leadership has decided to host The Convention virtually for 2020. While it will be unique, I am excited that our cutting edge content will reach an even wider audience than an in-person event. Join us October 7-8, 2020 for all the exciting, informative

sessions from Michigan Realtors® to which you have grown accustomed and encourage your friends to join along too. As we see this pandemic through, we will adjust to new and innovative platforms for education and professional development, but there is no doubt in my mind that this will be a great program for all involved.

MICHIGAN REALTORS®

## THE CONVENTION

Virtual Real Estate Convention | October 7-8, 2020

To see the complete schedule for the Convention, visit [MiRealtors.com](http://MiRealtors.com). Registration is now open, so get October 7-8 on your calendar now!

2020 has been a life changing year across the world. From the COVID-19 pandemic to extensive flooding to fights for social justice, it is clear that we will be closing out 2020 much differently than how we entered it. Our commercial members are at the forefront of transforming the way our state looks by guiding clients through rapidly evolving demands for office space, retail and other commercial property.

While this year continues to play out, the American Dream of homeownership is stronger than ever. Notably, the importance of "Home" only grew as we've all spent more time evaluating our surroundings and how they fit our needs. As Realtors®, we fulfill a critical role in ensuring that people have a safe haven that they can call home. Helping consumers from all walks of life find their dream home is one of the many ways we can support our fellow Michiganders as we all traverse the changes that surround us.

I look forward to connecting with everyone at a virtual level at the Convention or anytime, and I am optimistic about the future of real estate in Michigan. Together, we can make big things happen in our industry. ●

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# COMING EVENTS

**October 7-8, 2020**

The Convention

Virtual Real Estate Convention

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## THE CONVENTION

Virtual Real Estate Convention | October 7-8, 2020

**January 27-29, 2021**

2021 Achieve

The Westin Book Cadillac Detroit

**April 28, 2021**

2021 Broker Summit

The Inn at St. John's, Plymouth

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## The Continued Fallout from COVID-19

When I completed my last Capitol report back in May, I never would have guessed that Covid-19 would still be so rooted in our daily lives. The effects of this virus continue to take their human and economic toll on Michigan families. What started as a 3 week Stay at Home Order in March to flatten the curve continues into a several phase reopening of businesses and activities.

We've all had to learn how to work differently. The word "zoom" is so overly present in our vocabulary it has become a verb. "Why don't we zoom, later!" Thanks to Covid-19, Skype blew a 3 run lead in the 9th to Zoom as the virtual meeting tool of choice. Even standard work meetings that we used to hold over regular conference calls now have us entering our clients' and co-workers' living rooms. CBS's Big Brother will not air this year because of the virus, but we will still get our share of voyeuristic moments into people's lives via Zoom.

As much as I knock it, the innovation is tremendous and has allowed for the association's political and advocacy efforts to continue during the virus. For the first time, local candidate interview committees conducted their meetings with candidates for office virtually. Conducting candidate interviews allowed RPAC to complete candidate endorsements before the upcoming August primary. Even the legislature took to using virtual testimony in the legislative committees from citizens and interest groups.

The Michigan House and Senate resumed in May under a limited schedule and a different look to the legislative process to comply with social distancing guidelines. Although, it's not the actions of the legislature that are grabbing the headlines. The news cycle still very much belongs to the Governor and her executive orders. These are orders that the Governor is issuing under her declared states of emergency and disaster. Under those declarations she is exercising the authority to act unilaterally, without the legislature, to issue law in reaction to the virus. The legislature and others have challenged the constitutionality of her authority to issue executive order after executive order with minimal success to this point.

By way of illustration, to date (7/12/2020) the Governor has issued 147 Executive orders since March. There have only been 91 Public Acts (signed bills) in 2020. The response to help Michigan citizens during the Covid-19 pandemic is at times contentious between the two branches of government, but work

to help people and businesses see their way through is coming from both the legislature and the Governor.

Michigan Realtors® is actively engaged with legislative leaders and the administration on a daily basis to address the effects of the pandemic on the real estate industry. Over the summer important property tax relief bills extending timelines for the filing of the Principal Residence exemptions and moving deadlines for property tax appeals were signed into law.

### PRINCIPAL RESIDENCE EXEMPTION EXTENSION TO JULY 30

The traditional deadline for filing a PRE in Michigan is June 1. The delay in the spring market caused by the Stay at Home Order meant pushing the deadline out as far as possible would save homeowners thousands of dollars in property taxes.

Michigan Realtors® worked with the Legislature and the Department of Treasury on Senate Bill 940, sponsored by Senator Roger Victory (R- Hudsonville) to extend the time frame to file a 2020 PRE until June 30th. The bill received expedited action and overwhelming support in the legislature and was signed into law by governor Whitmer on June 24th.

Throughout June, Realtors® advised their buyers to file their PRE before June 30th in order to receive the PRE rate for their July property tax bill. Because Michigan's tax calendar is very compact with little flexibility in dates, many July tax bills were prepared and mailed before June 30th. If you have a client that filed a principal residence in the month of June and they received a tax bill that reflects a non-PRE tax rate, please have them contact their local assessor to receive an adjusted bill, or a refund if the bill has already been paid. In addition, even if they did not file a PRE but still met the criteria for owning a principal residence in Michigan by June 30th, they should also reach out to the local assessor.

### PROPERTY TAX APPEAL EXTENSIONS

In addition to extending the deadline for PRE filings, Michigan Realtors® also supported HB 5766, to extend property tax appeal deadlines for all classifications of property to August 31st.

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The bill sponsored by Representative Roger Hauck (R- Union Township) grants a 96-day extension to file property tax appeals. Property tax appeals with deadlines between May 27, 2020, and September 1, 2020, would have a designated deadline of August 31, 2020.

The bill piggybacks off an earlier executive order by Governor Whitmer that extended the appeals deadline for commercial and industrial property that was set to be May 30th. The bill expands the extension to include residential and agricultural property tax appeals with firm deadline of August 31st for all filings. Providing extra time for homeowners and businesses to file property tax challenges in line is important in providing due process with many services operating in limited capacity.

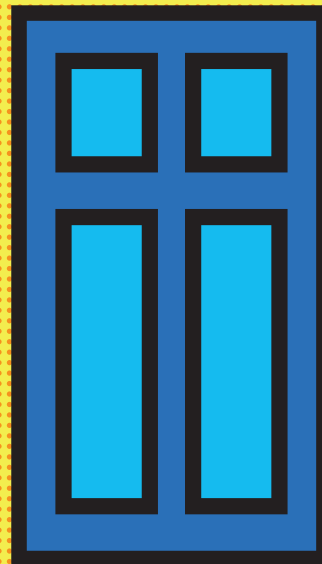
HB 5766 received a unanimous vote in the House and Senate and was signed into law by Governor Whitmer on June 11th.

There is still a long way to go with policies dealing with Covid-19. The legislature returns in September to get to work on the budget deficit. Michigan Realtors® continues to press forward on our pre-Covid priorities of First-time Homebuyer Savings Accounts and Short-term Rentals. Since November is a general election, you can expect a fair amount of legislative activity in a lame duck session before the end of the year.

If 2020 were a Zoom call, I'm sure that many of us would have already hit the "Leave Meeting" button by now. ●

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# Can I Purchase My Client's Property?

BY GAIL A. ANDERSON, ESQ.

From time to time, listing agents inquire as to whether it is permissible for them to offer to buy their seller-clients' property.

The answer to that question is – only under very limited circumstances and never without risk. It is also true that while under these circumstances it is important that the listing agent pay fair market value for the property, that fact alone will not necessarily insulate the agent from liability.

A New York case shows just how complicated it can be for a listing agent to buy property she has listed. In this case, the Dubbs owned a cooperative apartment unit in New York City. The Dubbs listed their unit for sale with a real estate agent, Avery Smith. At the time they listed their unit, the Dubbs told Smith that they would have preferred to remain in their unit, purchase the adjacent unit and combine the two, but that their neighbor had been unwilling to sell.

After several failed attempts to arrange for the sale of the Dubbs' unit to third parties, Smith and her husband offered to buy the Dubbs' unit for their own personal use. The Dubbs' sales contract called for the closing to be delayed for five months so that the Dubbs would have time to find another home. Prior to closing on her purchase of the Dubbs' unit, Smith noticed that the Dubbs' neighbor had listed her unit for sale. Smith immediately contacted the Dubbs' neighbor and began negotiations for the purchase of the adjoining unit. Smith purchased the neighbor's unit soon after closing on the Dubbs' unit. After discovering that Smith had accomplished what they had long sought to do, the Dubbs sued Smith claiming that she had breached her fiduciary duties.

In its decision, the Court first noted that a listing agent may buy her seller-clients' property but only after "full and frank disclosure." If the listing agent does not make "full and frank disclosure," it does not matter that the agent acted in good faith or that she paid full market value. That being said, since in this case the Court believed that there had been full and fair disclosure,

Smith's purchase was deemed to have been permissible. Moreover, relying on cases from other jurisdictions, the Court held that where a listing agent contracts to purchase her client's property, the agency relationship terminates at the time the purchase agreement is executed. The Court found that Smith had no duty to disclose the fact that the Dubbs' neighbor was selling her unit because Smith learned that information after she entered into the agreement to purchase the Dubbs' unit.

It is important to understand that Smith would have likely lost the case had the Dubbs been able to prove that Smith had been made aware of the availability of the neighbor's unit before they signed the purchase agreement. The law is very clear that a listing agent owes a duty to the seller-client to disclose all material facts the agent possesses or obtains during the course of the relationship. The Court described the moment in time when the Dubbs signed the purchase agreement with Smith as a "fundamental metamorphosis" in their relationship. Prior to that moment, Smith owed a duty to the Dubbs to share everything she knew. After that moment, when the parties switched from principal/agent to seller/buyer, the Smiths no longer owed the Dubbs any duty of loyalty or disclosure.

A listing agent who decides to offer to buy her client's property is, at that moment, still a fiduciary. Full and fair disclosure would require, for example, that the agent disclose her plan to buy the property and resell it for a profit. Likewise, full and fair disclosure would require the agent to disclose that she has reason to believe that the market value of the home will significantly increase over the next year. Obviously, fulfilling the duty of full disclosure while negotiating a contract to purchase is a very difficult position to be in.

Listing agents who wish to buy their clients' property have a second hurdle. Unlike the fiduciary duties of disclosure and loyalty, an agent's duty of confidentiality lasts beyond the agency relationship. Even after the termination of an agency relationship, a real estate agent may not use confidential information obtained during the relationship in competition with, or to the detriment of, her former client. In the New York case, the Dubbs argued that even if the fiduciary relationship had ended when the purchase agreement was signed, Smith was not permitted to use the confidential information they



had given her about the desirability of combining the two apartment units. The Court, while agreeing with the Dubbs' legal theory, held that in this case, the information the Dubbs had disclosed to Smith was not confidential. "It is hardly a secret that neighboring apartments can be combined into a single, larger unit," the Court stated. The Court went on to explain that information which is commonly known does not become "confidential information" simply because sellers repeat it to their broker when listing their property for sale.

While the information in the Dubbs' case was not "confidential," it is certainly possible to imagine scenarios in which confidential information disclosed by sellers could be used to their disadvantage during subsequent negotiations. Suppose, for example, that the Dubbs had initially disclosed to their agent that they were having financial difficulties that made it necessary for them to sell their home quickly. Suppose further that after the purchase agreement was signed, Smith had asked for a significant price reduction to address problems that were discovered by an inspector. In this instance, the Dubbs may have been able to persuade the Court that Smith had used confidential information learned during the agency relationship (i.e., the Dubbs' financial difficulties) for her own benefit (i.e., a substantial price reduction).

Finally, it should be noted that in this case, the Court appears to have been strongly influenced by the fact that the Dubbs were sophisticated attorneys such that it seemed unlikely that they had been taken advantage of by their listing broker. The Court also seemed to be impressed by what they viewed as Smith's ethical conduct throughout which had included recommending to the Dubbs that they contact their neighbor about the availability of her unit one more time before they signed the purchase contract with Smith.

Realtors® sometimes assume that if they are negotiating with a client to buy their client's property, they are serving as a dual agent and therefore owe only limited duties to their seller-client. That is not true. A listing agent who wants to buy her client's home has only one client. Until that relationship is legally severed, the agent owes that client the full range of fiduciary duties. This puts the listing agent in the difficult position of being required to disclose to the seller all relevant information about the property known to the agent. The listing agent must also try to make certain that the seller-client cannot later claim that the agent used confidential information to the detriment of the seller-client.

For these reasons, it is always difficult (and somewhat risky) for a listing agent to offer to buy her client's property. This is particularly true if the property is being purchased for immediate resale rather than for the listing agent's personal use. If later challenged, the listing agent may find it difficult to persuade a court that her former clients knowingly agreed to their agent's resale of their property at a profit. This is particularly true if, for example, the sellers are inexperienced and/or in a difficult financial position. Realtors® considering such a purchase should keep in mind that if the transaction is later challenged, the burden will be on them to show that they did not take unfair advantage of their seller-clients. ●



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# YOU'RE *always* BEING TESTED

BY BRIAN WESTRIN, ESQ.

This past April we celebrated Fair Housing Month. While this important observance typically serves as a marker for reflection, education and continued aspiration, there is no doubt that 2020 has a much different and more solemn feeling. With the horrific killings of George Floyd, Breonna Taylor, and Ahmaud Arbery we remain in the midst of various expressions of outrage over police brutality. These expressions have also sparked important discussions about systemic inequalities under the law. As Realtors®, this spotlight on inequality is particularly disturbing. Such injustice flies in the face of the personal and heightened commitment to equality under Article 10 of the Realtor® Code of Ethics. As standard bearers, Realtors® regularly challenge and hold themselves responsible to engage in training and self-assessment within the brokerage. Sadly, some Realtors® have also been involved in troubling examples of disparate treatment of home buyers and sellers based on protected classifications.

In November of 2019, *Newsday* published an expose after a three-year investigation into the real estate market in Long Island, New York. The findings, established through matched fair housing testing, strongly indicate the existence of racial bias, steering and other discriminatory behavior by real estate licensees and sellers. For anybody reading this article, I would strongly urge you to read and watch the report. It can be found at <https://projects.newsday.com/long-island/real-estate-agents-investigation/>. It is a compelling case study not only due to the findings – but it is also compelling for the subtle ways that some of this behavior can occur. And while Long Island, New York is a long way from Anytown, Michigan, the investigation and the findings present Realtors® everywhere with a moment of pause to reflect upon measures to protect and promote equal service, while guarding against instances of bias.

Some years ago, I wrote an article for the “Michigan Realtor®” magazine about fair housing testing and education. It was written from the perspective of a new attorney seeking a knowledge base on fair housing education, compliance and enforcement. At that time, one thing stood out to me that still resonates to this day. It centers on the notion that some real estate licensees believe that they can “spot” a fair housing advocate that is testing for compliance. After reviewing the *Newsday* investigation and the number of instances where testing found unequal treatment, this notion of trying to spot a tester remains a confounding one. That is, as a guiding principle, a Realtor® is always best served by engaging with customers and clients as though the Realtor® is always being tested and not trying to spot a tester. The brokerage would be well served by instilling the “you’re always being tested” mindset as a business principle. Such an approach to service, whether with a customer or client, strikes me as an important one for a brokerage because it speaks to fair housing, but also strong customer and client service overall.

Acknowledging that such a constant state of self-awareness can be difficult to sustain, brokerages are very much encouraged to implement compliance programs and reminders. One such tool is the implementation of a *Fair Housing Checklist* within the office. It should be a document that is reducible to a single page. However, it should identify in a very straightforward manner the things that a typical compliance program would address.

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As... (Article 10 of the Realtor® Code of Ethics)

...standard bearers,

*Realtors® regularly challenge  
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within the brokerage.

”





## THE CHECKLIST

### COURTESY

It is important to work through exactly how a prospective client is received by either the office support staff or the salesperson. This is true, regardless of whether the venue is an office or in the field. Are all prospective clients offered the same reception? How long must they wait before someone offers them services? How responsive are agents when they receive a voicemail or an email from a prospective client? In the initial meeting or discussion, are prospective clients offered brochures and/or literature? Are they offered immediate services regarding showings of homes or are they told that someone will phone them either that day or the next day for potential showings? With regard to courtesy, the law requires that all clients and home seekers be treated alike. If equal professional services are offered to all, there should be no problems. Customer service is a truly universal concept and it should be well-executed when it comes to fair housing law. From a broker's perspective, an agent's responsiveness should be consistent and exceptional.

### INTERVIEWING

Getting a handle on the housing market that the prospective client is hoping to enter is a particularly sensitive situation. During the interview process, it is imperative that every prospective client is being asked the same questions concerning price range, type of housing preference, type of features desired. If the prospective client takes charge of the interview and narrows the housing search on their own accord then the agent should attempt to search accordingly and within the law – always remembering, however, to document the search process. Additionally, if the agent mostly facilitates the search, remember, if specific inquiries are made of some, they should be made of all. And perhaps most importantly, educate agents on the dangers of making assumptions about the housing needs of a customer or client. In the real estate context, these assumptions are at the heart of nearly every instance of unconscious bias. Unconscious bias (aka implicit bias) is often defined as prejudice or unsupported judgments in favor of or against one person or group. These biases can present themselves without warning and with even the best intentions. An agent should always be mindful of the way they approach an interview and avoid interjecting assumptions, remembering that such assumptions are going to be born out of the agent's perspective – not that of the customer or client. An illustration of this misstep would be an agent telling a client or customer “this neighborhood you're looking at is great, but I think you may be more comfortable in...”

### HOUSING AVAILABILITY

It is important for a salesperson to be aware of the number of available housing choices that are ready for immediate viewing. This is especially true with low inventory levels. For many agents, this comes down to entering criteria into the computer and receiving a detailed list of options. Be certain to include all homes that fit within the criteria given to you by the client. Also, do not assume that the client understands the way in which the search may be altered by the slightest variable. If a home meets the buyer's preference, do not omit showing it. Be careful to suggest the identical number and types of homes to all persons regardless of background – or take care to explain the reasons why the given criteria may have created limitations in possible listings. Note: The content, quality and quantity of the information provided as well as the level of service provided to all prospective clients should be equal – or well documented as to any deviation. Consistency is key.

### LOCATION

Show all prospective clients the same locational choices, unless you are specifically requested to show homes only in certain areas. All homes that fit the buyer's preferences must be shown to give as wide a freedom of choice of housing as possible. It should be the buyer's request and not your suggestion that determines the areas in which housing is sought – otherwise, you open the door for a potential fair housing claim. Requests for information and comments related to area schools should be objective and prospects should be referred to source documents to do their own inquiry.

### FOLLOW-UP PLAN

This is arguably the most important thing to keep in mind. Out of sight should not be out of mind. Make sure the plan is consistent regarding all. If your brokerage has the practice of requesting contact information for a call back and receives the information but doesn't make a call back to a prospective client then it is necessary to look at the function of that internal policy. If the request is made for contact information and the prospective client does not have a phone or does not wish to give that information, then it should be noted by the salesperson that the prospective client did not leave information for a follow-up.

## EMBRACE TRAINING AND DIFFERENT PERSPECTIVES

Upholding Fair Housing Law, along with the Realtor® commitment to equal housing opportunity, is not as simple as common sense. The *Newsday* investigation is a sobering reminder that brokerages should never take compliance for granted. Regular education and ready reminders are helpful in fostering a culture of compliance within the brokerage.

In early June, the National Association of REALTORS® partnered with the Perception Institute to develop a powerful training video to address unconscious bias. As we strive for continued progress and housing opportunity, I encourage you to have the entire brokerage watch “Bias Override: Overcoming Barriers to Fair Housing.” That video is available on NAR's website at the following link: <https://www.nar.realtor/videos/bias-override-overcoming-barriers-to-fair-housing>. A brokerage's openness to new ideas and teaching methods will go a long way towards ensuring that fair housing education and awareness is part of the brokerage culture. If you have any difficulty accessing the resources suggested in this article, please don't hesitate to contact me at [bwestrin@mirealtors.com](mailto:bwestrin@mirealtors.com). ●

A photograph of two men in business attire. The man on the left is wearing glasses and has a beard. The man on the right is smiling and looking down at a laptop screen. They are both holding the laptop. The background is a blurred office setting with large windows.

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# *Fair Housing & Social Media*

THE NEW FRONTIER

BY BECKY GEAN, ESQ.





Social media has become an integral part of how we do business in real estate and it's easy to understand why. Social media has enabled us to reach larger audiences, quickly list properties, generate interest and grow clientele, all with a simple click. Growing a business has never been easier, but, despite its perks, social media has created some unexpected avenues of legal liability. One particular area of concern is Fair Housing law and the unintentional discrimination that has subsequently stemmed from advertising for housing on social media platforms.

As Realtors® continue to rely on virtual platforms for advertising, it's paramount that brokers and their agents understand that advertisements for housing must comply with the basic requirements under the law, and advertising via social media is no exception. Online advertisements are not exempt from federal, state and local Fair Housing laws. In fact, it's arguably more important that online advertisements are fair housing compliant since agents are reaching a much larger audience compared to traditional in-print advertising.

Broker supervision will play an important role in maintaining Fair Housing compliance as we enter a new era of conducting business online. If an agent violates the Fair Housing Act, the agent's firm is liable for that action. A meaningful internal policy that addresses fair housing can act as a great defense to a Fair Housing claim alleged against an agent or a brokerage. Such a policy will not automatically absolve the broker from liability, but it's a good place to start. Firms are strongly encouraged to monitor their agents' online advertising and other practices that may potentially violate Fair Housing law. The less control a broker has over an online housing advertisement means a greater potential for legal liability. Alternatively, the more supervision a broker exercises, the lesser the likelihood that discriminatory content slips through the cracks and reaches the audience.

## FACEBOOK WOES

Fair Housing advocacy groups across the country are working diligently to combat discrimination in online housing practices. In 2018, Facebook was sued by the National Fair Housing Alliance over its data collection practices and the effect that those practices had on discrimination in the housing industry. The lawsuit alleged that Facebook's advertising platform violated the Fair Housing Act by target marketing to certain users and excluding others from seeing advertisements for housing based on their race, sex, familial status, and other protected classifications.

Facebook argued that it was merely acting as an "interactive service provider" and, therefore, not liable for violating the Fair Housing Act. In making this assertion, Facebook relied on a case from 2008 in which Craigslist successfully convinced the Court that, as an "interactive service provider," it could not be held liable for discriminatory posts made by 3rd party users because Craigslist did not help create the discriminatory posts and because interactive service providers are immune from liability for content created by 3rd parties.

The Department of Justice intervened in the case and determined that Facebook should not be afforded the same immunity as Craigslist because, unlike Craigslist, Facebook collected user data and used the users' demographics to purposefully exclude members of protected classes from seeing certain advertisements for housing.

Facebook played an active role in creating discriminatory content that violated Fair Housing law. For those reasons, the DOJ determined that Facebook should be liable, as a publisher, for those discriminatory advertisements.

The case was settled in 2019 and, as part of the settlement agreement, Facebook agreed to pay 1.95 million dollars in damages as well as make comprehensive changes to its online housing, employment, and credit advertising platform. The most important change was the removal of targeted marketing practices based on protected classifications such as race, color, sex, national origin, disability, religion, and familial status.

Shortly after the initial lawsuit was filed, the Department of Housing and Urban Development (HUD) filed its own complaint against Facebook, alleging that Facebook's targeted marketing and data collection practices enabled online housing discrimination. Despite the settlement agreement, HUD expressed that it would still be pursuing its own complaint against Facebook and seeking the maximum civil penalties. The interest and attention that this case generated from HUD, as well as the Department of Justice, indicates that regulatory bodies are paying attention to the way real estate professionals conduct themselves on social media, especially in the context of fair housing. This is likely not the last we'll hear of this issue.

## ARE YOU A PUBLISHER AND DOES IT MATTER?

Determining who is and who is not a "publisher" is important when considering liability for Fair Housing violations. This distinction matters, because the publisher of the advertisement will be held liable along with the creator of the advertisement. What does this mean for real estate professionals? Simply put, a Realtor® who publishes online content (blogs, social media posts, listings, etc.) may find themselves liable for third party comments that violate State or Federal Fair Housing law or at the very least explaining why they aren't liable. Brokerages would be wise to implement some type of "Take Down" policy that outlines a procedure for monitoring and/or removing inappropriate or discriminatory material from the brokerage's public-facing social media pages. Agents are solely responsible for monitoring their personal business pages and should be aware that they face liability as a publisher of whatever content they create.

Remember, an employing broker bears the ultimate responsibility for any adverse actions, including Fair Housing issues, that arise out of an agent's practice within that brokerage. Thus, brokers have great incentive to adopt policies that promote fair housing compliance and to set standards for an agent's behavior – particularly online. This is especially relevant now, as we navigate the changes created by COVID-19. Increased remote work and on-line business outreach may very well be the new normal. Now, more than ever, is the time for brokerages to keep a watchful eye on social media usage and online activity.

Michigan Realtors® has created a model social media policy which may be useful for brokerages looking for additional guidelines in using social media responsibly and safely. The policy should be viewed as a risk-reduction tool that will provide real estate professionals with a framework to keep their social media usage professional, ethical, and compliant under the law. The model policy can be found at [www.mirealtors.com](http://www.mirealtors.com). ●

# Answering Appraisal Challenges Today

BY MICHEAL R. LOHMEIER,  
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The past few months I received questions by appraisers regarding particularly

- *How to address inspecting properties during the COVID-19 Pandemic, or similar crisis where personal safety is an issue*
- *What information or types of data, at a minimum, an appraiser should study in the local market due to the COVID-19 Pandemic, or other turbulent times, to evaluate local market changes*

In this article, I'd like to provide a brief summary of my feedback to the above questions.

## INSPECTION OF THE SUBJECT PROPERTY

This question is raised based on the increased risks of coming in contact with so many people on a face-to-face basis.

You should always be mindful of your safety when working on any appraisal assignments. This is not only true during the COVID-19 Pandemic, but also true when inspecting properties in areas you're not familiar with, vacant homes and meeting people for the first time. In prior articles I've mentioned the importance of taking protection classes, being mindful of your surroundings and staying connected with your office while out on inspections. Your safety and wellness should always be your #1 priority!!! With regard to doing any inspections, wear protective clothing, face masks, gloves and follow any appropriate protocols necessary to ensure your own personal hygiene, such as use of sanitizers.

When considering inspections, keep two points in mind:

- *An appraiser's **personal inspection** of a property is defined by the Uniform Standards of Professional Appraisal Practices (USPAP), 2020-21 ed. as the "physical observation performed to assist in identifying relevant property characteristics in a valuation service." Inspections include potentially both **interior** and **exterior** observations for the purposes of collecting physical information about the property that you need in order to use in its valuation.*
- *USPAP doesn't require the appraiser to inspect the subject property; however, it does require the appraiser to identify its "relevant characteristics." The emphasis of "relevance" relates in part to the property and to the **effective date of value**, which may require the appraiser to perform some degree of inspection of the property. However, that's not always necessary, and not always to the extent of needing an inspection of the entire property, as information about the property may be gathered from other sources.*

The key to inspecting the subject property is to identify its characteristics that are "relevant" and "necessary" to develop *credible* assignment results. When identifying your appraisal assignment, you need to discuss with your client what information is available about the subject property that

is reliable, whether that information can be collected from other reliable sources in place of an inspection or if it can complement a lesser-degree inspection.

For example: your client may have a prior appraisal report, or a broker's report, which was completed within the past two years and provides a sketch of the property as well as other information about the property, including photographs, as well as a detailed listing of the features of the home. Public records provide that the property has not had any permits pulled, no fire records, no associated public problems and assessment records confirm the records provided by the client are accurate. You discuss this with the client and it appears that an exterior inspection could provide insight as to the condition of the property (albeit exterior only) and an extraordinary assumption could be invoked that the condition of the exterior would be reasonably believed to be similar to the interior of the property. It's an uncertainty, but one that is reasonable to the appraiser and the client.

If your scope of work determination involving other sources of information is reliable and that scope of work is acceptable to the client, then the use of an *extraordinary assumption* may be invoked for this assignment for those characteristics as a combination from (1) a type and extent of inspection, or lack of interior inspection as in the above example, and (2) from *other sources* of information about the property, such as the prior appraisal and public records.

As mentioned in prior articles an *extraordinary assumption* is defined by USPAP as "an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions." Whenever using an *extraordinary assumption* regarding *other sources*, the appraiser must disclose the use the extraordinary assumption(s), and the use(s) might have affected the assignment results.

Other sources of information which an appraiser may consider in providing reliable information about a subject property may include

- *Brokers and agents, MLS photos, owner photos, drone photos and Pictometry photos*
- *Prior appraisal reports*
- *Seller disclosure reports, contractor and building reports*
- *Virtual inspections such as mobile, Facetime and skype*
- *Public records, assessment records and building inspections*

## MARKET ANALYSIS

Market analysis is an important part of an appraisal report as it paves the way for connecting highest and best use with the valuation approaches. This helps clients understand the motivations of the market participants and the market conditions in the subject's marketplace. Market participants are the individuals engaged in transactions, or the real estate decisions makers involved in the transactions such as buyers, sellers, developers, users, landlords, tenants, lenders and borrowers.

Market analysis is not just reporting raw data and graphs. It's an important analysis which appraisers use to relate the socio-economic environment where the subject property competes and is situated within. An appraiser's market analysis is ultimately a professional opinion of the *market's opinion* of the subject property's real estate market.

Appraisers look at past and present real estate market data. At a minimum for residential data, which is similar in substance to non-residential appraisers study:

- *Listings, new and reduced listings*
- *Signed contracts*
- *Concessions or discounts offered*
- *Leases, or offerings to rent*
- *Days on market*
- *List-to-sale price ratios*
- *Employment and unemployment rates*
- *Foreclosure and eviction rates*
- *Listing and sales volumes, including pending sales*
- *Median and mean sale prices*
- *New construction permits, certificates of occupancy permits (which were not issued during the Governor's "Stay Home, Stay Safe" Executive Order)*
- *Escrows opened and transactions closing*
- *Mortgage interest rates*
- *Rental versus owner-occupied rates*

When analyzing price data, it's important to, at minimum, study a period of three to six months. When analyzing market conditions at a minimum, study data from a date prior to your know cause of effect (i.e., COVID-19 Pandemic), such as listings or sales of houses prior to COVID-19 Pandemic and listings or sales of properties one year ago. For example, new home listings or sales in July 2020 (i.e., effective date of appraisal during Pandemic) as compared to new home listings or sales in July 2019 (one year prior).

As important as market data is, equally important is information interviewed by market participants such as

- *Are homeowners holding off on listing their properties for sale? What are they waiting for?*
- *Are homes that are currently on the market for sale being reduced in prices, and if so by how much?*
- *Are sellers offering concessions? Are they getting full price as listed? Are they getting multiple offers? Is there lack of inventory in certain price categories?*
- *How long are properties being exposed on the market prior to reaching a contract?*
- *Where are buyers coming from? Where are sellers moving to?*
- *Are buyers walking away from deals or asking for concessions? If yes, why?*
- *Are developers putting their projects on hold? Are they reducing the size of their projects, or phasing them?*
- *What's happening with active escrows?*

Don't overlook the importance of interviewing market participants right now. Interviewing those involved with the decision-making process of real estate is critical today more than ever.

## DISCLOSURE IN REPORTS

Currently appraisers are finding it important to write much more about what's incurring in the market. Appraisal reports with effective dates encompassed within today's COVID-19 Pandemic times require disclosure of COVID-19 and discussion of its influence on value, even if the adjustment or effect on market influence is "zero." As you write your appraisal you need to be mindful to disclose your analysis how you developed your analysis and conclusions and remember you are studying a market that is not perfect and is constantly changing. So you also have to continuously analyze the market.

The use of *extraordinary assumption(s)* relating to the subject property should be not only disclosed where necessary in the report as necessary per USPAP, but it's been suggested by many appraiser's peers to introduce the issue in your letter of transmittal since this is new grounds for clients as well.

It's not appropriate to use an extraordinary assumption when determining your opinion of market analysis conclusions, as those are your opinions of the market's opinion of what's occurring in your subject property's environment. Those are not "uncertainties," those would be your conclusions based on your review of data and your conclusions. That's different than our earlier discussion of the use of extraordinary assumptions relating to physical characteristics involving the subject property's relevant characteristics that you did not personally observe. ●



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# Michigan Placemakers | August 2020

## What benefit have you seen from Realtors® engaging in community revitalization projects?

Realtors® are known experts of their communities, and what better way than to be actively involved in projects that benefit and improve those communities. Working side by side with community members to accomplish a goal for the betterment of the area, shows that we care and will work to make a place the Best It Can Be.

## How can placemaking help communities to reengage post-COVID?

Public engagement builds confidence that we can work together even in these challenging health times, to safely accomplish great things. Coming out of our homes and offices, practicing social distancing, and wearing PPE allows us to demonstrate that Realtors® will go the distance to get things done, regardless of the challenges.

### Project

Marketplace on the Green

### Grant Recipient

Meridian Township Parks and Recreation

### Location

Meridian Township, MI

### Completion Date

In progress

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## Featuring Special Guest

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