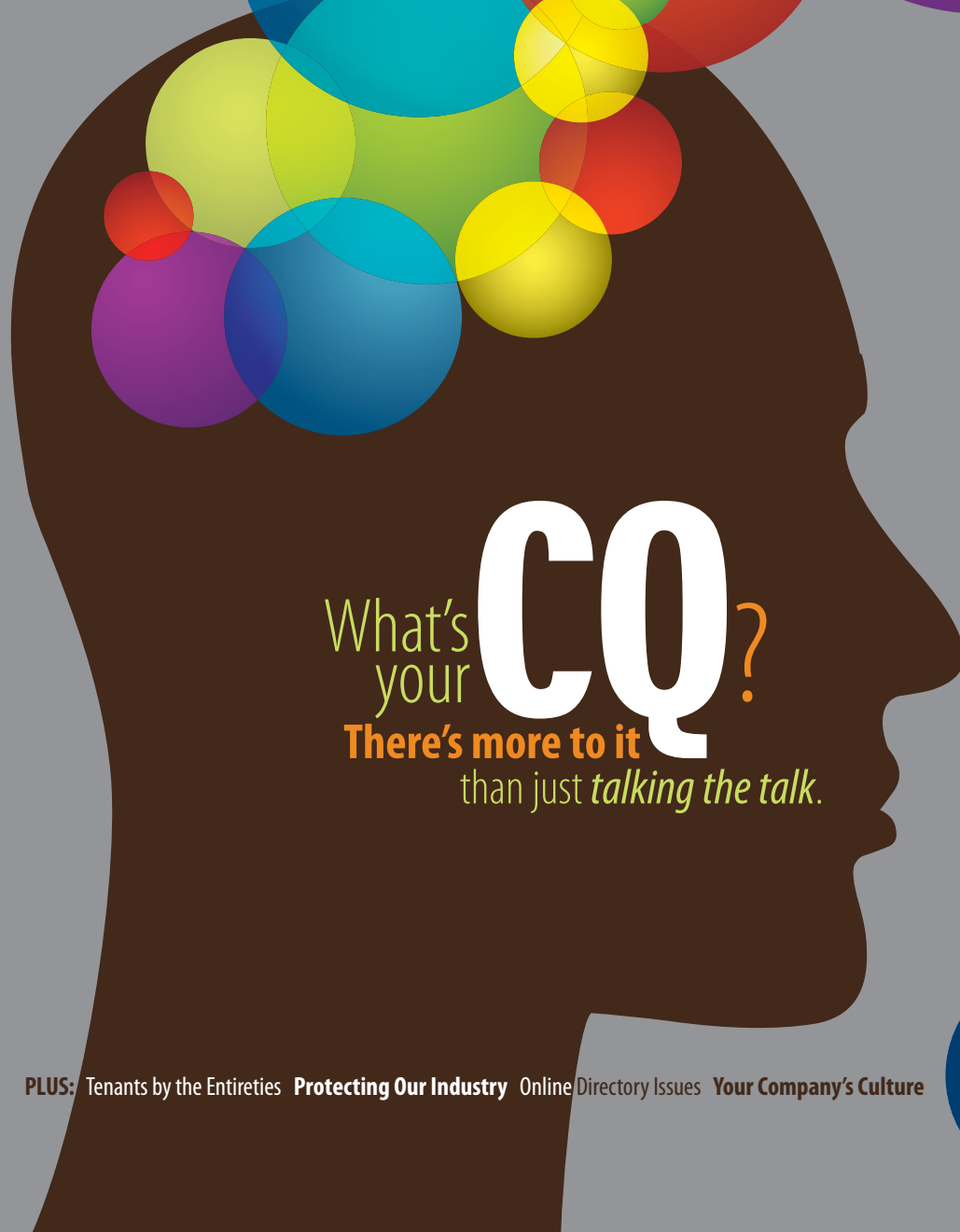


A publication of Michigan Realtors®

MICHIGANREALTOR®



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Realtors® Helping Our Friends in Flint

The Michigan Realtors® Relief Fund® ("MRRF") was established to support and expedite the receipt and donation of charitable aid from Michigan Realtors® and supporting organizations in response to the water crisis in the City of Flint. While the genesis of the MRRF was specific to providing relief in the City of Flint, the MRRF is intended to be ongoing as a 501(c)(3) organization established to provide housing-related assistance to victims of disasters and for other charitable purposes permitted under the Internal Revenue Code. All donations made to the fund for the period beginning January 28, 2016 through April 30, 2016, will be designated to support the City of Flint and the East Central Association of Realtors® during the Flint Water Crisis.

You can donate online and learn more about the fund here:

<http://www.mirealtors.com/relief-fund>



Michigan Realtors® Community REengagement

As Realtors® we are all about community, and 2016 brings us great momentum. In January, we kicked off the first meeting of the Michigan Realtors® Leadership Academy, featuring an awesome group of fourteen talented individuals. As you may know, the National Association of Realtors® and the Boys & Girls Clubs of America have joined forces to play a pivotal role in impacting the lives of children while strengthening their local communities.

With that in mind, the class participated in a team-building exercise, assembling bicycles from the ground up. Upon completion, children from the local Boys & Girls Club entered the room and were presented with their new bicycles. Neither academy students nor the children knew this exchange was going to happen. You could see the mutual compassion and joy on the faces of all in the room. What a powerful moment! This year, I encourage you, as local boards, offices and individuals to reach out to your local Boys & Girls Clubs of America and make an impact in your community through these wonderful children. To get involved, contact the Michigan Realtors® or me directly. We would love to get you started on a wonderful and fulfilling journey.

Another way we are engaging with our communities is through the Michigan Realtors® Lighter, Quicker, Cheaper Program (LQC); a program that the Michigan Realtors® Board of Directors recently voted unanimously to expand. LQC is a placemaking program geared toward creating common space in communities that previously did not exist. Projects can range from a collection of park benches that encourage people to gather in one location to a community "open air" art center where local artists can utilize community platforms, walls, and displays to create public art. It is a program that can create public space via engaging the community as a whole, utilizing otherwise dead space. It is called Lighter, Quicker, Cheaper because we have found that it doesn't have to be an expensive or long bureaucratic process to be relevant in our use of space. If placemaking interests you, we would love to hear from you. Look for a Michigan Realtors® LQC project near you!

We will also be re-engaging our members' participation in RPAC this year through a series of phone banks with each local association. As you may have heard there is a nationwide push by NAR 2016 President, Tom Salamone to "Phone-a-Friend for RPAC." I am excited about the opportunities that this program will

bring, not just in terms of membership participation in RPAC, but also building a strong base of new volunteers through peer to peer contact. I believe that the success of these phone banks relies heavily on the hard work of our Realtor® member volunteers stepping up to make the calls. I am asking that each of you serving on a local association committee or board of directors participate in making these important calls to non-investors. This isn't just about RPAC, it's about leadership.

I would like to send a big round of applause to the Michigan Realtors® lobbyists, staff and Realtors® that were our "boots on the ground" in getting House Bill 4173 passed and recently signed by Governor Snyder. Many homebuyers that purchased bank-owned properties during the economic downturn were wrongfully charged State transfer taxes. House Bill 4173 allows for the refund of those transfer taxes to buyers. It is an easy process to apply for the refund. This is one more way our Association is working hard for private property owners by getting money back into our communities. This is a great time to reach out to your past clients and let them know that they may be eligible for a refund. Please visit Mirealtors.com for more information.

I think back when I served on the State and Local Issues Committee for the National Association of Realtors® and attended my first meeting. I was surprised how we, as an Association, are truly involved in everything community. Looking back, it shouldn't have been a surprise. After all, what makes a subdivision valuable or property values rise? It's safe roads, public transportation, community diversity, a vibrant commercial industry such as shops, restaurants, recreation...and clean water. Clean water is paramount in communities and our friends in Flint are in need of help. The Michigan Realtors® Board of Directors and Leadership Team made the decision to get involved and help those that are in need of something that we take for granted daily...clean water. We are looking to all of you to step up and help our Flint community weather this storm by making a donation. You can go to Mirealtors.com and make a donation right on the home screen... just look for the Michigan Realtors® Relief Fund logo, click on it and make a difference. YOUR extended community needs your help!

Thank you for allowing me the privilege to serve as your President. I am proud of what we do to engage our community, making it stronger and better for us all. ●

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COMING EVENTS

April 21, 2016

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Michigan State University Breslin Center, East Lansing

June 10, 2016

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October 5-7, 2016

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IMF: Bringing Advocacy Home

General George S. Patten once said, "My flanks are something for the enemy to worry about, not me." This phrase might seem to turn conventional military wisdom on its ear but if you dig deeper, Patton's logic would be akin to the old "the best defense is a good offense," an adage paralleled by the writings of Sun Tzu. Our industry, private property rights, real estate as an investment, is constantly under attack by regulators and other interest groups. Over time, the Michigan Realtors® has developed a strong and active defense in the courts, the legislature and at the ballot box. However, the landscape is changing and a flank has become exposed.

The Michigan Realtors® maintains three funds for the protection and promotion of your industry. The Realtors® Political Action Committee (RPAC), the Legal Action Fund and the Issues Mobilization Fund (IMF) make your voice strong in every aspect. You may already be aware of these acronyms through your involvement in the association, but it is important to understand the vital role that each plays in the protection of our association.

RPAC is the voluntary investment Realtors® make to support Realtor®-friendly candidates who understand our issues and are willing to take that understanding with them to public office. RPAC is one of the largest and most respected PACs in the state

of Michigan. Our state and local associations have utilized your contributions to support candidates at local, state and federal levels of government.

The Legal Action Fund is supported through an assessment on your state association dues. The fund supports our attorneys and involvement in Michigan's court system. We provide legal expertise through persuasive legal briefs, weighing in on precedent setting real estate cases. Over the years the legal action fund has protected your exemption from the Michigan Consumer Protection Act, preserved private property rights from government takings and preserved important statutory issues like transfer tax exemptions.

The Issues Mobilization Fund is quickly evolving into the most versatile and important advocacy tools this association operates. Since 2009, this fund has been part of an annual assessment on your state association dues. The IMF is overseen by the Michigan Realtors® Board of Directors and is allocated for three important purposes: independent expenditure campaigns, research and development of legislative issues and local issues advocacy. The fund has been used to successfully pass two statewide ballot proposals: one to protect private property rights against government takings; and one eliminating the job-killing personal property tax.

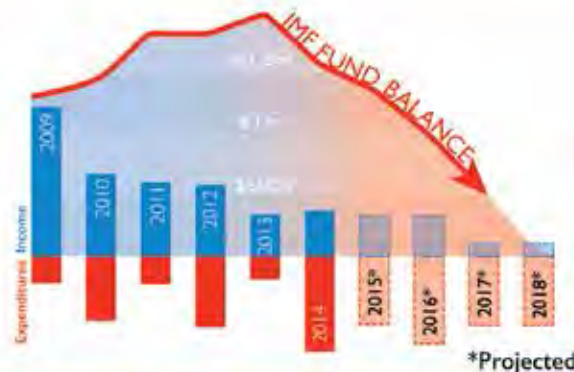
WHAT IS THE IMF USED FOR?

The Issues Mobilization Fund (IMF) has evolved into one of the most versatile and important advocacy tools at your disposal. Since 2006, the Michigan REALTORS® Board of Directors has utilized the IMF to pass two statewide ballot proposals. These victories strengthened Michigan's eminent domain protection and modernized business taxes by eliminating the job-killing personal property tax. The IMF also successfully defeated two harmful and reckless statewide proposals that would have spun state government spending out of control and necessitated higher taxes on our industry.

WHY INCREASE THE IMF?

Current funding levels leave us vulnerable to a sales tax on service, increased property taxes and a higher real estate sales tax.

**NO AMOUNT OF NEW FUNDING
WILL BE APPLIED TO EVERYDAY
OPERATING EXPENSES.**



In 2010 the United States Supreme Court rendered a decision in the case of *Citizens United v. FEC* that opened the floodgates for corporate funding in elections, potentially outpacing both the RPAC and the Realtors® Issues Mobilization Fund in terms of dollars. This association has been successful in protecting your interests at every level, but our voice is endangered. Our rivals have latched on to ballot proposals and other corporate funding mechanisms to effectuate drastic and sweeping changes. Last October, the Michigan Realtors® Board of Directors and Delegate body recognized the threat and approved an increase in the IMF dues assessment, beginning with your 2017 dues.

Your Realtor® leadership strongly supports making ours the strongest voice at the state and local level. It is estimated that spending on Michigan's 2014 election topped \$127 million, and at least a dozen possible statewide ballot proposals appear every two years. A robust IMF will be needed to fend off multiplying attacks on our industry, private property rights, and Michigan's economic recovery.

This is not a decision made lightly. Realtor® leaders from around the state preformed an analysis of the IMF budget and the funds needed to effectively address the needs of our members through IMF advocacy. As a re-

sult of their review, they made a recommendation to the Michigan Realtors® Board of Directors and Leadership to increase the Issues Mobilization Fund Assessment, from \$3 to \$40. The Board supported the recommendation and it was approved by the full Delegate Body this past October at the 2015 Michigan Realtors® Convention.

It is important to remember that 100% of this increase stays in Michigan. In addition to future statewide advocacy efforts, these funds are available to local associations. Our success in state government has not just forced rival voices to go to the ballot, but has also forced them to take their issues to local governments. Indeed many of our local boards have already used IMF to fend off harmful local ordinances such as point of sale mandates, punitive rental regulations, and overreaching sign ordinances.

As a closing note, it is important to remember that IMF is very different from RPAC. While still vitally important, RPAC is limited to the direct support of candidates for public office. The increased use of ballot initiatives, expanded local regulations and proliferation of independent expenditure shifts the direction of the attack to our industry and private property rights. Putting it in the perspective of General Patton's quote, our newly bolstered IMF will strengthen the flank to give our opponents something to worry about. ●

WINNING IN MICHIGAN



Michigan's winning issue campaign teams raise between \$10m and \$15m to pass a ballot initiative. **That's what it takes to win.**



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Gary J. Reggish

2016 Michigan Realtors® President

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The Impact of Online Directories for Real Estate

Finding your way isn't always that easy

BY TRAVIS SAXTON,
VICE PRESIDENT
OF TECHNOLOGY,
REAL TRENDS

Real estate firms have a growing problem—literally. I recently met with a top brokerage. The morning of our meeting, I used Google Maps to get to their office. When I arrived, the receptionist told me they had moved two years ago. Luckily, I gave myself plenty of time. I walked about a mile further and found their main office with plenty of time to spare.

To illustrate this further, REAL Trends has been at its current location for nearly eight years. Before that, we were located on University Boulevard. When we plug REAL Trends into a new tool that cross-checks online directories, some 50 percent of our companies' listings are inaccurate. Many display our old address and others have an incorrect company name.



A Difficult Concept

The world of online addresses, directories, yellow pages and business pages is extremely complex. Currently, there are nearly 100 main online directories where you can find business information, such as Google, Google Local, Google+, Facebook, Yelp, Yahoo, Bing, Yellow Pages, CityPages and more. It would be nearly impossible for you to stay on top of your business location on all of these sites. These sites aggregate information much like the listing portals. One bad piece of information from one site can resurface on other sites, even when you think you have the problem solved.

You may be saying to yourself, "If I take care of the big sites, I don't care about the other 75 or so that nobody visits." Not true; you should care and here's why.

Imagine you are in an unfamiliar city and you want to find a great restaurant. You ask a few friends, and they all mention one restaurant. Several people knew the name, others were hazy, and the location wasn't clear. You go online, and you see several different locations. So, where the heck is this place? You get so confused that you don't even bother going there.

Inaccurate listing = Low Google Rankings

If you search your business, and you have inaccurate listings, Google will spot that and give you lower confidence in their search results. Let me apply this to your business; the real estate brokerage. Let's say you have 100 agents, 5 offices, and mortgage, title, and commercial divisions. You moved a couple of your offices once or twice. How many times have agents claimed your offices? Agents come and go, sometimes they have inaccurate information and sometimes you have agents that no longer work at your company showing up on these sites. With the example above of 100 agents and 5 offices, you can potentially have 42,000 entries online.

The Solution

What is the solution? And, who has the time to monitor and change information on all these sites? The big chain stores learned early on that they need a service to do this for them. Of course, many of those services charge \$1,000 per year, per office—not very economical.

Good news; in 2016, REAL Trends is privately rolling out a tool to our clients that has a direct API connection to all of these sites. We can take an office, get the correct information, and connect with every site to update your information all over the web. And, we're doing it for a lot less than other services.

Eventually, we will make this available online through Realtrends.com for use in our industry. REAL Trends is the trusted source for accurate and timely information in real estate, and this new tool is a great fit for us with our position in the industry. ●



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Tenants by the Entireties – Timing is Everything

BY GAIL ANDERSON, ESQ.

Title to property held as tenants by the entireties is unique. Under Michigan law, property held by the entireties can be held only by a married couple. Both parties hold title; both parties have an equal interest in it; and both parties have the same right to use the property. Neither spouse acting alone can transfer any interest in the property and neither spouse possesses a separate interest in the land. Because one spouse cannot separate his or her interest, creditors who do not have a judgment against both spouses cannot reach

entireties property to satisfy that judgment. It is not difficult to see why the vast majority of married couples choose to hold real property as tenants by the entireties.

It is important to keep in mind that a tenancy by the entireties may exist **only if the persons are married at the time the deed is recorded**. If two unmarried people attempt to take property as tenants by the entireties, a court will typically declare them to be tenants in common. *In re: Estate of Kappler*, 418 Mich 237 (1983). Moreover, if the parties are not married at the time of the conveyance, their later marriage will not create a tenancy by the entireties.

It is important to understand that the recitation of entireties status in a deed and the acceptance of that deed by a register of deeds does not in and of itself have any legal significance. Any two people can record a deed declaring themselves to be tenants by the entireties. A register of deeds does not, and cannot, determine whether that declaration is accurate; he or she will simply record the deed. The entireties status will only become an issue if someone has reason to challenge that declaration at sometime in the future – for example, a challenge from an heir in the event of the death of one of the co-tenants, or from a creditor of one co-tenant alone.

If a married couple was not married at the time that they bought a home (or if their marital status at that time was less than clear), there is an easy fix. The couple can simply deed the property to themselves and clearly provide that they will be holding title to the property as entireties property. A sample form of such a deed is included with this article. ●

STATE OF MICHIGAN)
COUNTY OF _____) ss.
The foregoing instrument was acknowledged before me this _____ day of _____
20____, by _____ and _____, a married couple.

Drafted by and When
Recorded Return To:

QUIT CLAIM DEED

The Grantors, _____ and _____,
a married couple, whose address is 123 Main Street, Lansing, MI, quit claims to the Grantees,
and _____, a married couple, as tenants
by the entireties, whose address is 123 Main Street, Lansing, MI, a parcel of land situated in the
City of Lansing, County of Ingham, and State of Michigan, legally described as follows:

for the sum of less than One Hundred Dollars (\$100.00).

The Grantor grants to the Grantee the right to make all divisions under section 108 of the
land division act, Act No. 288 of the Public Acts of 1967.

This conveyance is exempt from state transfer tax pursuant to MCL 207.526(a) and is
exempt from county transfer tax pursuant to MCL 207.505(a). The sole purpose of this deed is
to establish/confirm the Grantors' intent to hold title to the property as tenants by the entireties.

This property may be located within the vicinity of farm land or a farm operation.
Generally accepted agricultural and management practices which may generate noise, dust, odors
and other associated conditions may be used and are protected by the Michigan right to farm act.

Dated this _____ day of _____ 20____.

Signature _____ Signature _____
Type Name _____ Type Name _____



Under Michigan law, property held by the entireties
can be held **ONLY BY A MARRIED COUPLE.**





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GARY J REGGISH

*President,
2016 Michigan REALTORS®*

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BRINGING BUSINESS INTO FOCUS



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CULTURAL INTELLIGENCE *why*



Michigan Realtors® Need it

BY DAVID LIVERMORE, PHD



The sun is rising over Michigan. The Big 3 are making a comeback. Presidential hopefuls can't overlook us. And, we now have more science and technology companies started by first generation immigrants than any other state in the country excluding California and New Jersey.



I'm hard pressed to think of a group of professionals in our state who matter more to our future than Michigan Realtors®. You're often the first face of Michigan to those thinking about locating here. And, with the growing diversity of those moving to our neighborhoods, the way you treat these potential residents could make or break us.

Thankfully, there's an emerging body of research that offers some promising answers for how you can "sell with cultural intelligence" in a way that's both respectful and successful.

What is cultural intelligence?

Cultural intelligence, or CQ is the capability to relate and work effectively across various cultural contexts. It's rooted in academic research across more than 98 countries and it's an approach being used by leaders in business, government, education, and non-profit sectors around the world. CQ is a proven way to measure and develop your ability to effectively sell to culturally diverse clients.

You've heard about IQ, which is essentially a measurement of your "book smarts." In more recent years, you've probably also heard about EQ, a measurement of "people skills." The newest form of intelligence is CQ and it's a measurement of your "culture skills." This isn't about whether you can spout off the heads of state for 50 countries or eat a peanut with chopsticks. It's about your ability to

apply your people skills and sales techniques when working with clients from a different culture.

Who are the Culturally Intelligent and What Does This Have to Do with Real Estate?

My colleagues and I have been researching this skill set for about 20 years. The question that we've continually asked is this: *What's the difference between individuals and organizations that are respectful and effective in culturally diverse situations and those that aren't?*

We found four key capabilities that consistently emerge among those who can be described as culturally intelligent.

1 CQ DRIVE: They have a strong level of interest and curiosity in cultural differences. They're motivated to work with culturally diverse colleagues and clients and they can manage their attitudes when difficulties emerge—and they will!

Rather than being fearful of the cultural differences that exist between you and a customer or colleague, look at it as a learning opportunity. Walking on eggshells over fear of being offensive only ends up paralyzing us. Instead, just as you do with any client, find out what kind of home and community they want. Silently consider what aspects of their desires might be related to their cultural background. And note

where they're similar and different from other clients you serve.

And if the simple pursuit of learning about other cultures is enough to motivate you to get on board with this, keep in mind that more than 50% of first-time homebuyers in the U.S. are people of color. And, according to NAR, 62% of international buyers pay cash for their homes, compared to only 8% of domestic buyers. Beware what you assume about selling to someone who's not from here.

With a little bit of thought, you'll see that you don't need to work hard to be motivated to learn about different cultures and see them as an asset to you, your business, and your community.

2 CQ KNOWLEDGE: They have some basic understanding about cultural differences.

One of the things that sometimes hinders our motivation for pursuing culturally diverse clients is fear of the unknown. Perhaps we've heard things from other Realtors® or maybe it's that we're so fearful of violating a fair housing law that we'd rather just let someone else attend to the prospects from different cultures.

You don't have to be an expert about every culture in order to sell with cultural intelligence. In fact, it's impossible to keep up with all the ins and outs of every culture moving into our state. But a basic grasp of how cultures differ in terms of decision-making, religious

preferences, direct versus indirect communication, gender roles, etc. can go a long way in effectively working with a customer from a different cultural background.

Now beware, none of us like to be stereotyped—even if the stereotype isn't negative. So don't immediately assume that people from a certain culture are most concerned about finding the top schools or that the man will be the one making the decision or that an extended family will be living in the house. Rather, use your understanding of cultures to guide you in making a “best guess” as to what might be of importance to these buyers.

On a more practical level, if you have even a little bit of insider knowledge about a place from which someone is moving, it goes a long way. Americans are notorious around the world for being culturally ignorant. Knowing that an election just took place in Russia or referencing the recent one-year anniversary of the devastating earthquake and tsunami in Japan can go a long way with a client feeling like you have some understanding of the world outside your own community.



“

with the growing diversity of those moving to our neighborhoods, the way you treat these potential residents could make or break us.

”

3 CQ STRATEGY: They're aware of how culture influences a situation and have the ability to plan in light of cultural differences.

This capability is the one that really separates the culturally intelligent from others. You can be multi-lingual and still not be culturally intelligent. Or you can have all kinds of insider knowledge about Middle Eastern culture and still not be able to successfully work within it. It's whether or not you can actually draw upon your cultural knowledge without discriminating, but to inform a good sales strategy that separates the culturally intelligent Realtors® from the rest.

If you're a seasoned Realtor®, you might not need much time to prepare to meet with a “typical” client. Perhaps you pull up some listings and prepare to do the showings. After you've worked with enough people, you can read the body language and wing it with your charm and technique. But when you're working with someone coming from a different cultural background, you'll need to put more effort into thinking about how to plan a meeting or an afternoon of showings that will be worthwhile. Body language will be harder to read. You'll need to listen more and talk less. The assumptions you typically use might be faulty. And, be ready to change whatever plan you developed mid-stream.

When our family was looking for housing in Singapore, I was frustrated that the agent automatically assumed we only wanted to see housing in the expat community. Granted, an effective plan for showing housing to an American family would include being ready to show some properties in an expat community. But when I explained that we didn't want to live in that area, I was frustrated that the agent had no other options prepared.

4 CQ ACTION: They can be true to themselves while adapting enough to be both effective and respectful.

Finally, the culturally intelligent professionals are not chameleons to every culture where they find themselves. Instead, what we found is that the culturally intelligent are comfortable in their own skin, but can adapt enough to communicate respect and to complete a sale that is beneficial for all parties involved.

That's what's at the crux of culturally intelligent real estate. It's about respect and results. It's about being true to yourself and adapting to various cultures as needed.

For information on assessments and training on cultural intelligence, visit www.culturalQ.com or check out the brand new book: *Driven by Difference* and best-selling business book, *Leading with Cultural Intelligence*.

Diversity is on the rise in our

state and all indicators suggest we've only just begun. But this is not a problem to be solved. It's an opportunity to be treasured and stewarded well for our state.

We still have some work to do on discrimination and fair housing issues. But it's time we move away from ranting and raving about it and instead, see the opportunities on the horizon for Pure Michigan to be a place that welcomes people from all over the world. We need Michigan Realtors® who show and sell newcomers homes and commercial properties to demonstrate what this state is really made of: a place where you can be true to your own convictions, values, and beliefs...and a place where we defend passionately the right for others to do the same. And, where somehow in the midst of that, we will find our growing diversity as our greatest resource for our future growth as a state. ●



***David Livermore, PhD** (Michigan State University) is a thought leader on cultural intelligence and global leadership and president of the Cultural Intelligence Center in East Lansing, Michigan. He's a frequent advisor to Fortune 500's, governments, and charitable organizations and has worked with leaders in 100 countries. www.davidlivermore.com and www.culturalQ.com*

CULTURAL INTELLIGENCE UP CLOSE

BY LOLA AUDU, CRS, PMN, GRI, E-PRO – AUDU REAL ESTATE

I grew up in the country of Nigeria, attending an American school where children from many countries were educated. There were approximately 60 different nationalities represented. This diversity created a uniquely multi-cultural experience which has served as a unique backdrop for selling real estate in West Michigan.

After college, we moved to Grand Rapids, Michigan where I obtained my real estate license. It was fairly early in my career that I came across the actual evidence of the systemic use of racist terminology in zoning ordinances as I examined a title abstract on behalf of a client. Several sections of the abstract had been blocked out by black marker, but unfortunately the entirety of the now illegal terminology was still visible in part. The language in the document indicated that the subdivision had restrictions against certain types of people (including Blacks & Jews among others) purchasing homes in that particular subdivision. Due to these types of laws and ordinances, and the impact of Jim Crow laws, American neighborhoods in the Midwest have developed around distinct cultural patterns.

Racial bias is so deeply embedded within our psyche that we are often unaware we are prejudiced. Unconscious bias runs deep and controls many reactions and belief systems. It is so deeply enfolded within the subconscious that most people would not admit to any racist tendencies or biases against any other traditionally marginalized group.

Historically, the United States has been defined by segregated neighborhoods. As the traditional gatekeepers of information and the source of financing for homes, the real estate and lending communities have had a tremendous amount of influence and leverage in defining the context of American neighborhoods.

As our nation becomes increasingly multi-cultural (the Millennial Generation is the most ethnically diverse generation in U.S. history), Realtors® are serving an increasingly diverse array of individuals. In 2015, China surpassed Canada as the source of the highest volume of international transactions in the United States. Realtors® are finding that it is necessary to develop another skill set which facilitates better communication with people from other cultures.

Realtors® who have developed a higher level of motivational cultural intelligence have a higher degree of professional success serving clients from diverse backgrounds.

Racial steering refers to the practice in which real estate brokers guide prospective home buyers towards or away from certain neighborhoods based on their race. Racial steering is often divided into two broad classes of conduct;

1. Advising customers to purchase homes in particular neighborhoods on the basis of race
2. Failing, on the basis of race, to show, or to inform buyers of homes that meet their specifications

Wikipedia: Racial Steering: The Real Estate Broker and Title VIII

The Yale Law Journal, Vol. 85 No. 6. (1976) 808 – 825



Lola Audu is the Owner of Audu Real Estate and LA SPEAKING through which she leads seminars and workshops for business in the areas of Leadership, Branding, Fair Housing and Cultural Diversity. Many of her educational course offerings are available through the CE MARKETPLACE for continuing education credit for agents and brokers. Lola has served as the President of Michigan's third largest association, the Grand Rapids Association of Realtors® and as a Director for the Michigan Realtors®. Lola is available to help organizations develop innovative approaches to leading through periods of rapid change and challenge.



TOP LEGAL Q&A

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.

QUESTION: I run a property management company that specializes in luxury home rentals. In order to ensure that only eligible candidates apply, I have instituted a policy that requires prospective tenants to have a **minimum credit score** prior to viewing the property. Is this an allowable policy?

ANSWER: YES. It is permissible to require a minimum credit rating as a criterion to determine whether a prospective tenant is eligible to see a property. Such a policy should be disclosed to and approved by the owner of the property and must be applied to all applicants equally. Any variation in the application of the policy could subject you to a claim of unlawful discrimination.



QUESTION: I am representing the sellers in the sale of their house. There have been some delays and the buyer is asking for yet another extension. My

sellers will only give the buyer an extension if the buyer agrees to a \$2,000 **non-refundable deposit**. I have heard that non-refundable deposits are illegal. Is this true?

ANSWER: NO. A buyer and seller can certainly agree that a deposit will be non-refundable. You will want to make certain that this is explicitly stated in the contract so that there can be no argument about the parties' intent.

QUESTION: I represent a buyer who had a signed purchase agreement. Just prior to the closing date, the buyer suffered buyer's remorse and chose not to purchase the property. The sellers are upset and want the **earnest money deposit**, but the buyer is disputing the fact that the sellers are entitled to the EMD. The sellers have also put their house back on the market. I was told that the sellers could not relist their house when there is a dispute over the EMD. Am I correct?

ANSWER: NO. The fact that the buyer and sellers are in a dispute over the EMD does not prevent the sellers from relisting. However, if the buyer has not clearly indicated that he will not go forward with the purchase, the sellers should consult with an attorney before binding themselves to a second purchase agreement.



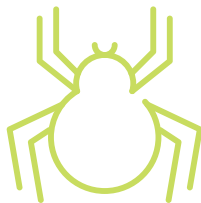
QUESTION: I am an agent in an office that practices designated agency. I am currently a designated agent for seller. I also

represent someone as a designated buyer agent. My buyer is interested in making an offer on my listing. Is it possible to be a **dual agent** in a designated agency office?

ANSWER: YES. It is possible to be a dual agent in a designated agency office, but you must get both the buyer and the seller to consent in writing. Without informed consent you have unconsensual dual agency and will forfeit your right to a commission.

QUESTION: Some clients of mine bought vacant land in 2011 on which they had a house constructed in 2012. They sold the house in late 2014. Will they be entitled to a **state transfer tax refund** if the SEV of their property at the time the house was completed was more than at the time of sale?

ANSWER: NO, because at the time of purchase, the land was vacant, they cannot claim a refund of the state transfer tax since the property was not their principal residence at the time of purchase.



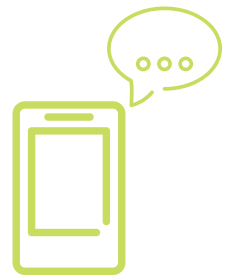
QUESTION: I currently have a property listed by the heirs of a man who died in his house as a result of a spider bite from a brown recluse spider. Does my seller have to **disclose this information**?

ANSWER: Unless a prospective buyer asks if someone died in the home, you do not have to disclose this information. However, if there is a history of infestation in the home, the seller must disclose that in the seller's disclosure statement.

QUESTION: Some clients of mine sold their principal residence in 2013 and the SEV was lower at the time they sold it than when they purchased it. They just found out that they might be entitled to a **refund of the state transfer tax** they paid. They sold the house at a profit; will they still be entitled to the refund?

ANSWER: YES, to qualify for the state transfer tax refund, the SEV at the time of purchase must be higher than the SEV at the time of sale. The fact that they sold the house at a profit has no effect on their ability to get a refund.

QUESTION: My buyer made an offer that the seller countered. Before we could respond, the listing agent sent me a text stating that her seller was withdrawing the counter offer and going with highest and best. Can a counteroffer be **withdrawn in a text message**?



ANSWER: YES. The seller may withdraw the counteroffer at any time prior to receipt of an acceptance by any means of communication.

For More Q&A

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

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.

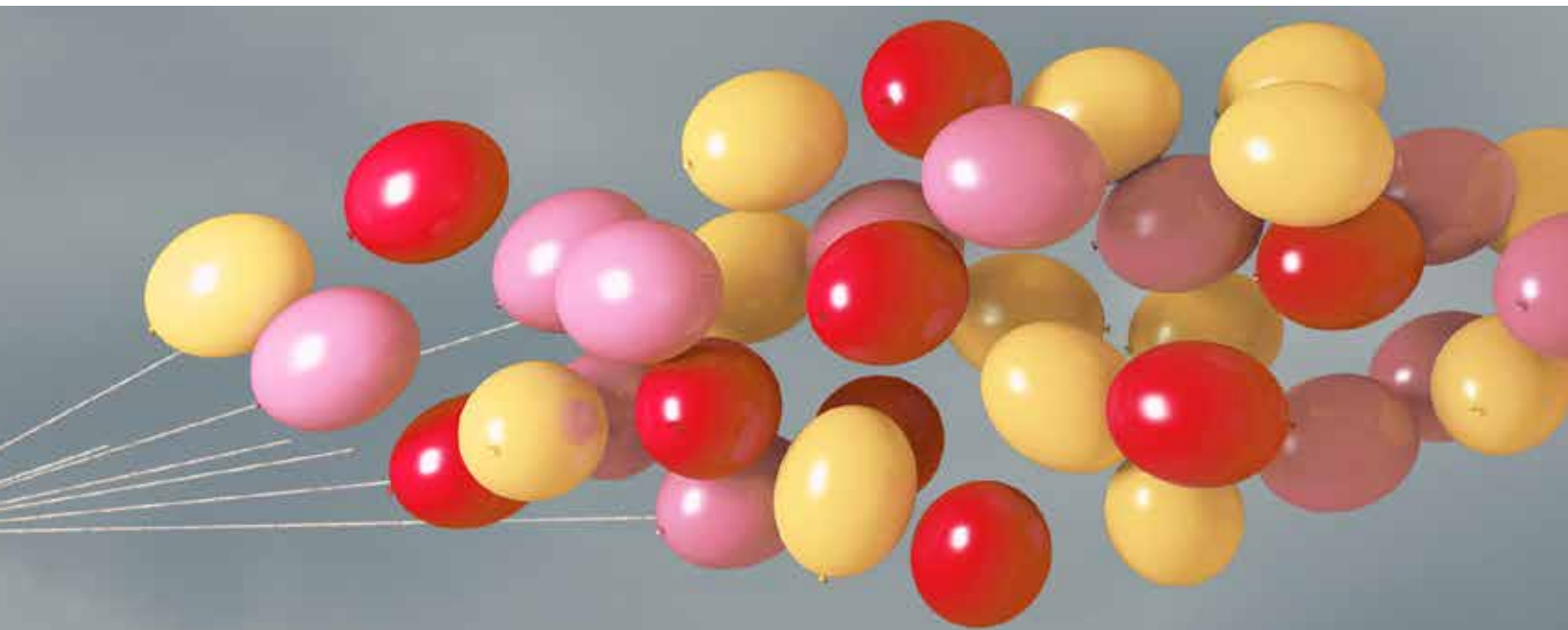
The Legal Hotline number is 800.522.2820. It is operated 9 a.m.— 3 p.m., Monday — Friday. This makes the Michigan Realtors® Legal Hotline available to Members approximately 250 workdays per year. Recognized holidays are excluded. If the Legal Hotline is busy; an answering machine will take calls. Calls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

Culture Eats Strategy for Lunch!

The above was said by management consultant Peter Drucker and holds true for real estate, as well.

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





The culture of an organization is one of those business concepts that is critical to success, yet hard to grasp. An organization's culture consists of widely shared values, symbols, behaviors, and assumptions. Put simply, it's "the way things get done around here." Culture comes down to an unspoken set of assumptions and a common way of thinking that drives a common way of acting on the job and in our companies. The result: culture eats strategy for lunch, according to management guru Peter Drucker.

What Are the Best Parts of Your Company?

What is the culture of your company? Do you know? What parts do you want to keep and strengthen? Are there parts that you would like to change? Let's start with helping you identify and measure the culture you have.

First, we recommend you read the excellent book, *"The Character of a Corporation,"* by Rob Goffee and Gareth Jones. The subtitle of their book, *How Your Company's Culture Can Make or Break Your Business,* tells you how important culture is to your organization. Their research shows that every company's culture

revolves around just two dimensions:

- **Sociability:** a measure of friendliness both on the job and outside the office
- **Solidarity:** results orientation, performance, and common goals

The combination of these two dimensions results in the four types of culture shown on the chart above.

The Communal Culture is big on sociability (having fun) and is also very focused on results (making money). Research by Goffee and Jones shows that only about 10 percent of companies are in this culture.

The Networked Culture places more emphasis on the people and the fun than on the results. The older and more successful your company, the more likely you are to gravitate to the Networked Culture.

The Mercenary Culture is all about the results and making money. It's strictly business, with very little emphasis placed on fun. Players tend to look out for themselves and are very competitive.

The Fragmented Culture is neither social or results oriented and is the most common culture in the real estate industry right now. Why? There are currently about 2.1 million real estate licensees in the United States,

and only about half of them are serious enough about their career to join the National Association of Realtors® and their local and state Realtor® associations. Even among Realtors®, many are part-time and don't have an office. They are fragmented.

I observe that most of the REAL Trends 500 companies are in the Communal, Networked, and Mercenary cultures. How do you discover your organization's culture? Start by reading the book, *"The Character of a Corporation,"* and administer to your company the short questionnaire in the book. If you have multiple offices, I recommend you administer the survey at each office. You may discover that each of your offices has a different culture!

Once you've identified your culture, how do you change, improve, or reinforce it? That's our topic for next time. The power of your company is a function of your culture. As a leader, you set the tone. Invest at least as much time in your culture as you do your strategy. ●



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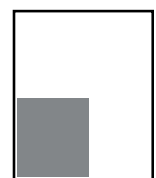
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Electronic Contracts – How Long They Work

In the Fall of 2000, the Michigan legislature passed the Michigan Uniform Electronic Transactions Act (“UETA”) which permits electronic transactions. However, some persons have been slow on the uptake to recognize that they can enter into contracts electronically. A recent decision by the Court of Appeals demonstrates both a contracting party’s lack of knowledge with respect to the validity of electronic contracts (apparently shared by their lawyer) and the Court of Appeals’ willingness to enforce Michigan law on electronic transactions.

In this case, a home inspection company had entered into a written contract with prospective purchasers on March 12, 2010 to inspect a home in Au Gres, Michigan. At trial, the purchasers stoutly maintained that there had been no written contract and that they had only entered into an oral agreement with the home inspection company. In any event, an inspector from the home inspection company inspected the property and prepared a report regarding the Au Gres home on March 15, 2010. The prospective purchasers alleged that they purchased the home on May 25, 2010 for \$340,000 in reliance on the inspector’s report. For whatever reason, the prospective purchasers did not begin moving into the home until almost three years later. At that time, the purchasers discovered that there were “cracks in the interior drywall and unlevelled floors in various areas.” The purchasers claimed that there were significant structural defects existing at the time of the inspection on March 15, 2010 and that the structural defects made the home unfit for habitation.

On February 20, 2014, the purchasers sued the home inspection company arguing that had they known about the defects, they would never have purchased the home.

In response to the lawsuit filed against it, the home inspection company immediately moved for summary dismissal of the purchasers’ case. The home inspection company claimed that the purchasers’ claims were barred by paragraph 10 of the parties’ written contract, which states as follows:

Client understands and agrees that any claim for failure to accurately report the visually discernible conditions at the subject property, shall be made in writing and reported to the inspector within ten business days of discovery. Client further agrees that, with exception of emergency conditions, Client or Client’s agents, employees or independent contractors will

make NO alterations, modifications or repairs to the claimed discrepancy prior to a re-inspection by the Inspector. Client understands and agrees that any failure to notify the Inspector as stated above shall constitute a waiver of any and all claims for said failure to accurately report the condition in question.

Furthermore, any legal action must be brought within one (1) years [sic] from the date of the inspection or will be deemed waived and forever barred. [Emphasis added.]

The home inspection company contended that under UETA, the husband of the purchasers had electronically signed the written agreement and therefore the purchasers’ claim was barred by the one-year limitation period in paragraph 10. In other words, under the terms of the agreement as written, the purchasers would have had to file their complaint against the home inspection company not later than March 15, 2011. Again, they filed on February 20, 2014.

There was no real issue as to the enforceability of the one-year limitations period. In a prior case decided in 2005, the Michigan Supreme Court had already held that parties to a contract may agree to a shortened limitation period for suits arising from that breach of contract. Rather, the issue was whether there was a written agreement at all. The purchasers in this case argued that they never agreed to the terms contained in the home inspection company’s written agreement. Their only agreement with the home inspection company, the purchasers argued, was an oral agreement, which had no such limitation period.

Citing the provisions of UETA, The Court Appeals held that under Michigan law mutual assent to a contract may be evidenced by an electronic signature if the parties agree to conduct the transaction by electronic means. The Court of Appeals found that under UETA, an electronic signature is “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign a record.” MCL 450.832(h).

When the home inspection company sought summary dismissal of the purchasers’ claim, they submitted an affidavit of the President of HomeGauge, the company from which it purchased its home inspection service software. In his affidavit, HomeGauge’s President explained how the software’s electronic signature function operated. He described the process as follows:

- a. The HomeGauge user sends an email to a potential client;
- b. The email contains a link to HomeGauge's website, to a home inspections services company's potential client;
- c. When the potential client receives the email and clicks on the link, it takes the potential client to HomeGauge's website;
- d. Once the potential client gets to the HomeGauge website, he or she is provided an electronic copy of the home inspection services contract;
- e. The potential client is asked to click a button indicating that he or she has read the home inspections contract and agrees to be bound to its terms of the agreement;
- f. Clicking this button creates an e-signature on the home inspection services contract.

After describing HomeGauge's process for obtaining an electronic signature, the President of HomeGauge then went on to describe in his affidavit what had actually occurred in this case. He reviewed all transactions between the purchasers and the home inspection company. In reviewing these transactions, he determined that an inspection agreement was uploaded to HomeGauge's website on March 12, 2010. Thereafter, an email was generated and sent to the husband on March 12, 2010 containing a link to the written inspection agreement. Thereafter, the husband clicked the procedures described above and, finally, the HomeGauge software generated and stored a record of the husband's signature. In addition, a document submitted with the affidavit indicated that notifications had been sent and the inspection agreement was agreed to by the purchasers under a profile, which was associated with the wife's email address on March 12, 2010.

The Court of Appeals found that the home inspection company's affidavit and supporting documentation constituted sufficient evidence to support the home inspection company's claim

that an enforceable written contract existed. The Court of Appeals specifically found:

The process outlined by [the President of HomeGauge] meets the definition of an electronic signature under the UETA. Clicking the button imposed on the inspection agreement evidences the intent to sign the contract. MCL 450.832(h).

The only response the purchasers made in this case was their own affidavit in which they denied that they had ever "read or been provided" with, "agreed, orally or in writing" to, or otherwise agreed to limit the home inspection company's liability in any way. These conclusory statements could not overcome the home inspection company's evidence that the purchasers had electronically signed the written agreement.

It should be noted that in deciding in favor of the home inspection company, the Court of Appeals had to reverse the decision of the trial court that the HomeGauge electronic signature process and the actions by the purchasers did not constitute a binding electronic signature on the home inspection company's written agreement. Obviously, judges, lawyers as well as members of the public are still working to get their hands around what it takes to create a binding, electronic agreement under UETA.

Many, many Realtors® and their clients are now relying on electronic signatures to carry out transactions. Those Realtors® will want to make certain that they can document the process for obtaining electronic signatures in the event that the parties to the contract, like the purchasers in this case, later claim that they never "signed" anything. The procedure outlined in this case provides one blueprint for successfully demonstrating that a person did in fact sign a document electronically. ●





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