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03.17

{ MARCH | TWO THOUSAND & SEVENTEEN | VOLUME SIXTEEN | NUMBER TWO }



Collective Growth Drives 2017

It's only March, and I am already ecstatic about the progress that Michigan Realtors® has made in 2017. Our January Michigan Realtors® RPAC Fundraising & AE Forum started the New Year on the right foot, providing guests with information and tools to strengthen their voices. CEO Rob Campau served as the moderator for an excellent exchange of ideas on how our local associations will continue to shape the future of the real estate industry in Michigan, and what is on the horizon in 2017.

In addition, the forum provided vital information on continued RPAC success for local RPAC and Government Affairs committee leaders. The inaugural one-day RPAC training program featured various ways to get members actively involved in RPAC. The event presented a variety of speakers, along with breakout sessions to share ideas on how to effectively fundraise for RPAC. We were able to bring together members who are in the business of creating a culture of RPAC awareness at the local, state, and national level.

Networking with such a profound group of industry leaders early in the New Year is truly inspirational. There are many thanks to be made for all that goes into Achieve.

I would first like to thank our 2016 President, Gary J. Reggish for his contributions. Thank you to the incredible team at Michigan Realtors® for organizing this exciting event, as well as the attendees for their participation. I am excited for the coming year, and to work with this year's talented board of directors and my fellow officers, Sara Lipnitz, Matt Davis and Rob Campau.

Next month is equally full of opportunity, as it brings the annual Broker Summit. Registration is now open online, and I encourage all to attend. The Broker Summit is a great opportunity to learn and engage with fellow real estate professionals. The Broker Summit brings together Realtor® brokers from around the state to address current real estate and market trends. Last year's event at the Breslin Center in East Lansing was a booming success, with over 150 attendees! The event is open to all

attendees, so don't miss a fun and exciting opportunity to bring business into focus.

Finally, I would like to remind everyone that volunteering, at any level, broadens horizons and opportunities to grow. Even at an entry level, volunteering grows your network, builds skills, and opens new windows to success that were previously hidden. Whether it be a national, state, or even local contribution, your time and

energy strengthens our industry and your career. If you are looking for ideas for where or how to begin, contact your local association or speak with staff at the Michigan Realtors®. Make 2017 your year of giving back! ●

Our January Michigan Realtors® RPAC Fundraising & AE Forum
STARTED THE NEW YEAR ON THE RIGHT FOOT...

Following the forum was Achieve in February. This leadership program was held at MotorCity Casino & Resort, a fun and unique venue located in Downtown Detroit. I was personally impressed by Karel Murray's performance as opening Keynote Speaker. Her unique insights on Applying an Incredible Client Experience (ICE) is something we can all appreciate. One of my favorite aspects of Achieve is having the opportunity to connect with my fellow Realtor® leaders from across the

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COMING EVENTS

April 20, 2017

Broker Summit

Somerset Inn, Troy

September 27-29, 2017

The Convention

Amway Grand Plaza Hotel & DeVos Place, Grand Rapids

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Coming in 2017: The Peer-To-Peer Portal

Are you savvy with Facebook Live? If so, you will love this modern social platform that will create a hub for sharing your expertise and best practices for the real estate industry. Give your advice to new agents, provide open house tips that create a positive consumer experience or contribute to the portal on other relevant real estate topics. You will be able to contribute via uploading your video to the Portal. If we find a really great video, we may invite you to a Michigan Realtors® event to share your expertise live on stage. Let's face it; video is taking the world by storm. We can sit back and watch it happen or collaborate for a more productive future! More information coming in February.



Tax Reform On Tap

New legislative sessions have begun in Washington, D.C. and Lansing, and both Congress and your state legislature are laying out their priorities for the next two years. High at the top of both lists are sweeping personal income tax reforms that could impact the real estate industry. At the federal level proposed reforms could lower current tax rates while sacrificing some of the current deductions property owners have come to enjoy. At the state level, the elimination of the state income tax could put more money into taxpayers' pockets, but could also carry with it a shift to other types of taxes, possibly including services.

The Stakes Are High in Federal Tax Reform

For the last several years tax reform has been at the top of the to-do list for members of Congress. Year in and year out, America faces an increasing deficit and an annoyingly complex tax code. Tax reform is a good thing. So is the goal of lowering rates for taxpayers and developing sound fiscal policies to put the economy on the right track. However, homeownership and real estate investment have a big stake in these discussions.

By now, Realtor® members should be well aware of the talking points from the National Association of Realtors® preaching "do no harm" to the real estate industry in tax reform discussions. The current tax code has several deductions and incentives for real estate investment: from the mortgage interest and local property tax deductions to the 1031 like-kind exchanges on the commercial side. While no tangible legislation has been developed eliminating these deductions, these messages are as well known to members of Congress as they are to realtors across the nation.

From our sources inside the beltway, it looks as if tax reform legislation will be a matter of when, not if, this year. The first order of business under the new Congress is the repeal of Obamacare -- then they will turn

their attention to tax reform. NAR is already engaged with key members in the House and Senate, to reiterate the importance of preserving real estate investment tax policies. The loss of these policies would mean a significant adjustment in real estate values, which rely on many of these incentives. As the debate over tax reform continues, NAR will work to protect all commercial and residential real estate tax provisions.

This year the will be important for Michigan Realtors® to stay on top of these issues and maintain contact with our members of Congress. If you haven't already signed-up, make sure you text the word "MIRealtors" to 30644, and get text alerts for all upcoming calls to action.



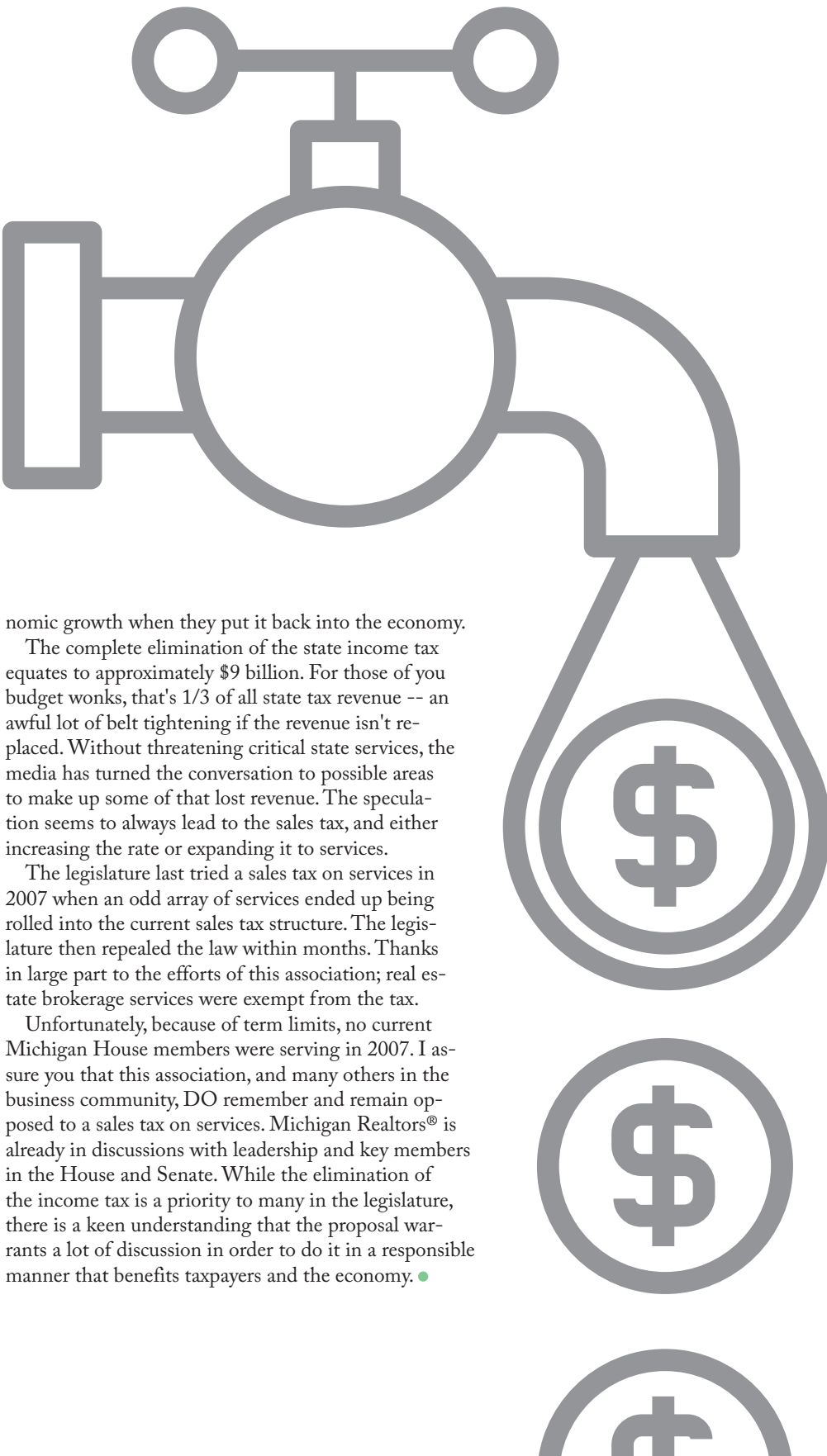
By now, Realtor® members should be well aware of the talking points from the National Association of Realtors® preaching "DO NO HARM" TO THE REAL ESTATE INDUSTRY IN TAX REFORM DISCUSSIONS.



State Level Changes Could Bring About Old Discussions

Among the first bills introduced this year, both the Michigan House and Senate included separate plans for eliminating the Michigan income tax. The income tax has a current rate of 4.25%. Under House Bill 4001, introduced by House Speaker Pro Tempore Lee Chatfield (R- Levering), the tax would drop to 3.9% beginning January 2018 and be phased out at a rate of 0.1% per year. Senate Bill 4, sponsored by Senator Jack Brandenburg (R-Harrison Twp.), phases the current rate out over 5 years. These bills share a common admirable goal of keeping more money in the hands of taxpayers and hopefully spurring eco-

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conomic growth when they put it back into the economy.

The complete elimination of the state income tax equates to approximately \$9 billion. For those of you budget wonks, that's 1/3 of all state tax revenue -- an awful lot of belt tightening if the revenue isn't replaced. Without threatening critical state services, the media has turned the conversation to possible areas to make up some of that lost revenue. The speculation seems to always lead to the sales tax, and either increasing the rate or expanding it to services.

The legislature last tried a sales tax on services in 2007 when an odd array of services ended up being rolled into the current sales tax structure. The legislature then repealed the law within months. Thanks in large part to the efforts of this association; real estate brokerage services were exempt from the tax.

Unfortunately, because of term limits, no current Michigan House members were serving in 2007. I assure you that this association, and many others in the business community, DO remember and remain opposed to a sales tax on services. Michigan Realtors® is already in discussions with leadership and key members in the House and Senate. While the elimination of the income tax is a priority to many in the legislature, there is a keen understanding that the proposal warrants a lot of discussion in order to do it in a responsible manner that benefits taxpayers and the economy. ●



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MINDSET

HUNGRY

CHARACTER

EMPATHY

FLOW

DATABASE

VALUE PROPOSITION

NEGOTIATION

FOCUS

REFERENCE GROUP

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



“

Success takes effort. Hire associates who

HUNGER TO SUCCEED

and have the work ethic to get there.”

Here's why you should consider hiring those who aspire to be the best.

The average annual household income in the United States is \$56,516. For the top five percent of households, it's \$159,619 and, for the one percenters, it's \$380,354. In our company, we are only interested in hiring associates who aspire to be five percenters or better. We call them *High Fivers*, and we have a system to help them get there. Our associates averaged \$221,485 in Gross Commission Income (GCI) in 2016.

How do you build a High-Five Culture? Simple. Hire sales associates who aspire to be five percenters and coach them to success. Here are our observations of the Top 10 attributes and activities of these top agents:

MINDSET. *Players versus Victims.* Look for associates with a growth mindset who believe they can figure this business out and be successful if they work hard enough. See Dr. Carol Dweck's book: *Mindset: The New Psychology of Success.*

HUNGRY. Success takes effort. Hire associates who hunger to succeed and have the work ethic to get there. What is their motivation? What is their *why*?

CHARACTER. Hire likable people who tell the truth and do what they say they're going to do. These character attributes are the keys for them to be a trusted advisor rather than just a salesperson.

EMPATHY. Having the social skills to pick up on the subtle nuances and the feelings of others was the key attribute of the top ten percent of sales associates, according to a study by Franklin-Covey.

FLOW. Flow fixes everything. We are in a contact sport. High Fivers are in flow (face-to-face or voice-to-voice) with at least 50 people a week. For some of them, it's 50 a day! They use technology but tend NOT to spend a lot of time looking at screens.

DATABASE. What holds an associate back from flow: Fear of making calls? It could be, but we've found another common factor. They don't have a good database. They can't make the calls or send the mailings because they don't have phone numbers, home and email addresses. Help them put together a database or hire a student to help them. A survey of 20,000 Realtors® showed that less than 40 percent had a database (even scraps of paper and business cards in a shoebox counted). Those with even a semblance of a database earned 251 percent more than those without one.

VALUE PROPOSITION. High Fivers know how to create value by solving problems and making their clients feel good. They are constantly solving and serving versus selling. They bring real value to their clients and know how to articulate their value proposition.

NEGOTIATION. A survey by the National Association of Realtors® of homebuyers and sellers, rated *Negotiation Skills* as a key attribute in selecting a real estate professional. Are you practicing negotiation skills in your meetings? Share best practices on the five negotiation points of a real estate contract: Price, Terms, Dates, Inclusions/Exclusions and Contingencies.

FOCUS. Dr. Stephen Covey, in his book *7 Habits of Highly Effective People*, talks about living in our three circles. Circle One is our circle of concern—everything from politics to celebrities to football scores. Circle Two is our circle of influence—clients, friends, kids and business. Circle Three is our circle of control—our mindset, behavior and daily activities. High Fivers focus on their circles of control and influence. The 95 percenters tend to focus on their Circle of Concern and live their lives worrying about everything over which they have no control. This is also called the focus of the victim. Players focus on their circles of control and influence.

REFERENCE GROUP. Harvard Professor Dr. David McClelland found that "Eighty percent of a person's success can be attributed to their reference group (peers, role models, mentors)." His research supports the adage "Birds of a feather flock together." What kind of a flock are you creating at your company? Are you focusing on High Fivers?

Focus on these 10 attributes and activities of High Fivers, and you will build a High Five Company. Just as importantly, you'll build a High-Five Culture. Remember what management scientist Peter Drucker once said, "Culture eats strategy for lunch." ●



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PRODUCTIVITY

the secret



of being more PROFITABLE

How often do we hear how busy peoples' lives are? Whether it's a question about how someone's weekend was or how their work day is going, we hear the word "busy" and are supposed to assume it's a good thing. Maybe I missed the memo, but I am not sure when we started to value how little time we have.

BY WARREN DOW,
DIRECTOR OF CHANNEL MARKETING AT
LONE WOLF REAL ESTATE TECHNOLOGIES



Our goal should be to get the
**SAME JOB DONE
IN A MORE
EFFICIENT WAY**
whenever possible.

I look around our industry and I see a lot of hard working, talented professionals. The ones that are leading this industry are those who aren't necessarily keeping busy, but are staying productive. Our clients, our colleagues and our brokers don't care how busy we are – it's all about the bottom line. How many contracts did you get signed? How many closed deals? Did you get the top dollar for your client? How much money did you make?

We don't get perfect attendance awards anymore. We don't get a pat on the back for working 16-hour days. We get rewarded for results. Our goal should be to get the same job done in a more efficient way whenever possible. No client wants to hear how busy you've been. They want to know whether you're doing your job.

Productivity requires systems. It requires prioritization. Technology has brought about a wave of services, software and applications that can automate the tasks that used to keep us busy.

Whether that's prospecting through SEO and lead generation tools, marketing tools for emails and lead follow-up, document management and electronic signature for contracts or accounting software to automatically cut checks and track the business of your business, all of these tools can save us time. Maybe it's only ten minutes per deal, or maybe it's five hours that you would have spent manually following up or processing information at the close of a deal. It all adds up. Each tool you use can save you, your team and your staff time. After implementing, these systems will add hours of time back into your day. What would you do with an extra two hours a day?

We need to re-train ourselves. It's not about how we got the job done; it's about getting it done. We live in a world of technology. This means we live in a world of analytics and data. We should use these numbers to measure our agents, our employees and ourselves as value propositions

when speaking to prospective clients. Numbers don't lie.

Find the software that will give you the reporting you need. The numbers and metrics to see how your business is doing. Once you see the numbers, you'll be able to start seeing where you stand out. It may not be the highest volume or most transactions, but once you see the data, you'll be able to see where you stand apart from everyone else. Technology will not replace a Realtor,[®] but a Realtor[®] with technology will replace one without. It's just a matter of how much more time will be available on a given day.

Finding the right software can be challenging. Maybe it's a question of cost or functionality, of implementing the change with your team or staff. My suggestion – find someone you trust and ask what they're using. Ask for advice. Join a product demo for software that was of interest to you. The more receptive you are to adopting tools to save you time, the more time you'll have to focus on

your real business: *relationships*. This means more time to focus on networking, lead generation, sales, and even community engagement or volunteer work. Or, dare I say it, your life!

The next time someone asks how your day was, make sure to think twice before saying "busy." We need to value the time we have, the time we spend and the time we save. Having more time in your day doesn't mean you don't work hard. It shows that you can get the job done in less time and gives you the freedom to invest that time into strategies that can make you even more profitable! ●



Warren Dow is the Director of Channel Marketing at Lone Wolf Real Estate Technologies and a principle contributor to the Real Estate Technology Institute. With a degree in behavioral neuroscience and a background in technology, consumer engagement, and marketing strategy, Warren offers a unique perspective that has placed him on the national stage for NAR, WCR, NAHREP, NAREB

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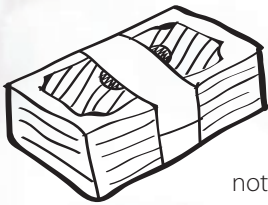
Q&A Top Legal

Each year, Michigan Realtors® and McClelland & Anderson, L.L.P., put together the most **FREQUENTLY ASKED QUESTIONS** for quick reference. Michigan Realtors® hopes that members will find this information useful and will continue to utilize the **LEGAL HOTLINE**.



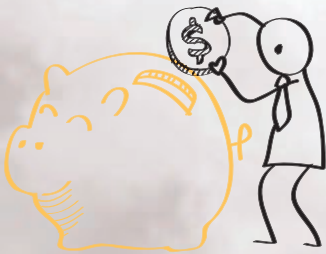
I listed a home for \$300,000. My seller has received a full price offer and wants to counter it at \$310,000. Can he do this?

YES. Even if a full price offer is presented to the seller, he or she is not obligated to sell it at that price and can counter at a price that is higher than the listing price. (A listing broker may be entitled to a commission even if the seller does not accept a full price offer.)



I am the listing broker. I always ask the cooperating broker for proof of the earnest money deposit. Is the cooperating broker obligated to provide proof in the form of a copy of the check?

NO. There is no law requiring the cooperating broker to provide proof of the earnest money deposit. You could, however, make this requirement part of the purchase agreement.



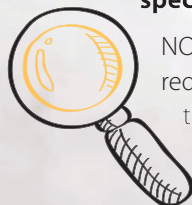
I received an offer through a buyer's agent who is a participant in my MLS but never showed the property to his buyers. It turns out that his clients contacted the sellers directly and arranged a showing without a licensee present. The buyers then contacted the buyer's agent and asked him to write up an offer. Do I have to pay the buyer's agent commission if he did not show the house?

YES. An offer of compensation through an MLS does not require that the agent bringing the buyer show the buyer the house.

An agent may qualify as procuring cause even if he or she did not show the house to the buyers.

My seller was home when the inspector showed up with the buyer's agent. The seller was told that he could not be present during the inspection. Is this true?

NO. There is no law that requires the sellers to leave their property during an inspection.



The purchase agreement provides that the seller shall surrender possession of the home on August 1st at 12:00 a.m. Is the seller entitled to possession for the entire day on August 1st?



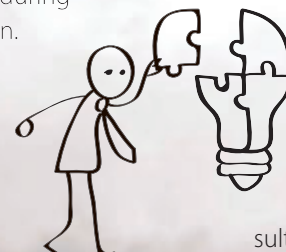
While the weight of authority seems to be that 12:00 a.m. (or midnight) marks the start of the new day, this understanding is by no means uniform.

For this reason, to avoid confusion, Realtors® are encouraged to avoid using this deadline in contracts and instead use 11:59 p.m. or 12:01 a.m.

I am a buyer's agent. The title work shows the seller's deceased father as titleholder of record to a small portion of the land my client is purchasing. Seller has asked his father's estate attorney to take care of this matter. Buyer does not want to delay closing. Should I let my buyer close before this title problem is worked out?

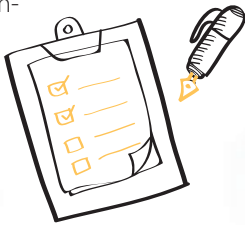
While it may not be advisable to close under these circumstances, the buyer cannot be prevented from closing. In circumstances

such as this, a buyer's agent should give his client something in writing recommending that the closing not take place until the buyer consults with an attorney.



I am listing vacant land. Should I have my seller complete a vacant land disclosure form?

Sellers of vacant land are not legally required to provide a disclosure form. Sellers who do provide vacant land disclosure forms should be cautioned against making any representations where they are unsure. Unlike with the statutorily required residential seller's disclosure form, a seller could be held liable for an innocent misrepresentation made in a vacant land disclosure form.



I am a buyer's agent. My clients had their attorney review the offer after I wrote it but before it was presented to the sellers. The lawyer is asking for many changes to the offer that, in my opinion, will make it unacceptable to the sellers. How should I advise my buyer-clients?



Do not ever advise a client to ignore the advice of counsel, even if the advice of counsel seems like bad advice.

I am acting as a transaction coordinator in a real estate transaction. I was told that I am not allowed to hold an earnest money deposit in such a transaction. Is this true?

No. There is no prohibition against transaction coordinators holding earnest money deposits.



I have received a Writ of Garnishment on one of my agents. It is my understanding that since my agent is an independent contractor, I do not have to obey this order. Am I correct?

No. The Writ of Garnishment is a court order, and you must obey it. The fact that the agent is an independent contractor does not mean the order can be ignored. Failure to obey a Writ of



Garnishment can result in you becoming liable for all or a portion of the agent's debt.

FOR MORE Q&A

Visit the Legal Resources page found on *Mirealtors.com*. The web site is your once stop source for all things legal. Resources include, videos, legal lines, legal update archives, and featured white papers and guides.

Watch the new video series Letter of The Law on <http://www.mirealtors.com/Legal-Resources>

MICHIGAN REALTORS® LEGAL HOTLINE

The Michigan Realtors® Legal Hotline allows members to have direct, toll-free access to a qualified attorney who can provide information on real estate law and other related matters. This service is only available to Michigan Realtors® members. This is not a public service. The service is provided through members' dues.

The Legal Hotline number is 800.522.2820. It is operated 9 a.m.–3 p.m., Monday – Friday. This makes the Michigan Realtors® Legal Hotline available to Members approximately 250 workdays per year. Recognized holidays are excluded. If the Legal Hotline is busy; an answering machine will take calls. Calls are returned within 24 hours, usually during the same day. ●



As Basic As It Gets

The changes in the real estate industry resulting from one technological breakthrough after another have been truly breathtaking. The tools and resources now available to salespersons have never been greater. Yet, with all the technological breakthroughs, the ability to collect a commission in connection with the sale of real estate still requires obtaining the appropriate written signature (or an electronic equivalent) from the right person at the right time. No matter what form of futuristic wizardry is used in a transaction, a Realtor®'s entitlement to a commission goes back down to the same old statute:

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise: . . . (e) An agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate. MCL 566.132(1)(e)

MCL 566.132(1)(e) (the "statute of frauds").

In spite of the straightforward requirement of the statute of frauds -- i.e., an enforceable right to a commission requires a signed written contract -- some Realtors® continue to believe that the statute of frauds can be "worked around" and that somehow they will be paid even if no one has signed anything. This is a mistaken notion that has cost many Realtors® substantial sums of money over the years. The following hypothetical demonstrates how, after months of hard work, an agent can end up with no compensation.

In our hypothetical, Agent A has worked with the Smiths for many years, as the Smiths have bought a number of upscale properties. The latest hunt for the Smiths has gone on for approximately 13 months and Agent A has the Smiths honed in on two final possibilities for homes, each of which is listed at over 10 million dollars. Agent A had presented the Smiths with a buyer's broker contract at the start of their latest home search, but somehow the Smiths never got around to signing it. Agent A has been reluctant to push, feeling that by doing so she may alienate the Smiths and lose out on what is likely to be a sizable commission.

At a subsequent showing of one of the two homes, Mrs. Smith brings along a third party, Mrs. Green. Mrs. Green is introduced to Agent A as a long-time friend

of Mrs. Smith who sometimes counsels her on home remodeling. Thinking nothing further of her interaction with Mrs. Green, Agent A ultimately prepares an offer on the home for review by the Smiths. Days pass and Agent A hears nothing from the Smiths. Ultimately, Agent A discovers that Mrs. Green was, in fact, an agent with another brokerage firm. Subsequent to the meeting at the home shown by Agent A, Mrs. Green showed Mrs. Smith a couple of different homes which had never been shown to the Smiths by Agent A. Ultimately, the Smiths bought one of these other homes through Mrs. Green's brokerage firm.

Agent A is understandably very upset, having worked with the Smiths for over a year. Agent A contacts an attorney, confesses to the fact that she has no buyer's broker contract with the Smiths and urges the attorney to find some way around the statute of frauds that will enable her to collect a commission. The attorney agrees to give it a shot. Because Agent A has no contract with the Smiths, Agent A and her attorney decide to pursue Mrs. Green and her firm on the theory that Mrs. Green's actions were deceptive and interfered with Agent A's ability to collect a commission.

The initial question is whether Agent A should initiate a professional standards proceeding with her local association. Unfortunately, Agent A will not be able to recover her commission in a professional standards hearing. First, there is no basis for mandatory arbitration under the facts of this case. In an arbitration matter, a complainant must establish that he or she was the "procuring cause" of the sale that closed. Agent A cannot establish that she was the "procuring cause" for the home purchased by the Smiths as neither she nor anyone else from her firm had ever shown this home to the Smiths or even mentioned it to them. Second, while it may well be that Mrs. Green violated NAR's Code of Ethics by knowingly interfering with Agent A's agency relationship with the Smiths; that does not, however, mean that Agent A will be able to recover any damages as a result of that wrongful conduct. As most Realtors® are well aware, a complainant cannot collect damages in an ethics proceeding.

For these reasons, Agent A has no option other than to file a lawsuit with the circuit court. Agent A's lawyer makes a valiant effort to find a cause of action that will get his client around the statute of frauds. Agent A claims she has been damaged by Mrs. Green by reason of her

intentional interference with Agent A's contractual relationship with the Smiths and/or intentional interference with Agent A's business relationship with the Smiths. Agent A's attorney also asserts silent fraud, negligence and conspiracy claims. Agent A and her firm seek lost damages in the amount of the commission Agent A and her firm would have been paid had the Smiths purchased a home through them or, alternatively, the commission amount that the Smiths actually paid to Mrs. Green and her firm. Unfortunately, for the Smiths, none of these theories are successful.

First, as to the claim for intentional interference with a contract, Mrs. Green responds that it must be dismissed because no such contract exists. Unfortunately for Agent A, this is the truth. Agent A never took the time to enter into a buyer's agency agreement with the Smiths. Thus, there could hardly be tortious interference with a contract that did not exist.

Second, Agent A claims that Mrs. Green tortiously interfered with her business relationship with the Smiths. In order to establish a claim for tortious interference with a business relationship, a party must have either an enforceable contract or reasonable business expectancy. Here again, there was no written contract between Agent A and the Smiths. Moreover, since the law is very clear that a written contract is required in order to be entitled to a commission, the court finds that Agent A had no reasonable expectancy to a commission. In other words, the fact that Agent A did not receive a commission was not the result of the actions of Mrs. Green, but instead her own actions in failing to get a written contract signed by the Smiths.

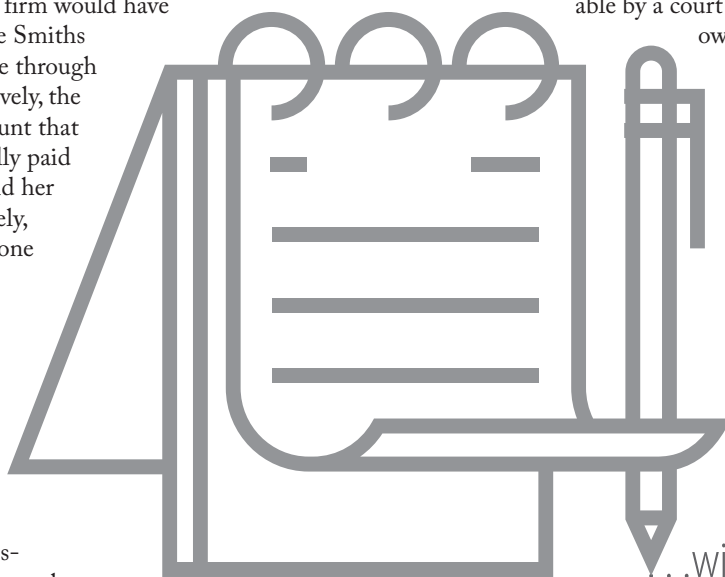
Third, as to Agent A's silent fraud and negligence

claims, it is not the case that as a matter of law, Mrs. Green owed a duty to disclose the nature of her relationship with Mrs. Smith. Mrs. Green had no legal relationship with Agent A and thus owed her no legal duty. (The Court held that the duties imposed by the NAR

Code of Ethics are not legal duties enforceable by a court of law.) Since Mrs. Green

owed no legal duty to Agent A, the court also dismissed the fraud and negligence claims.

In sum, any Realtor® acting as a buyer's agent without the benefit of a written agreement signed by the buyers does so at his own risk as he will have no legally enforceable right to a commission. Instead, he is relying solely on the fairness and inherent goodness of his clients and customers •



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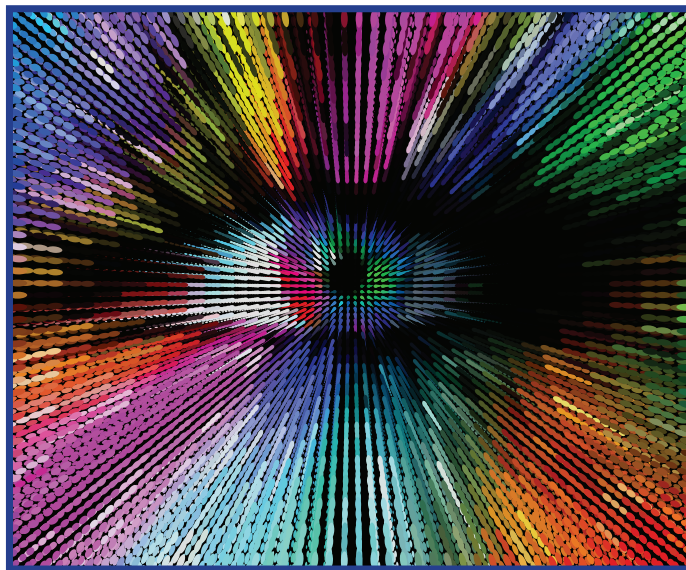


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