

A publication of Michigan Realtors®

MICHIGAN REALTOR®

Understanding THE Contract

CONTRACT



PLUS

2023 Leadership Team
Capitol Report

President's Report

The Ins & Outs of
Agency Law

Let's Close the Deal on a Brighter Energy Future



Looking to build your brand and become a trusted energy efficiency resource for your clients? The **Consumers Energy Real Estate Energy Consultant program** provides real estate professionals like you with **free promotional support** and energy efficiency educational resources to help homebuyers better understand how their new home uses energy.

When you sign up, you'll enjoy free customizable marketing materials, expanded reach and the opportunity to create a brighter energy future for Michigan.



Visit ConsumersEnergyTradeAlly.com/resn to learn more, or scan the QR code to enroll in the program.

Consumers Energy
Count on Us®

Features

COVER STORY

- 06 **2023 Officers & Directors**
- 08 **Negotiation via Feigned Termination is Risky Business**
Legalities of contracts
by Gail A. Anderson, Esq.
- 12 **An Overview of Agency Law: Creating and Terminating Agency Relationships**
First things first is safest
by Rebecca Berke, Esq.

MICHIGAN**REALTOR**[®]

Departments

- 02 **President's Report**
Leaders help build leaders
by Natalie Rowe
- 04 **Capitol Report**
Things are a little different this year
by Brad Ward, Esq.

01.23

{ JANUARY | TWO THOUSAND & TWENTY THREE | VOLUME TWENTY TWO | NUMBER ONE }



Answer the Call for Leadership

As we begin 2023, it is truly an honor to serve as your Michigan Realtors® President. When I started my career in Real Estate, I had a unique opportunity to learn from some of the best. As many of you know, my parents introduced me to our profession very early on in my life. As I was growing up, I learned many valuable lessons about our profession. But many of the most important lessons had nothing to do with brokerage strategy, lead generation or marketing 101. While those things are all vital to running a brokerage, the lessons that I took the most from had everything to do with teamwork, patience and listening.

As I think about those lessons, it reminds me of a Simon Sinek quote; “a leader’s job is not to do the work for others, but to help others figure out how to do it themselves, to get things done, and to succeed beyond what they thought was possible.” I share this quote, not to talk about myself, but to talk about the many volunteer leaders beside me and the spirit of collaboration. In addition to the lessons my parents imparted, I have benefitted from the wisdom and generosity of so many mentors and friends during my leadership journey with my local Association and through the Michigan Realtors®. What I think you’ll find is that it’s never too early or late to start your journey.

If you’re interested in taking your leadership journey to the next level, consider making plans to attend the 2023 Achieve Leadership Conference on January 26-27 in Grand Rapids. Achieve provides leaders of every level with the tools needed to be part of the change they want to see in their local associations, offices and communities. The event gathers the best and brightest association leaders and public policy advocates from across Michigan.

SCAN THE QR CODE
TO GO DIRECTLY
TO MICHIGAN
REALTORS® WEBSITE



ACHIEVE

January 26-27, 2023

JW Marriott Grand Rapids

This is such a wonderful profession that we have chosen. I love the phrase “a rising tide lifts all boats” as it seems emblematic of what being part of an association means. We raise one another up. We push one another forward. Together we can make a difference and I will always view leadership through the lens of what we can accomplish together. Thank you for all that you do. The leadership team and I look forward to all that we can accomplish together. ●



PRESIDENT

Natalie Rowe
ABR, CDPE, GRI, SFR
GKAR

PRESIDENT-ELECT

Sandi Smith
GRI, E-pro
AAABR

TREASURER

Christopher M. Germain
ABR, PSA
UPAR

CHIEF EXECUTIVE OFFICER

Robert Campau, Esq.
RCE, CAE
rcampau@mirealtors.com

EDITOR/ADVERTISING

Joe Kras
MBA, SAG-AFTRA
jkras@mirealtors.com

CHANGE OF ADDRESS/UNSUBSCRIBE

Kaetana Beech
kbeech@mirealtors.com

2023 Michigan Realtors® Board of Directors: District 1 Matt Hodges, (Aspire North Realtors®); District 2 Richard Adgate, (West Central Association of Realtors®); District 3 Ingrid Nelson, (Greater Regional Alliance of Realtors®); District 4 Mark Oegema, (West Michigan Lakeshore Association of Realtors®); District 5 Kimberly Gibbs, (Jackson Area Association of Realtors®); District 6 Alex Milshteyn, (Ann Arbor Area Board of Realtors®); District 6 Jodie Franklin, (Ann Arbor Area Board of Realtors®); District 7 Beth Graham, (Greater Lansing Association of Realtors®); District 8 Michele Papatheodore, (East Central Association of Realtors®); District 9 Katie Weaver, (Greater Metropolitan Association of Realtors®); District 10 Al Block, (Greater Metropolitan Association of Realtors®); District 11 Karen Greenwood, (Greater Metropolitan Association of Realtors®); District 12 Fred Pickens, (Detroit Association of Realtors®); District 13 Deanna Coleman, (Southeastern Border Association of Realtors®); Past President Gene Szepeinski (Greater Regional Alliance of Realtors®); Large Office Camille Peterek, (North Oakland County Board of Realtors®); Large Office Adam Paarlberg, (Greater Regional Alliance of Realtors®); Jason Makowski (CAR) (MiCAR Representative); Terry Bixler (CBOR) (MiCAR Representative); MRAEC Rep. Alan Jeffries (Southwestern Michigan Association of Realtors®)

Michigan REALTOR® provides information about the real estate profession and news of Michigan Realtors® and its members. Opinions expressed in signed feature articles are those of the author and do not necessarily reflect the viewpoint of Michigan Realtors®. Advertising of property, services or products herein does not imply endorsement by Michigan Realtors®.

Michigan REALTOR® (ISSN 1053-4598, USPS 942-280) is published four times per year (January, March, August, 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.

January 26-27, 2023

Achieve
JW Marriott Grand Rapids

April 26, 2023

Broker Summit
Westin Book Cadillac Detroit

September 20-22, 2023

The Convention
Detroit Marriott at the Renaissance Center

SCAN THE QR CODE
TO GO DIRECTLY TO
MICHIGAN REALTORS®
WEBSITE FOR UP-TO-DATE
EDUCATION & EVENTS



Find Michigan Realtors® on your favorite
social networking sites:





This Duck Has Flown Away

For those of you that are regular readers, you have read about lame duck in previous articles throughout the years. As a refresher, lame duck is the several weeks between the November election, and the end of a legislative session. It is traditionally a time when bills that sparked controversy were given new life in the legislative process. Presumably because there would be less repercussions for elected officials, with some ending their time in office, and others not having to face voters for another couple of years.

Past lame duck sessions brought us late nights and many days, and even a “super duck” from time to time. However, 2022’s duck proved to be one of the lamest. There were only 3 days of session in both the House and Senate between the election and them packing it in for the year. After the November election, the legislative Republicans lost majority in both chambers (more on that later). That loss really took the air out of the balloon for any kind of last-minute charge on several issues.

Despite a number of bills still in the process and a budget surplus of almost \$7 billion to be spent, there was very little appetite to approach lame duck with the same vigor as in years past. For Michigan Realtors®, we were able to cap off some long work on a couple of important issues, but we also face the legislative death of our package of bills to protect short-term vacation rentals. This top priority will now have to be reintroduced next session and begin the process all over again.

Before breaking for the end of session, the legislature did send to the Governor’s desk a package of bills that we have been working on as part of the Housing Michigan Coalition. Senate Bills 362, 364, 422, and 432 create new options for local governments, developers, and business interests to partner in the creation of workforce housing.

The coalition, also consisting of the Grand Rapids Chamber, Michigan Municipal League and Michigan Home Builders Association along with several other businesses and nonprofits pursued these bills to provide additional options for public and private cooperation in housing availability and affordability. The legislation uses three proven concepts that have been active in Michigan for years to create flexible and locally driven incentives for development. SBs 362 and 422 are modeled on Commercial/Industrial Facilities Exemptions, SB 364 extends Neighborhood Enterprise Zones to allow all local units to use them with some added language

to protect against sprawl and SB 432 allows for local PILOTS (or PILTS) for workforce housing without requiring state or federal subsidies or programs.

Another important bill that went to the Governor’s desk was House Bill 4416, sponsored by Representative Sarah Anthony (D- Lansing). In the not-too-distant past, discriminatory deed restrictions were used for segregating neighborhoods based on race, religion and other factors. While courts have ruled these restrictions unenforceable, the hurtful language remains when purchasers receive their deeds. This new law will provide homeowners a path to remove the unenforceable language.

Unfortunately, legislation to protect the ability of homeowners to short-term rental rights died on the floor of the Michigan Senate. As you know this priority legislation has been the subject of many workgroups and negotiations over the years. The latest iteration combined protections for short-term rentals within Michigan’s Zoning enabling Act and additional regulations that could be applied by local governments, with a statewide registry and tax collection mechanism for hosting platforms, like Airbnb.

While this broader package of bills enjoyed the support of many Senators on both sides of the aisle, it did not have the final blessing of Senate Majority Leader Mike Shirkey (R- Clark Lake). Senator Shirkey tried to bridge a deep philosophical divide between two of the strongest voices in his caucus. Senator Aric Nesbitt (R- Lawton), the sponsor of the bill in the Senate, and Senator Ken Horn (R- Frankenmuth), a passionate protector of local zoning and his community of Frankenmuth. In the end, Senator Shirkey sided with his long-time friend Senator Horn. Without any voting days remaining in lame duck, the bills will have to be reintroduced next year to start the process over.

THE UPCOMING 2023-2024 LEGISLATIVE SESSION

The Michigan Realtors® Political Action Committee scored an 89% success rate on our endorsements of state and federal candidates in the November 2022 General Election. Of note, RPAC endorsed Michigan Supreme Court candidates, Brian Zahra and Richard Bernstein, were both victorious. And RPAC-supported Proposal 1, dealing with term limits and financial disclosures, also passed overwhelmingly.

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



This year will be the first time in 40 years that the Democratic party will control the House, Senate, and the Governor's office. The new leadership offers several new advocacy opportunities. The legislature is now under the new leadership of Speaker of the House Joe Tate (D- Detroit) and Senate Majority Leader Winnie Brinks (D- Grand Rapids). Both leaders are well known to Michigan Realtors® and we look forward to working with them and their respective caucuses on new challenges and opportunities this session. The new majorities are slim (20-18 in the Senate, and 56-54 in the House), so Speaker Tate and Senate Majority Leader Brinks are hard at work laying out their first legislative priorities.

The Michigan Realtors® Public Policy Committee has already begun laying out its priorities for this session. Along with the short-term rental legislation, the Public Policy Committee will be placing a focus on fair housing, housing availability and affordability, defining post-closing occupancy agreements and the pursuit of a statewide septic code.

Under fair housing, expect to see legislation that will incorporate fair housing education into our existing continuing education credits along with expanding Michigan's Elliott Larson Civil Rights Act to include sexual orientation and gender identity, codifying the recent Michigan Supreme Court decision.

Cooperative work will continue with the Michigan Housing Coalition and individually to expand development options to create new housing inventory, reduce cost barriers to homeownership as well as legislation that separates post-closing occupancy agreements from the traditional landlord tenant relationship.

Lastly, stakeholder discussions have already begun to revisit a statewide septic code. As pollutants continue to make their way into our lakes and streams, uniformity and certainty in septic regulations across jurisdictions is vital for protecting our fresh water.

This past fall's duck may have been one of the lamest and tamest, but there will be no shortage of issues and solutions to move forward with in this new year. ●

...**2022's duck** proved to be one of the **lamest**. There were only **3 days of session** in both the House and Senate between the election and them packing it in for the year.

2023 Officers



President: Natalie Rowe, Greater Kalamazoo

Natalie started her Real Estate career as an office admin in 1999 and in 2006, earned her Real Estate license. In 2016, she earned her Associate Brokers License, just before becoming the Broker/Owner of RE/MAX Advantage in 2017. Natalie's office is located in Portage and is currently home to 30 Realtors® and 3 office admins. Throughout her career, she has served on most of the committees at the Greater Kalamazoo Association of Realtors®. She also served as a Board Member and an Officer. She was elected to serve as District 6 Director for Michigan Realtors® in 2017, before being elected as Treasurer-elect in 2020. In addition, Natalie serves as a NAR Director and was recently appointed to the RPAC Participation Council. Outside of Real Estate, Natalie loves to do anything active with her partner, Mike and their pup, Otis!



President-Elect: Sandi Smith, Ann Arbor

Sandi Smith, GRI, e-PRO, first entered real estate while still a college student at the University of Michigan. She joined the Ann Arbor Area Board of Realtors® and quickly became engaged at the committee level and served as a Director. Sandi was honored as the 2007 Realtor® of the Year. She has also been active in the Ann Arbor community, serving 2 terms on City Council and 3 terms on the Downtown Development Authority. Sandi is a past chair for the Jim Toy Community Center and currently serves on the Board of the Washtenaw Housing Alliance, a unique coalition of over 30 non-profit and government entities that are committed to ending homelessness in our community. She is the co-founder and Associate Broker of Trillium Real Estate in Downtown Ann Arbor.



Treasurer: Christopher M. Germain, Upper Peninsula

Christopher M. Germain is a lifelong resident of Michigan's Upper Peninsula. He was born and raised in the Escanaba area. In 2004, he attended Holloway Institute to receive his real estate license and began working as a Realtor®. Since then, he has taken a very active role in the real estate community. He is a past director on the Delta County MLS Committee, Past President of the Upper Peninsula Realtors®, and has served on various PAGs. In addition, he was selected to take part in the Inaugural Leadership Academy class for the Michigan Realtors® and then went on to facilitate the academy for the following two years. He occasionally speaks on real estate and various business topics around the region. He was raised with a strong sense of community service. He dedicates a great deal of time each year giving back to his home area, most notably as the Captain of the Ford River Township Volunteer Fire Department. He is a Past President of the Delta County Jaycees, Past Master of Delta Lodge 195 of Free and Accepted Masons, past secretary of the Delta County Fire Chiefs, past director of the Delta County Fire Training Council, and a past committee member of Delta County Relay for Life.

2023 Board of Directors

The Michigan Realtors® board of directors is made up of district directors and other representatives, which are listed below. District representatives serve as liaisons between the Michigan Realtors® and local associations in their region.



Rich Adgate
District 2
WCAR



Beth Graham
District 7
GLAR



Mark Oegema
District 4
WMLAR



Terry Bixler
MiCAR Rep.
CBOR



Karen Greenwood
District 11
GMAR



Adam Paarlberg
Large Office Rep.
GRAR



Al Block
District 10
GMAR



Matt Hodges
District 1
ANR



Michele Papatheodore
District 8
ECAR



Deanna Coleman
District 13
SEBAR



Alan Jeffries
Local AE Rep.
SWMAR



Fred Pickens
District 12
DAR



Camille Peterek
Large Office Rep.
NOCBOR



Jason Makowski
MiCAR Rep.
CAR



Gene Szpeinski
Past President Rep.
GRAR



Jodie Franklin
District 6
AAABR



Alex Milshteyn
District 6
AAABR



Katie Weaver
District 9
GMAR



Kimberly Gibbs
District 5
JAAR



Ingrid Nelson
District 3
GRAR



NEGOTIATION VIA *Feigned Termination* IS *Risky Business*

BY GAIL A. ANDERSON, ESQ.

Last fall, a caller to the Michigan Realtor® Hotline described a unique situation that raised a number of interesting legal issues. The call was from a buyers' agent whose clients had entered into a purchase agreement that called for an "informational only" inspection. That inspection uncovered termite damage. The damage was not structural, and the buyers decided that they wanted to go forward with the purchase of the house. However, the buyers and the buyers' agent decided that since there was termite damage, they would try and get the sellers to reduce the price. The buyers' agent called the listing agent and pointed out that the sellers had provided a seller's disclosure form stating that there was no history of termite infestation. The buyers'

agent told the listing agent that since this turned out to be false, her buyers were terminating the purchase agreement. The buyer's agent then indicated that her clients might be willing to reconsider if the sellers would agree to a price reduction.

The listing agent and sellers did not challenge the buyers' right to terminate the purchase agreement. Instead, they presented the buyers' agent with a written addendum that called for a \$10,000 price reduction. Before forwarding this addendum on to her buyer-clients, the buyers' agent called the listing agent and indicated that the buyers wanted a \$15,000 reduction rather than a \$10,000 reduction. At this point, the listing agent advised the buyers' agent that the sellers had

received another offer and were going to take that second offer.

The buyers' agent immediately called the Hotline to ask whether her clients could enforce their original contract. She explained that when she attempted to get the purchase price reduced an additional \$5,000, she was just "doing her job" and trying to get the "best possible deal" for her client. Besides, she pointed out, her client had not signed any written termination of purchase agreement.

Unfortunately, in this scenario, it is quite possible that a court would decide that the sellers were free to sell their home to the second buyer. Let's walk through the analysis.



Seller Disclosure Act

It is simply not true that a buyer can terminate a purchase agreement whenever it turns out that something in the seller's disclosure statement is untrue. A seller's disclosure statement is not a warranty of any kind. In fact, the form itself states:

This statement is not a warranty of any kind by the seller or by an agent representing the seller in the transaction and is not a substitute for an inspection or warranties that the buyer may wish to obtain.

The seller's obligation is simply to answer the questions honestly and in good faith. If a seller answers the questions honestly, and it turns out the seller was mistaken, the buyers

do not necessarily have the right to terminate the contract. Buyers who agree to an "informational only" inspection should not assume that they will be able to terminate the purchase agreement if they discover something that is not disclosed in the seller's disclosure statement.

However, here, the listing agent and sellers did not challenge the buyers' right to terminate the purchase agreement. Even if the buyers had no legal right to terminate the contract, if they did, in fact, terminate the contract and the sellers accepted that termination, the buyers could not then revoke the termination on the basis that they had no legal right to terminate the contract in the first place.

Adequacy of Notice

This raises the next question of whether the telephone call from the buyers' agent to the listing agent did result in a termination of the purchase contract. The buyers' agent's position was that her telephone call did not terminate the purchase agreement because the notice that was given here was not in writing and did not come from the buyers themselves.


The buyers' agent's confusion here is understandable. One of the very first things that a real estate licensee learns is that a purchase agreement must be in writing, signed by the parties. However, it is not true that all notices given pursuant to a purchase agreement must be in writing. A writing is always preferable, but it is not always required.



CONTRACT



CONTRACT



The *lesson* to be *learned*
is that you *should not* try
and *have it both ways*.



For example, where a purchase agreement provides that the contract may be terminated by one party in the event something happens (or doesn't happen), that termination need not be in writing unless the contract requires "written notice." Most, if not all, inspection contingencies require "written notice." In the caller's situation, however, there was no inspection contingency. Instead, the buyers' agent advised the listing agent via telephone that her clients were terminating the purchase agreement on the basis that there was a false statement in the seller's disclosure statement. Since a writing was not required, the buyers cannot revoke her termination notice just because the notice was not in writing.

Moreover, the termination is not automatically invalid because it came from the agent rather than the buyers themselves. Buyers' agents should not assume that they can provide informal notice on behalf of their buyer-clients without committing them in any way. Under a legal doctrine known as "apparent authority," in some instances a buyer will be bound by the actions of their agent. The test is whether a person familiar with the nature of the business would believe that the agent had such authority. It is a very subjective test, and here, a court could certainly conclude that the seller was entitled to rely on the buyers' agent's representation that her clients were terminating the purchase agreement.

Offer and Acceptance

If the original contract was terminated by the agent, then the sellers' proposed addendum calling for a price reduction was a new offer. That is, the sellers were offering to resurrect the initial contract with a \$10,000 price reduction. An offer can be revoked at any time before it is accepted. So, when the buyers' agent decided to try and get a better offer, rather than simply forwarding the existing offer to her clients, she put her clients at risk. There was nothing to stop the sellers from

revoking their offer and selling the home to someone else. The same analysis would apply if the buyers' agent had called the listing agent and told her that the buyers had signed the new offer. Until that acceptance was delivered, the offer could be withdrawn. For this reason, it is usually better to actually deliver the response rather than to call and advise the other agent as to the nature of the response that will be delivered. And, of course, a buyers' agent should never try to negotiate a better deal for her clients without her clients' knowledge and consent.

Court of Appeals Decision

A recent Michigan Court of Appeals case involved a similar dispute as to whether the buyer's attempted negotiation had resulted in a termination of contract. The plaintiff had entered into a purchase agreement with defendants to purchase land in Warren, Michigan for \$615,000. The purchase agreement stated that the purchaser would have a 60-day due diligence period. The purchase agreement stated further that in the event the purchaser was not satisfied with the condition of the property, he could terminate the purchase agreement by written notice within the 60-day period.

Prior to the end of the 60-day period, the purchaser sent a text to the seller along the lines of the following:

Given the setback issue and the environmental issue, I am only willing to close this deal for \$600,000.

The seller responded, "I'll pass. But thanks." The buyer then responded, "No problem."

The seller refused to close on the sale, and the purchaser sued to enforce the purchase contract. The issue to be decided by the court was the meaning of the above text message exchange. The seller's position was that this exchange evidenced a termination of the purchase agreement. The purchaser

argued that the text exchange was only an attempt to renegotiate the purchase price which, when rejected by the seller, meant that the original purchase agreement terms remained in effect.

The court in this case found that the text message exchange was ambiguous and that the court needed to consider all of the actions of the parties in order to determine the intent. Because the purchaser and the seller both took various steps toward closing after the text exchange, that suggested that they both believed the purchase agreement was still in effect, and the court held that there had been no termination of the contract. Had the seller immediately declared the contract over after the text exchange, the case could have easily come out the other way.

Final Word

The lesson to be learned is that you should not try and have it both ways. Where a contract allows for termination via "notice," do not try and keep your options open by intentionally giving what you believe to be faulty "notice." The sellers may call your bluff, and if there is any ambiguity, the effectiveness of the termination notice will depend on a court's interpretation of the intent of the parties. That is a very subjective standard. Of course, if the question has to be determined by a court, your clients will be unhappy even if they win. Litigation is costly and time-consuming. ●





An Overview of Agency Law: Creating and Terminating Agency Relationships

The topic of “agency” is one that never goes away in the life of a Realtor®. Agency law sets the parameters for how you interact with your clients and defines what legal obligations you owe to your clients. It’s also an area of the law that can create a good deal of risk and liability for brokerages if it’s undertaken incorrectly. The goal of this article is to help Realtors® understand: 1) what agency law is, and 2) how to interact with clients in a way that creates the least amount of liability for the agent and their brokerage.

WHAT IS AGENCY LAW?

Let’s start with the basics. In an agency relationship, there are two parties: the “agent” and the “principal” (who we’ll also refer to as the “client”). The relationship between an agent and a principal creates a fiduciary relationship which obligates the agent to act in the principal’s best interest. Agency law sets forth the rules that apply to these fiduciary relationships.

CREATING AN AGENCY RELATIONSHIP

There’s a common misconception among many agents that there must be a written agency agreement in place in order to create an agency relationship. But, that’s not true! Legally speaking, a written agreement is not necessary to establish an agency relationship.

Using a written agreement is, of course, always preferred. This is because a written agreement gives

the broker an enforceable right to a commission (which guarantees that you get paid). Michigan licensing law calls these agreements “Service Provision Agreements” (e.g. listing agreements and buyer’s agency contracts). This is the recommended way to create an agency relationship because, again, the written agreement obligates the client to pay a commission. Although using a written agreement is encouraged, it is not the only way to create an agency relationship.

Agency relationships can also be formed through words and conduct. If a potential client thinks that an agent is acting on their behalf, and then the agent actually does act on their behalf, then the agent has created an agency relationship and will owe fiduciary duties to that individual.

Let’s say, for example, that a customer comes to you and says that they are looking to buy a home and that they’re interested in finding an agent to help them with the home buying process. You don’t ask them to sign a buyer’s agency agreement, but you begin sending them listings and even drive them around to see available properties. As the buyer becomes more serious about buying, you answer their questions about financing, introduce them to a lender and eventually begin submitting offers on their behalf.

In this scenario, you are *acting* like the buyer’s agent, and the law will treat you as such (regardless of whether you have a written agency agreement in place with that buyer). This example illustrates why it is so important that estate licensees are

cognizant of how they interact with customers. Those interactions can easily create a legally binding agency relationship (and all the duties and obligations that stem from that relationship). Again, this is true even if the parties have not executed a written agency agreement. Realtors® are still very much encouraged to establish their relationships in writing. A written agency agreement will not only lay out the expectations of both parties, but also guarantee that the brokerage is paid for their services.

THE AGENCY DISCLOSURE FORM

Do not confuse a written agency agreement with Michigan’s agency disclosure form! They are not the same. A written agency agreement, while not required by Michigan law, is generally used to create an agency relationship, and imposes contractual obligations on the parties. An agency disclosure form, on the other hand, is a creature of Michigan statute and is not really intended to serve the same function as a written agency agreement. It’s true that the agent’s act of presenting the agency disclosure form to the client could result in the agent owing fiduciary duties to that client (because remember, an agent’s conduct can create an agency relationship). But understand that the agency disclosure form is not a contract and does not obligate the client to pay commission – regardless of what duties the agent might owe to the client. This is why the agency disclosure form should not be used as a substitute for a listing agreement or buyer’s agency contract.

AGENCY LAW . . .

can create a good

deal of **RISK**

and **LIABILITY**

for brokerages

IF IT'S

UNDERTAKEN

INCORRECTLY.



So, what purpose does the agency disclosure form serve if it was not intended to be used as an agency contract? The purpose of the disclosure form is to simply let the client know: 1) what types of agency relationships are available to them, and 2) what duties they are owed as a result of entering into an agency relationship. Michigan law requires that the agency disclosure form be provided to a client prior to the disclosure of confidential information by the client¹. Failure to do so will result in a violation of the Michigan Occupational Code. This means that it's a good idea to have the client sign this form early in the agency relationship, before the client divulges any confidential information.

Let's say, for example, that an agent is representing a seller in the sale of the seller's home. The parties have a signed listing agreement in

place, but the agent keeps forgetting to have the seller sign the agency disclosure form. Say that the seller tells the agent the lowest price they're willing to accept for their home. They also reveal that they need to sell quickly because they're in a bad financial position. These disclosures are "confidential" information and because the seller-client revealed this confidential information before their agent provided them with the statutory agency disclosure form, the agent is now in violation of Michigan licensing law.

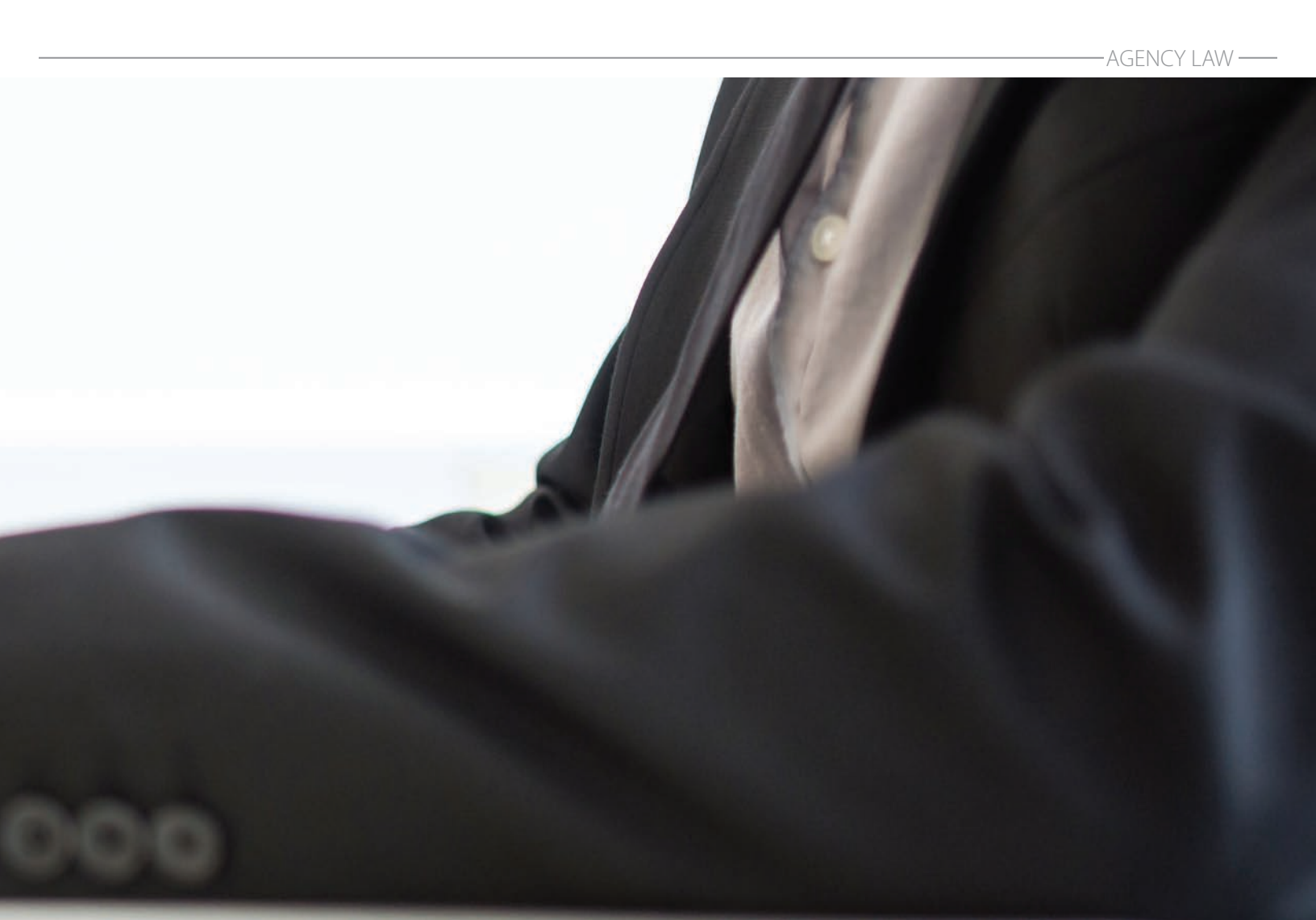
Note that if the seller hadn't actually disclosed "confidential" information, then, technically, that statute would not have been violated. In the real world, however, it's unlikely that an agent would work closely with a client without the client revealing something that would be considered "confidential" information. As any

experienced agent knows, you can't control what your client tells you (or when they say it)! The best practice is to have the client sign the agency disclosure form as soon as possible.

TERMINATING AN AGENCY RELATIONSHIP

We've talked about creating an agency relationship. Now, let's talk about how to terminate an agency relationship. An agency relationship will typically terminate whenever the agency agreement says that it terminates. Michigan law provides that an agency contract must contain an expiration date. That expiration date is, typically, when the agency relationship will end.

But, agency agreements can also be terminated unilaterally before the expiration date. This means that one party can end the agency relationship



early without the permission of the other party. A client can never be forced to work with an agent whom they do not wish work with. And vice versa. An agent cannot be forced to continue working with a particular client. That being said, if one party terminates the agency relationship early without a mutual release from the other party, then the terminating party doesn't necessarily get to walk away free and clear. The early termination might be considered a breach of contract in which the terminating party is liable for damages.

The court will consider a number of factors when determining whether an early termination of an agency agreement is a breach of contract and what damages might be owed. These cases are up to the court's discretion and are very fact dependent. If you find yourself in a situation where your client has terminated an agency

agreement early and you believe that you may be owed damages – seek legal counsel. An experienced attorney will be able to help determine: 1) whether breach actually occurred, and 2) whether damages are owed. These lawsuits can be very costly and time-consuming. So, depending on the analysis of potential damages, it might not be worth the time and effort to sue a former client over the early termination of an agency agreement. Again, this will depend highly on the facts and circumstances.

The key takeaway is that agency relationships can be terminated unilaterally. As soon as one party says that they no longer want that agency relationship to continue... that's it. The agency relationship is over, and no more fiduciary duties are owed. Still, the terminating party might owe damages to the other non-breaching party. This is an important

consideration before attempting to terminate the agency relationship early, before the stated expiration date in the agency agreement.

If you have any questions about agency law in general, please reach out to the Michigan Realtors® Legal Hotline at 800-522-2820. Be on the lookout for the article in the upcoming issue which will continue our series on “Agency” and discuss how to navigate dual agency in both “designated” and “traditional” agency brokerages. ●

¹ MCL 339.2517(1).

HELP YOUR CLIENTS UP TO \$7,500 AT A TIME.

Tell them about our **Down Payment Assistance loan of up to \$7,500.*** Combined with a Conventional, Rural Development, or FHA home loan, they can buy that home they've been eyeing. More at Michigan.gov/Homeownership or call 1.844.984.HOME

*Terms and conditions apply.

DOWN PAYMENT ASSISTANCE LOANS

 Equal Housing Employer/Lender



2 PAGE SPREAD



Full Bleed 17 1/4" x 11 1/4" Trim Size 17 x 11

FULL PAGE



Full Bleed 8 3/4" x 11 1/4" Trim Size 8 1/2" x 11

HALF PAGE



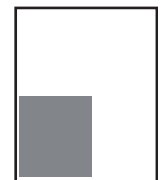
Horizontal 7 1/2" x 4 3/4"

HALF PAGE



Vertical 3 3/4" x 9 3/4"

QUARTER PAGE



Quarter 3 3/4" x 4 3/4"

How Will You Reach your target audience more than 35,000 Realtors®!

Reserve your 2023 ad space in Michigan Realtors® Magazine!

To place an ad, contact Joe Kras

Phone: 800.454.7842

E-mail: jkras@mirealtors.com

	1x	3x	6x
2 page	\$4,250	\$4,080	\$3,927
full page	\$2,500	\$2,400	\$2,310
half page	\$1,345	\$1,245	\$1,155
quarter page	\$1,060	\$960	\$870

Business card sized ads also available starting at \$250.

*Magazine is printed in full color and ad prices reflect per insertion cost.



Yes, our tools do make a difference.

Our innovative tools can make your business soar. If you want to be great, you need great tools. Look no further. Weichert® gives you an incredible set of tools to help you succeed both in the office and on the go. Work smarter with our powerful listing presentation, polished marketing materials and the industry-leading myWeichert® powered by the kvCORE platform – the #1 lead gen system available. Generate more leads. Engage more buyers and sellers. Build better relationships. Weichert tools really do make a difference. Put them to work for you. Give your local Weichert office a call today or visit jobs.Weichert.com



Weichert®

Each Weichert® franchised office is independently owned and operated. ©2021 Weichert Real Estate Affiliates, Inc. Weichert is a federally registered trademark owned by Weichert Co. All other trademarks are the property of their respective owners.

WANT TO GET AHEAD? GET INSIDE THEIRS.



A wise REALTOR® once said: *“With greater due diligence comes greater customer intelligence.”*

OneHome™, Realcomp’s new client portal for RCO3®/Matrix™, brings new tools to help agents collaborate more intuitively with clients and remain at the center of their home search. Illuminate your customers’ behavior and serve them better.



Realcomp.MoveInMichigan.com | www.MoveInMichigan.com
f www.facebook.com/realcompimls | t twitter.com/realcompmls
Phone: 866.553.3003