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{ NOVEMBER | Two Thousand & Fifteen | Volume Fourteen | Number Six }

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It's the people that make Michigan Realtors[®] special

We have lost our blaze of color that has decorated our state these past few months as we move into November with thoughts of winter in our mind and wonderful family Holidays to enjoy soon. I truly hope you had some opportunities to enjoy the brilliance of fall in Michigan – we really do live amid an amazing diversity of nature!

As the calendar nears the end of the year and we prepare to attend the NAR Convention. This will be my last chance to communicate with all of you through our magazine. You have all been on my mind and in my heart for eight years on the Board of Directors and especially the three-and-a-half years as an Officer.

I would like to take the opportunity to thank our staff by first acknowledging what a great team they are. They interact so well and assist each other in all situations, making the Michigan Realtors® a highly functional, deeply respected organization that is the envy of many. Being part of leadership allows us the special privilege of getting to know our staff on a more personal basis and have the opportunity to witness their daily dedication to all of our members. Here are some too brief words about them.

Rob Campau hit the ground running as our CEO and continues to regale us with a vocabulary that an English professor would envy. His warmth, humor and insightfulness help to create a great atmosphere within our staff.

Kathie Feldpausch, our CFO, loves parking lot projects and blends grace, attention to detail, a sense of fun and an active personal style that benefits us all.

Brad Ward, our VP of Public Policy & Legal Affairs, is a rock star at the Capitol and as he moonlights in a band The Dupes, does a wicked limbo and displays the ability to charm with his wit and a smile – he has our back in Lansing!

Shelley Albert is Rob's Executive Assistant who I affectionately and respectfully call Mom. She has guided me through many adventures and events with a brilliant smile and an "I'm on it" attitude while making you feel you are the most important person at any given moment. I can never say Thank You enough for all she has done for me and our Association leadership.

Brian Westrin is now stepping into the role of Public Policy & Legal Affairs Director after several years of sharing time between Michigan Realtors[®] and McClelland & Anderson. He is a singer and songwriter with several albums to credit of his band, Westrin and Mowry. Look up his music online.

Jodie Cady is our Events and CE Marketplace Director who flawlessly orchestrates all our events from inception to completion – a toast to Jodie for making all of our events fun, informative and noteworthy! Sandy Stump is our Accounting Director and along with Kelly Risley and Jerry Bornamann ensure that all our numbers add up – Thank you Sandy for graciously answering all my questions!

Theresa Gray is Brad's assistant and makes the world of Public Policy and RPAC flow between our lobbying activities and our volunteer members – she makes a big impact.

Our Government Affairs Field Directors, Doug Merriam in the West, Michelle Brant in the Southeast and Amy Taylor in the Central and North (aka "everywhere else") are probably the most well recognized and known faces as they travel to all our local associations attending meetings and functions. They are tireless advocates for Realtors[®] and RPAC and help the locals with their efforts to inform their members of the latest laws, regulations or policies. They literally drive our message to members with to steal one from the Governor, "relentless positive action".

Joe Kras, our Communications and Marketing Director, is one of the most accommodating individuals you will ever meet and shares an affinity for a certain rock guitarist with me.

Making videos and our Batman event with Joe and his often sidekick Andrew Francoeur, our IT Manager was always a pleasure and often an adventure – Thanks for making me look almost passable on the videos!

Julie Luper is our CE Marketplace Tracking Coordinator, a huge task that will make all of our members' lives better.

Andrea Bates is Instructor and Course Coordinator at the CE Marketplace.

Shayna Hanes at the front desk will greet you with warmth and a smile whether on the phone or when you walk in the front door.

Andrea Anderson as Project Manager and Tashina Obrecht as Graphic Design & Marketing Specialist round out the team. Thank you all for keeping our blue and red Realtor[®] R shining bright.

The future is bright for Michigan Realtors[®] and your 2016 Leadership Team of President Gary J. Reggish, President-elect Jason Copeman and Treasurer Sara Lipnitz are committed and dedicated to moving us forward. I thank them all for their service to our members and especially for their friendship!

Being your President in 2015 has been a great and humbling honor filled with amazing moments and memories as we celebrated our 100th year. In all things Realtor[®] I will continue to be with those "on the wall" that have your back.

May you all enjoy a wonderful Holiday Season with 2016 being your best year yet in many ways!

MICHIGAN REALTORS®

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COMING EVENTS

November 13-16, 2015 REALTORS® Conference & Expo San Diego, CA

January 20-22, 2016 2016 Achieve Dearborn Inn, Dearborn

April 21, 2016 2016 Broker Summit Michigan State University Breslin Center, East Lansing

June 8, 2016 Xplode Conference Brought to you by Michigan YPN Network, Location TBD

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Hc Svnt Dracones

"Reform," is a word that gets thrown around a lot in government, especially by people running for office. We're still over a year away from the 2016 election but we are being inundated with talk of reform -- immigration reform, tax reform, healthcare reform. These are big and weighty issues that have an impact on a large number of people. Reforms also take a long time to accomplish because good minds can differ greatly on the shape and the direction that a new law will take.

Those pushing for reform need to tread lightly. The challenge of upheaving an entire system begins with making a significant case that the current one is broken. If you falter from the start, the move forward can be even more difficult and slow. It also helps to garner the perspective of all stakeholders when creating the framework of the proposed reform. Ignoring the obvious interests can have detrimental consequences.

Michigan has seen a number of reforms over the years with varied results. In 1994, Proposal A reformed Michigan's entire property tax system and the overall framework has lasted for over 20 years. On October 1, 2007, the legislature and Governor passed an expansion of the State's use tax to include 82 categories of services. That particular reform barely sustained itself past its effective date 60 days later. Michigan's business tax structure has seen two separate reforms over the last 8 years, first the Michigan Business Tax (MBT) and today's Corporate Income Tax (CIT).

Recently, two separate reform proposals effecting property owners and private property rights have been introduced in the Michigan legislature. One proposal to reform the Michigan Tax Tribunal Process, and the other to reform property tax assessments of "big box" retailers. While they are not as broad-based as an overhaul of the State's business tax, they could have sweeping negative consequences if handled incorrectly. That of course presumes that these reforms are needed at all, which is debatable. For good reason, Michigan Realtors® is approaching both issues with a great amount of caution.

Tax Tribunal Reform

The legislature tried Tax Tribunal reform last session under the sponsorship of Senator Bruce Caswell (R- Adams Township). Senator Caswell's bill, among other things, aimed to change the current make-up of the seven-member tribunal. As it stands, the Tribunal is made up of seven members: 4 attorneys, 1 CPA, 1 assessor, and 1 real estate appraiser. Under Senator Caswell's proposal, the entire seven-member body would have been changed to all attorneys. This change drew the ire of many in the business community, not just those associations representing the three professional designations on the Tribunal. When the 2013-2014 legislative session came to an end, Senator Caswell's tribunal reform bills ended with it.

Senator Caswell has since retired from the Senate but the Detroit Regional Chamber of Commerce is picking up Tribunal reform where he left off. Senator Rick Jones (R- Grand Ledge) has introduced SB 537, representing the reform framework laid out by the Detroit Chamber. Similar to Senator Caswell's bill, SB 537 also seeks to shake up the current representation of the Tax Tribunal. SB 537 takes a little bit of a different approach by increasing the number of attorneys to 4, and maintaining the positions for both the assessor and the CPA. If you've been reading along, that means that the only position slated for elimination under their proposal is the real estate appraiser.

The goal of the bill, as outlined by the Detroit Chamber, is to increase the quality of individuals nominated to serve on the tribunal, increase operating efficiencies, and promote the ease of using the tribunal. All of which are admirable goals but really fail to make a strong case for overhauling a system that, in recent years, had taken immense strides to decrease the length of its docket and bring timelines more in line with expectations. Arguably the most positive change in the proposal is the one to increase the stature and pay of the Tribunal members to attract quality candidates to the position.

The Detroit Chamber has stated that the reason for eliminating the appraiser is because the last two appointees did not fulfill their terms and came from a government background anyway. Those reasons are an appointments issue, not a problem with the appraiser profession as a whole. If the goal is to attract better quality candidates, the appraisers should have the same shot as the other Tribunal members under this bill.

The property tax system in Michigan is completely determined by assessors. When people challenge their property taxes, they are challenging the work of an assessor. The appraiser serves as a check and balance on the assessor's work by looking at the property individually and not as part of a common group for valuation. Furthermore, assessors rely heavily on a cost approach to valuation, which is not an effective means for every property. If the tribunal is only represented by an assessor, the local assessor's work in question is most likely to be viewed from the perspective of "did they follow the rules" rather



than "did they get the right value." The petitioner already has the deck stacked against them in terms of the burden of proof and cost; this proposal removes the most accurate private sector means of valuation.

Michigan Realtors[®] is making our opposition to SB 537 known in the Michigan Senate. We believe that the preservation of the appraiser member on the Tribunal is vital to taxpayer fairness. Our proposal, assuming that this bill is the only way to address perceived issues with the tribunal, is to keep the current make-up of the Tribunal the same, or maintain the appraiser position over that of the assessor.

As I said from the outset, issues of reform need input from all stakeholders so it's important that our voice is heard. We will keep our members up to date on this bill if it moves forward.

A Different Set of Values

We may be heading into uncharted territory when it comes to the valuation of commercial retail properties around the state of Michigan. You may have heard or read the buzzwords "Dark Stores" in your daily news gathering. "Dark Stores" refers to certain big-box retail buildings which are closed and sit empty. These vacant properties, while a painful reminder of the market volatility over the last ten years, have also represented important sales comparables for operating big-box retailers when appealing their annual property tax assessments.

In Michigan, assessors typically use the "cost approach" (a property's construction costs, minus depreciation) as one method to determine its fair market value: the taxable value being half of that amount. However, many retailers (and the list is growing) have successfully reduced their assessments, arguing before the Tax Tribunal that they should not be valued by the cost to build the store (less depreciation), but rather their worth in comparison to other big box properties, many of which are vacant. Spurred on by an outcry from communities with day-to-day budgetary considerations directly tied to the type of tax revenue that is being refunded, Michigan lawmakers have begun to take a hard look at the issue. Two bills have recently been introduced to specifically target the use of "Dark Store" comparables and to eliminate deed restrictions from the consideration of a property's "Highest and Best Use."

Senator Tom Casperson (R – Escanaba) introduced SB 524, which inserts a new requirement for determining true cash value on all property subject to the General Property Tax Act – not just big-box commercial property. The bill also imposes a specific type of valuation on big-box commercial property (referred to as "Limited Use Property") that would enshrine in statute a rebuttable presumption exists that the "cost approach" is the best evidence of a big box store's selling price. Additionally, when determining a property's "Highest and Best Use" it would be necessary to exclude from consideration any deed restriction that would limit the use of the property for a subsequent owner.

While SB 524 is intended to take on the very specific issue in assessing commercial property, we are particularly concerned with its unintended consequences. The vast majority of appeals to the tax tribunal are residential properties in the small claims division. The typical appraisal submitted by a taxpayer in the small claims division costs \$300-\$400 and is based on comparable sales. This bill as drafted would create a much more complicated appeal process for residential appeals. Not to mention the large shift in the way we value commercial property away from comparable bricks and mortar sales.

Representative John Kivela (D - Marquette) has also introduced legislation to address the use of restrictive deed covenants by these big-box properties. HB 4909 would amend the Michigan Zoning Enabling Act to render deed restrictions on commercially zoned property void and unenforceable 90 days after it is first established. The purpose of this bill is to eliminate the practice whereby a big-box retailer places a restriction on a subsequent owner's use of the property. The practice has been done for many years to make it more difficult for competitors to enter a particular market. However, the practice has come under fire as of late. Many of the "Dark Stores" that sit closed and vacant are subject to some type of use restriction, precluding its use by some other big-box retailer. While we understand the intent of the bill, deed restrictions aimed at the use of commercial property are widely used and also very important to the development and success of commercial districts. They are used not just to avoid competing uses, but also those deemed incompatible with the surrounding properties (e.g. adult entertainment uses, bowling alleys, or pool parlors near high-end retail centers, schools, or churches).

The valuation of commercial property is a very hot topic in the Michigan legislature. There will be plenty of debate regarding these bills and we have already heard of several other proposals in the drafting stages. It will be important to take a hard look at all of the approaches to make sure we're not legislating property owners into a corner, either in their tax assessments, or their property rights.

It's important that our association remain vigilant to these two proposals that have the potential to dramatically change the way property taxes are assessed and challenged. We are blessed with an active membership that knows and understands these issues from all sides and we appreciate that advice in navigating the uncharted waters of reform.

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Realtors® shaping the future...united

BY WILLIAM F. KENDY

The 2015 Michigan Realtors® Convention & Expo, held at the Detroit Marriott at the Renaissance Center on September 30 through October 1st, drew over 1,100 real estate professionals (139 first time attendees) and was an incredible success.

It's not hard to figure out why.

The convention not only offered attendees the perfect forum to network with and learn from their peers, but also provided them with the opportunity to attend CE Marketplace certified knowledge sessions conducted by some of the best and brightest experts in the real estate industry and their respective fields. The subjects and sessions ran the gamut of critical subjects for Realtors[®], encompassing technology, marketing, sales, commercial, legal issues and much more.

Kicking off the convention as the Grand Assembly Keynote Speaker was Dan Gilbert, founder and chairman of the Detroit-based Quicken Loans, Inc. whose topic and message was "Shaping the Future...United." He shared his views regarding his work with and plans for the city of Detroit and had an in-depth conversational exchange with Brad Ward, Michigan Realtors® Vice President of Public Policy and Legal Affairs. "Kudos to the Convention Task Force and the Michigan Realtors[®] staff for a marvelous Convention! The Grand Assembly was awesome and the conversation with Dan Gilbert was truly enlightening regarding all he is involved with in making Detroit the comeback city!" said Gene Szpeinski, 2015 Michigan Realtors® President.

Gilbert is also the founder and chairman of Rock Ventures LLC, which has multiple business interests and investments, including being the majority owner of the NBA Cleveland Cavaliers. Through another of his companies, Rock Gaming, Gilbert owns the Detroit Greektown Casino & Hotel.

Gilbert moved the Quicken Loan headquarters and his family of companies (including more than 12,500 Rock Venture team members) to downtown Detroit in 2010 and is playing a large role in the development of the city. Since 2010, he has invested more than \$1.7 billion to purchase and renovate commercial property in the city's urban core.

Thursday during the Grand Gathering, Crystal Washington, a well-known and respected international expert at educating and training individuals across generations, spoke on how to strategically use social media.

Washington hosts a weekly technology segment on Houston's Fox television affiliate and has been interviewed by national media including Fox, ABC, CBS, NBC and other media. She is the author of *The Social Media Why: A Busy Professional's Practical Guide to Using Social Media Including LinkedIn, Facebook, Twitter, YouTube, Pinterest, Google+ and Blogs for Business.*

Here are some examples of other seminars: A presentation by Lynn Madison entitled, "From the Melting Pot to the Salad Bowl: Understanding Cultural Diversity," Rich Hart's seminar on "Going Mobile for Global" and a discussion of copyright best practices presented by the team of Brian O'Keefe and Karen Cage. Broker Knowledge Day also provided focused topics for brokers and managers, featuring Doug Devitre and Lynn Madison.

In addition to providing a forum for Realtor[®] interaction and education, the Convention provided a platform for the recognition of individuals who have demonstrated outstanding performance in the real estate industry.

John McArdle, broker and owner of Remerica Hometown One in Plymouth MI, was awarded the "Realtor® Active in Politics" award.

McArdle is a member of the Greater Metropolitan Association of Realtors®, where he is the co-chair for the government affairs committee, which interviews candidates on local and state levels, monitors legislative issues and makes recom-



John McArdle

mendations for support and endorsement of candidates and issues.



7





2015 Realtor® of the Year nominees

"It is an honor and a surprise! Being Realtor® Active in Politics for the Michigan Realtors® is an award I will always cherish! Volunteering on behalf of Michigan's Realtors® is something that is in my blood. Giving back has been a greater blessing than I could ever imagine. I would recommend working with your local, state and national Realtor® organizations to make sure the challenges facing our American Dream, property freedoms and financing are met with a massive united fight!" said McArdle.

The 2015 State Realtor® of the

Year award went

to Matt Davis

Davis, a li-

with Rosemary

Davis Realtors[®],

the Battle Creek

Area Association of Realtors® and

has served on the

Michigan Real-

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Matt Davis

mittees. He was appointed by Governor Rick Snyder to the State of Michigan Board of Real Estate Brokers and Salespersons, where he serves as the Chairperson of the Board that oversees the implementation and enforcement of real estate license law. He also serves as the treasurer of the Kellogg Community College Board of Trustees and

is the chairperson of the Marshall City Planning Commission. Matt is a 2015 RPAC Sterling R Investor. He and his wife Leigh have four daughters.

"Given the high quality of the other nominees on stage with me in Detroit, I was surprised and humbled to be recognized by my peers. I hope other Realtors® across Michigan will recognize how being involved in their local, state and national associations, as well as contributing to RPAC are so very important to the very core of our business. Without volunteer leaders, a great association staff, RPAC and the power of the Realtor® party, business as we know it would most assuredly be less friendly, more regulated, difficult and much less profitable. Much thanks and love goes to my family and office members and my hearty congratulations to all the Realtors® of the Year across Michigan as well as my sincere and deep thanks go out to our Michigan Realtors® leadership and staff--they are the best." said Davis.

As is normally the case, the Trade/ Expo was once again sold out. Over 75 exhibitors attended, ranging from insurance companies, financial institutions, utilities, marketing and collateral services, technology, and state agencies.

The RPAC Appreciation Breakfast featured speaker was Jamie Gregory, Deputy Chief Lobbyist for the National Association of Realtors®. Mr. Gregory touched on real estate industry issues at the federal level, and what policies and legislation were being analyzed in both the House and Senate in Washington D.C. Mr. Gregory

cited various accomplishments and victories made possible by both RPAC and a strong national membership that is politically engaged and involved in every level of government.

Once again the Michigan Realtors® Convention & Expo attendees promoted the real estate community by supporting RPAC during both the live and silent auctions. Bidders had their choice of a number of different items in all price points, including vacation getaways, home and office décor, golf packages and even a "Cruzin Cooler" that was perfect for events and just having fun. In total, a record \$16,000 was made with both the RPAC Live and Silent Auction combined!

Wrapping up the convention and presenting the Closing Keynote was consultant and author Tim Connor. Connor discussed the 12 things that allow salespeople to sell faster and easier.

Connor is president and CEO of Connor Resource Group and Peak Performance Institute. In his over 35year career he has written more than 80 books on a number of topics including sales, management and success. He has given more than 4,000 presentations in 24 countries and works with clients to help them improve their individual and organization performance.

The Michigan Realtors® want to thank all of the exhibitors, sponsors and attendees for their support...and mark your calendars for next year as we are back in Mt. Pleasant, October 5-7th! •

Thank you 2015 Sponsors!

Michigan Realtors® would like to sincerely thank the following sponsors who have contributed to the 2015 Convention & Expo. Without their support, this event would not be possible. Please join Michigan Realtors® in extending our appreciation to them.



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2015 Avociation Scholarhip Recipient

BY WILLIAM F. KENDY

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he Michigan Realtors® Scholarship Trust fund provides annual scholarships to full-time college undergraduate and graduate students who are taking classes that will lead them to a real estate career. This year alone, a total of \$7,500 was awarded to five deserving college students. The awards are based on average grade point, good citizenship, course

work and range from \$500 to \$2,000 per student per year. In addition, the applicants must submit an essay outlining their credentials and present a case why they are worthy to be awarded a scholarship. Here are brief profiles of the scholarship recipients and an update on their future plans.

LEANNA SAVAGE

(formerly Leanna Honderd) grew up in Wayland (MI) and graduated high school from the Byron Center Charter School where she was valedictorian. She has two siblings and her mother is a working Realtor[®].

Savage, who was awarded \$2,000, is 22 years old and a newlywed. She is in her senior year at Lawrence Technological University and is majoring in architectural design. She has her sights set on earning a master's degree from LTU and becoming an architect.

"I believe that architecture is a form of real estate

and, while it isn't selling or buying a building, it is selling the design," says Savage. "An architect works with the client, the facility managers and is in control of making sure the project is completed on-time, within budget, meets codes and insures that the workers know what to do and that the client is happy."

Savage's class load includes courses in heating and cooling, electrical acoustics and lighting, electronic imaging and "Design Studios" where students are assigned a design and told to make it happen.

"A design studio is very labor intensive and takes several hundred hours to complete outside of class time," says Savage. "It is typical toward the end of the semester for a student to not get any sleep."

When it comes to relaxing Savage enjoys scrapbooking.

"It's like creating a photo album book except anything goes," says Savage.

MATTIE ALDERINK

was raised in Grand Rapids (MI) and attended South Christian High School in Caledonia. This 20 year-old \$1,000 award winner is a junior at Calvin College specializing in strategic communications, which encompasses public relations, social media and marketing.

Her father is a partner/associate broker of NAI Wisinkski of West Michigan and she has one sister and the family dog Zinnia.

"The real estate industry is about communication between buyers and sellers and building a market base," says Alderink. "I am taking classes pertaining to real estate and I believe that since so many people are getting their information online and through mobile devices that the market potential and opportunities will be huge for real estate companies."

Alderink has found a way to build her marketing and communication skills and, at the same time satisfy her passion for basketball.

"I am a big Grand Rapids Drive basketball team fan and I do the marketing for the team," says Alderink. "I just conducted a summer long market demographic survey and now that we are going into our second season we are working to figure out how to best market the team."

> In addition to her basketball interests, Alderink is a runner, biker and water sports aficionado and especially likes wave surfing.

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JAMES GILLEN III

is from Clarkston, (MI) and is the oldest of three children, all of which are presently attending college (lucky mom and dad). His parents own Liberty Way Realty in Lake Orion.

Gillen received \$1,000 from the scholarship fund and is a 22 yearold senior at Michigan State University. He is majoring in advertising with a focus in management and is participating in the MSU sales leadership program. His advertising classes have focused on managing and creating brands and connecting with customers and building relationships. He is also working towards a minor in Spanish.

In order to hone his skills in connecting with and relating to customers, Gillen spend this last summer working at Flagstar bank as a part-time senior loan officer assistant. He worked through their customer relationship management system calling and interfacing with customers.

"First and foremost I want to finish up my final year at school," says Gillen. "My goal is to one day take over the family business and make it more successful. My parents have worked hard all of their lives and I'd like to take the business to the final level."

When not working or studying, Gillen hits the field or the water.

"Playing soccer was a big part of my life and I played club and in high school," says Gillen. "I also really like boating and getting out in different areas and lakes throughout the state."

Kaitlin Milligan

of Clawson (MI) graduated from Rochester Hills Christian High School and is presently a junior at Rochester College. Her father has been a real estate agent for 30 years, works at Century 21 Town and County in Rochester. Like many of the scholarship winners, Kaitlin grew up exposed to the world and workings of real estate.

"My association with real estate came from my dad and right now I am working at a Century 21 office as a receptionist and am used to and very comfortable in the Realtor® environment," says Milligan.

Milligan, who received a \$1,500 scholarship, is on a Rochester College mass communication and public relations track. She hasn't yet determined what career goal and direction she wants to pursue after graduation.

"I'm have taken a lot of classes on things like new media, intercultural and business communication along with a number of marketing classes," says Milligan. "Right now, I have no clear vision as to how these will serve the real estate market but I'm thinking about it."

In addition to hanging out with her friends, Milligan likes to hike, travel and cook.

ABIGAIL ROGALKE

is a 20 year old junior at Michigan State University majoring in advertising management with a minor in public relations. She received a \$2,000 scholarship. Raised in Lowell (MI) she graduated from Lowell High School.

> Rogalke interned at the Michigan Realtors[®] and worked on events, marketing and member recruitment.

"At first I wasn't sure about real estate industry until I found out about all the different things involved in the business," says Rogalke. "My internship was a lot of work but I received a good education and had a wonderful experience."

Rogalke isn't guite sure what the future holds.

"I like writing and I'm not sure whether I want to pursue that route or go into the public relations field or the business world," says Rogalke. "I do enjoy working with and helping kids and may go into the non-profit area, like working with a Big Brothers and Sisters Club or another non-profit organization."

When she isn't cracking the books, Regale enjoys playing tennis and the violin.

Judging by the caliber and integrity of the 2015 scholarship winners, things look positive for the future of the Michigan real estate industry. To learn more about the scholarship program and its history, visit *http:// www.mirealtors.com/Education-Events/Scholarships.* •

Will the explosion of new brokerage offerings be the ones to **take down the business**?

BY STEVE MURRAY, PUBLISHER - REAL TRENDS

Recently, it seems as if there is an explosion of new brokerage offerings, most focused on a discounted commission married to technology. The news that retail giant Lowe's was entering the fray with an investment in a firm designed to "unbundle the brokerage service while offering consumers lower prices" compounded the nervousness in the industry. Read the article: Solopro Unbundles Real Estate. Throw in the announced acquisition of DotLoop by Zillow, and it's no wonder that many are feeling a bit nervous about what this all means.

One can't blame the industry for feeling nervous. Anyone watching commerce didn't miss the impact of Amazon, Pandora, Apple, Google, Facebook, Craig's List, Uber and AirBnB. Each, in its way, has upended traditional players in business after business. Even the New York Stock Exchange and NASDAQ have been upended by more than a dozen other privately-owned trading exchanges.

WHAT WILL CHANGE THE INDUSTRY?

Because of all of this, more of us are asking, "Is the killer app for residential real estate now on our doorstep, and we just don't recognize it?" After all, how can all of the billions of dollars spent by venture investors be justified? Are they all wrong? Why do so many think that there is a gold mine in brokerage that would warrant such intense interest by technology firms and their backers? The last question is the easiest. In fact, there are nearly \$65 billion worth of reasons. Real estate is an industry that is remarkably untouched by the Web thus far. It's an industry that appears low on the productivity scale and high on the fragmented scale. It's ripe for the plucking, some might say.

Why so much interest and why so much money? First, not only is brokerage an industry still hugely fragmented among its competitors but also it exhibits fairly low productivity as measured by the number of closed deals (or commissions) divided by the number of agents. The largest national firm isn't much above 10 percent national market share, and the top five don't even have 40 percent share combined. So, the question of interest is not hard to fathom. Quite a few MBAs would say that all of these facts make it an appealing business opportunity.

HAS THE KILLER APP ARRIVED?

It is important to note that there are trillions of dollars of liquidity floating around our country and the world is seeking a higher return than Treasury notes. And, there are many pools of capital that place bets in dozens of places simultaneously in the hopes that one out of every ten of their investments will be the next Facebook or Uber. It should not surprise anyone that dozens of real estate tech start-ups get splashed with capital every year. As has always been the case, there is far more money chasing deals than there are good deals, thus you get a scattershot approach to investing by those who really think they know something about brokerage but who truly, well, don't.

Has the killer app arrived yet? No. There does not appear to be one or even two at this time. Think about it this way, the discount brokerage has been around for almost 40 years on a formal basis. The number of firms offering some discount or rebate numbers in the dozens around the country. This does not take into account agents who discount whenever they feel it necessary to do so. Webbased technologies have been around for over 15 years. From transaction management to customer relationship management systems (CRM), there has been a multitude of offerings from which to choose for both agents and consumers. There is nothing new in this regard.

A buyer or seller can find a discounted brokerage firm in virtually every market in the country. Further, in many cases, they can find a traditional agent who may be willing to discount or rebate in almost every market. So, there are few hurdles to lowering one's costs in a transaction today.

WHAT ABOUT THE MILLENNIALS?

The new argument is that the Millennial generation will use the combination of both lower costs and better technology to drive the current

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brokerage model into submission. But, let's think about that. What is it they favor (along with their older Gen Xers and Boomers)? In fact, we all want a service that is easy to use and doesn't cost much. That is not a generational thing. Every generation wants that. Uber didn't get big because of price; it got big because of their service, which is perceived by many to be far superior to taking a taxi. Amazon did not crush Borders just because of price. It did it because it is easier to order a book than drive to get it-the discount is a great additional benefit. AirBnB did not get huge because of lower prices, but because the service in finding what is available and knowing about options is superior to what was there before.

So how does that work in brokerage? Has anyone truly proposed a better service package in buying or selling a home than one can get from a competent agent with a decent transaction management system behind them? Has anyone delivered a superior way for consumers to find a home than is already available through thousands of real estate websites? Has anyone delivered a system that is so demonstrably better than what is available through the careful choice of a qualified agent? Can they do so at lower costs in a way that is significantly enough to matter to consumers while doing so?

No, we don't think so. Not yet anyway. Maybe a voiceactivated real estate search, which is 100 percent intuitive, would be the magic bullet—except really good agents know that what a seller and buyer say they want does not always measure up to what they end up choosing. Reprinted with permission from Real Trends – September 2015 issue.

Real estate is an industry that is

Remarkably untouched thus far.

It's ripe for the plucking, some might say.



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Five winners are announced each fall in Realtor[®] Magazine. Winners are recognized annually at the Realtors[®] Conference & Expo, and receive \$10,000 grants for their charities. Winners also receive travel expenses to the conference and national and local media exposure for their community cause. In addition to the winners, five honorable mentions each receive a \$2,500 grant. This year, two Michigan Realtors[®] members and their causes were recognized.

2015 GOOD NEIGHBOR AWARDS WINNER

John Kersten, CRB

Century 21 Town & Country Rochester Hills, Mich.

John Kersten became a power fundraiser for Easter Seals by helping people with disabilities realize their potential.

BY GRAHAM WOOD



2015 Good Neighbor Award Finalist

> Practically every day, John Kersten does something to bolster his connections. It may mean phoning a local business leader, placing an ad in a newspaper, or sending an e-mail blast to his database of more than 18,000 people. These efforts are much less about winning clients or promoting his real estate business than about helping kids and adults with disabilities have a better life. He views these new contacts as opportunities to deepen his community's understanding and support of people with Autism Spectrum disorder and other special needs in his home state of Michigan.

> As an Easter Seals fundraiser for more than 24 years, Kersten has raised more than \$15 million for the national organization's Michigan chapter. The nearly 100-year-old charity annually helps 1 million U.S. children and adults lead more independent lives. For the last 15 years, Kersten's brokerage, Century 21 Town & Country in Rochester Hills, Mich., has led the country in fundraising for Century 21, an official sponsor of Easter Seals. Lately, donations garnered by his office have reached nearly \$1 million annually. Put another way, Century 21 nationally raised \$2.9 million for Easter Seals in 2014, and about a third of that sum came from Kersten and his agents.

"It's become like my business," says Kersten, who has worked in real estate for 48 years. "You do what you have to do when you have to do it—when you care about something as much as I care about this."

Secret to Success

Kersten's secret is that he's devised and perfected an interesting and lucrative way of attracting donors: raffling off cars. He's networked with owners of local car dealerships, convincing them to offer new luxury automobiles as prizes while they lend their branding to the cause. A Corvette plus \$50,000, a Cadillac plus \$50,000 and a \$100,000 cash prize are among the grand prizes offered in the five annual raffles. All 5,500 tickets typically sell out for each raffle—at \$50 a piece with each event grossing \$275,000.

"It's about being part of a wider community," says Kersten, "people who are going through a struggle as part of a community, not by themselves."

Kersten has also worked with the owner of a newspaper group to place ads for the raffles in more than two dozen publications throughout Michigan several times a year. The exposure the raffles receive, on top of mailings Kersten sends out to his database of ticket buyers, bring in an additional 300 to 400 donors per year, he says. "It's an absolutely wonderful charity," Kersten adds, explaining his motivation to keep fundraising for Easter Seals. "They have a tremendous impact on people. All the money that we raise goes directly into our community."

Lasting Impact

Without Kersten's contributions, Easter Seals wouldn't have the resources to help people like Heather Reifler and her son, Silas, 5, who has Down syndrome. Among the challenges Silas faces, his fine motor skills have been slow to develop. At an age when he should have been pottytrained, he didn't have the coordination to lift or lower his pants. Such difficulties affected the way he interacted with his preschool peers at his public school. "He didn't have a lot of self-confidence," Reifler explains. "He would remove himself from certain activities, and that can be seen as inappropriate behavior at school."

A year ago, the Easter Seals branch in Grand Rapids, Mich., where the Reiflers live, began providing Silas with weekly occupational therapy. His feelings of accomplishment and pride are now developing as rapidly as his motor skills.

"He now has confidence in himself and the ability to push through some of his frustrations," Reifler says. "It's been a godsend. I'm pretty excited about where he's headed, and I know Easter Seals will be a part of that for a long time to come."

Easter Seals has also provided one of Kersten's grandsons, who has Asperger's syndrome, with cognitive therapy for 10 years. "It has helped him to adjust and cope with real life and relate to people in his own age bracket," Kersten says. "He's in middle school now and is very high-functioning."

Norb Promo, chief development officer for Easter Seals Michigan, recalls how Kersten brought a business sensibility to his office's charitable efforts and motivated agents to get involved. Promo was one of Kersten's agents for 21 years before joining Easter Seals in 2008. "[For John], charity efforts can be as much about having fun as raising money, but at the same time, John put a focus on the bottom line," Promo says. "I've never seen any company or individual that's had a longer commitment and more intense devotion to a charity."

He recalls Kersten's first contact with his office in 1991 seeking to get involved in Easter Seals fundraising. Kersten set a goal of \$50,000. The brokerage brought in \$47,000, so Kersten wrote a personal check for \$3,000 to honor his pledge. "I just think he's very loyal and very giving," Promo says.

"John's impressive fundraising formula places his efforts into a bracket of its own," adds Randy Rutta, president and CEO of the national Easter Seals operation. Not only have Kersten's efforts helped thousands of families in Michigan, Rutta says, but he has also mentored people around the country to help them replicate his fundraising success. Kersten has inspired countless new donors to give to Easter Seals, an accomplishment "which can never be measured," Rutta says.

Kersten says the time and work he has put into Easter Seals is worth every second. "It's been a very exciting program, and the community has been very supportive of it," he says. "It's important to keep it fun. We get better every year, and we have no desire to stop doing what we're doing."

2015 GOOD NEIGHBOR AWARDS HONORABLE MENTION

George S. Lucas, CRS, GRI

RE/MAX Harbor Country Union Pier, Mich.

Concern for the place he loves drives George S. Lucas to help his community preserve its most valuable asset.

BY FREDERIK HELLER





Heading east from Chicago along the Lake Michigan shoreline, you'll pass urban areas, commuter towns, and the Indiana Dunes National Lakeshore. Just beyond the Michigan state line, you'll find Berrien County, a quiet landscape of sandy beaches, tall grassy dunes, waterways, woodlands, farmlands, and vacation homes.

George S. Lucas spent many memorable childhood days exploring this southwesternmost corner of Michigan, officially called Chikaming Township. And it was here where Lucas returned to live full-time after a career in marketing and sales in Chicago. A Realtor[®] since 1999, Lucas has built a niche specializing in Chikaming Township's beachfront homes and farmland properties.

As with so many places around the country and world, population influx and increasing development have taken an ever more noticeable toll on the open space and natural areas that give Chikaming Township its unique character. Lucas decided he had to help preserve the place that he considered his home. "It was time to do something about preserving what makes it special," he says.

Seven years earlier, four of Lucas's

friends had come to the same conclusion. They founded Chikaming Open Lands, a nonprofit trust dedicated to working with private landowners to protect open space through conservation easements, donations, and community fundraising to purchase land.

At first, COL was run entirely by volunteers, as is common with many smaller land trusts in the United States. "[The group] did whatever it could to gain traction," Lucas says. Although the organization was successful in preserving environmentally sensitive acreage, "it didn't have focus or specific goals," he says. It also became too dependent on foundation grants — never a sure bet — for funding.

Building From the Ground Up

Among the first steps Lucas took was to create a founders' statement, to help the group's four founding members identify goals. Doing so helped set the overall direction, a vital element that was unarticulated before and that provided a set of criteria that enables COL to rank future land acquisition opportunities. Lucas created and executed a fiveyear strategic plan and established the Lakeshore Conservation Initiative to give highest priority to properties closest to Lake Michigan, which are typically the most desirable for development and therefore most at risk.

Another major accomplishment that Lucas orchestrated was a 2-to-1 challenge match fundraising effort in partnership with the Pokagon Fund, a private charitable foundation. In three years, the partnership raised more than \$1.3 million, allowing the conservancy to complete four land protection projects. "It put us in a position to finally drive our own destiny," reflected Lucas.

That destiny is being further bolstered through greater engagement with the community. Through marketing, events, and education, such as a new partnership with the Chicago Field Museum's Mighty Acorns program for elementary school students, COL is able to foster appreciation for open space and, hopefully, inspire future leaders. "When you help a community help itself by creating preserves," notes Lucas, "it helps the organization by getting more people involved."

Over the past 10 years, Lucas has served the COL board of directors in numerous roles, including secretary and vice president. Currently president of the organization, he volunteers an average of 80 hours per month, time he is able to set aside in part because of the highly seasonal nature of the area's real estate market.

For both COL and the community it serves, those 80 hours per month have been very well spent. COL executive director Chris Thompson is proud to point to a long list of accomplishments. COL is now a sophisticated land conservancy with four paid staff members. More than 550 member households contribute financially and give hundreds of hours of their own time each year. Most importantly, the trust has been able to conserve almost 1,600 acres of vital open space, much of which is accessible to the public in 10 nature preserves. Within two years, Thompson says, COL hopes to increase its holdings to 2,000 acres.

"When George decides to commit," says Thompson, "he jumps in completely and tries to ensure that the organization is acting in its best interest."

Much of that success was made possible through Lucas's business acumen and leadership skills. "He is a doer," Thompson says of Lucas. "If he says something, he does it and gets it done."

Overcoming Stereotypes

On the road to helping COL volunteers understand the mission, establish goals, and gain a stronger footing in the community, Lucas was able to turn around some preconceived notions about land trusts and the real estate business. When he began volunteering, "a couple of people were suspicious of having a real estate agent on the board of a land conservancy," Lucas says. He encountered skepticism from people with a perception that real estate professionals automatically favored development over preservation.

"We're in the real estate business, in a way. It worried me that his competitors might make a big deal of it," says COL cofounder Peter van Nice. "I got over those concerns very quickly." Lucas says he was able to quell concerns because his motives were pure. "I demonstrated a different point of view and was able to turn that perspective around," Lucas says. "I never did it to enhance my business. If you live in a community and do something noteworthy to improve the community, it attracts attention."

According to Lucas, "if you live in a community and do something noteworthy to improve the community, it attracts attention."

At the same time, van Nice says, "the idea of a land trust

isn't always popular with real estate professionals until they know more about them." Lucas's work with COL has helped other Realtors® recognize that the land trust helps everyone. "It made the community better and more attractive to tourists. That creates more demand for the general area," he says.

Contributing his time and expertise has enabled Lucas to make a difference in his community while gaining valuable executive experience. "It's been intellectually challenging and stimulating," Lucas says. "I like to leave things better than how I found them." •

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ABOUT THE GOOD NEIGHBOR AWARDS

REALTOR® Magazine's Good Neighbor Awards recognize REALTORS® who have made an extraordinary impact on their community,

or on the national or world stage, through volunteer work. Five winners are announced each fall in REALTOR[®] Magazine. Winners are recognized annually at the REALTORS[®] Conference & Expo, and receive \$10,000 grants for their charities. Winners also receive travel expenses to the conference and national and local media exposure for their community cause. In addition to the winners, five honorable mentions each receive a \$2,500 grant.

REALTOR® Magazine's Good Neighbor Awards was launched in 2000 and has since recognized more than 130 REALTORS® for their service to their communities. Through Good Neighbor Award grants and associated programs, Good Neighbor charities have received more than \$900,000 in donations. In addition, each winner receives national and local publicity, which generates additional donations and inspires new volunteers to get involved. Many REALTORS® are also recognized for their community service through state and local real estate associations.

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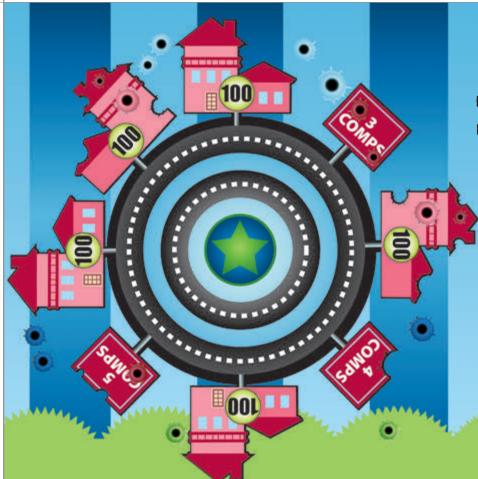
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Having the **Proper Number** of **Comparable Property Sales**

How many comparable property sales (i.e. "comparables" and "comps") are necessary using the sales comparison approach?

Note: This article focuses on comparable property sales in the sales comparison approach. However, the thought process is the same for comparable rentals, expense comparables and capitalization rate comparables.

How many sales are really needed is a question that frequently enters into discussion in appraisal continuing education classes. The appraiser usually states something similar to

- I used three sales, but then received a request for a fourth.
- I used four sales, but then received a request for a fifth.
- I used six sales and three listings but the client requested more.
- I usually use three sales, but they've always asked for an additional sale so I started giving four sales. But now they are consistently requesting a fifth sale.

So how many Comps are necessary? Is the magic number three, four, six or sixteen? Or is the question irrelevant because no matter how many you use the client, or its representative, is always going to request more, so just have additional comparables preanalyzed to give them upon request. The valid answer to the question is dependent on the appraiser determining the proper scope of work for an appraisal, reviewing past and best practices, and what may be uncovered in the reconciliation process.

SCOPE OF WORK

Scope of work is the type and extent of research and analysis in an appraisal. The number of comparables necessary in the sales approach is part of an appraiser's scope of work decision-making. Determining the acceptability for the appraiser's number of comparable property sales used includes whether it meets or exceeds:

- The expectation of parties who are regularly intended users for similar assignments
- What an appraiser's peers' actions would be in performing the same or a similar assignment¹

BY MICHEAL R. LOHMEIER

Expectation of Intended Users

Intended users include the client and any other party identified as users of an appraisal. This is identified by the appraiser at the onset of any assignment. But, as identified by US-PAP's SCOPE OF WORK RULE, this goes beyond the specific assignment and its elements and includes parties who are regularly intended users for similar assignments. This is because a specific assignment may include intended users who would require more or less than what's typical, but the minimum bar of expectation is set by what is expected by the population of the "regular" user.

The expectations may be studied on the level of a group of regular users, such as general requirements for financial institutions. But, it is important to also recognize specific client requirements that may require an additional level of performance by the appraiser, such as an organization's own appraisal requirements for their specific use. For example, a client for an assignment involved in litigation may state they only want three comparables used to limit scrutiny by opposing counsel. However, if the appraiser determines the regular intended users (e.g., attorneys, mediator, arbitrator, judge) would routinely expect four to six sales, then the appraiser has the responsibility to provide the extent of comparable sales necessary to satisfy the proper scope of work acceptability.

Appraiser's Peers Actions

When examining what actions would be acceptable by an appraiser's peers,' one should be cognizant of two standards of care; past practices and best practices. As appraisers, we are responsible for being aware of and understanding of what our peers would do in a similar assignment. This may be accomplished by researching accepted texts (including any errata), articles (including responses and criticisms to the articles), seminar and course materials, white papers published by the Appraisal Practices Board of The Appraisal Foundation and simply talking to other appraisers directly.

In addition to past practices, an appraiser is responsible for recognizing those practices considered best practices. This meaning those practices that are prudent and were accepted by the regularly intended users. Again, in the litigation specialty you may review court opinions to determine its position on the use of comparables. In financial institution, relocation, or other areas of practice, you may interview those professionals who review and rely on the appraisals for their feedback.

Best practices may be observed in reading the disciplinary action reports from state agencies and appraisal organizations. This helps appraisers identify what is not acceptable, and therefore assists in developing a best practice that would be, in contrast, acceptable.

The Frequently Asked Questions released by The Appraisal Foundation also aid in determining best practices. Public exposure of these questions and responses is not required. However, they are well vetted through the organization and among different committee group members. They are well thought through and do provide good guidance to specific situations addressed.

Intended Use of an Appraisal

The intended use of an appraisal is the use or uses of the reported appraisal assignment opinions and conclusions. The intended use is identified at the onset of an assignment based on communication with the client and is a critical driving element in what is considered a "similar" assignment. It is a foundational building block in determining the credibility for any conclusions and opinions reached.

RECONCILIATION PROCESS PROVIDES INSIGHT INTO NUMBER OF COMPARABLES TO USE

One of the major, and most often overlooked, final steps in the sales comparison approach is reconciliation. USPAP requires

In developing a real property appraisal, an appraiser must:

- (a) Reconcile the quality and quantity of the data available and analyzed within the approaches used
- (b) Reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s)²

The appraiser reviews the strengths and weaknesses of the approach to evaluate which comparable(s) deserves what amount of weight to develop a value indication for a property being appraised. This includes, but is not limited to:

• Overall comparability of properties prior to adjustments

- Reliability of the data used
- Method(s) used and reliability for individual elements of comparison adjustments applied and not applied (transactional and property)

The reconciliation process provides insight into the degree of reliability of each of the sales, and inherent risks involved in their use. Although the reconciliation process is provided as

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

a final step, the appraiser should keep it in mind when developing its sales approach. This may lead the appraiser to recognizing how many comparables need to be used to fully tell the story behind valuing a property.

CONCLUSION

Determining how many comparable property sales to include in the sales comparison approach requires an appraiser to examine and determine (1) what is acceptable by parties who are regularly intended users for similar assignments and (2) what is expected by its peers in same or similar assignments.

There is no magic number of what is acceptable on every assignment. The acceptability will be different dependent on the intended use and users of appraisal services, which includes specific client requirements. The decision making process is customized on a case-by-case review of the circumstances and situations surrounding an assignment.

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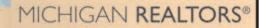
- 1 Uniform Standards of Professional Appraisal Practice (USPAP), 2014-15, Scope of Work Rule
- 2 USPAP 2014-15, Standards Rule 1-6

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Engaging Leaders • Building Connections

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Engaging Leaders Building Connections The Dearborn Inn, A Marriott Hotel January 20th through 22nd "Coming Soon" Listings

Over the past several months, many Realtors[®] have seen electronic advertising or a sign in a yard on which another Realtor[®] is announcing that a specifically identified property is "coming soon" to the market and will be available for purchase in the near future. Many Realtors[®] who see this advertising quickly conclude that there is something wrong with this arrangement both legally and ethically. However, when you break down the arrangement, assuming that the advertising Realtor[®] has the appropriate authorizations, the practice is lawful and does not violate the Code of Ethics of the National Association of REALTORS[®] (the "Code")

First, Article 12 of the Code, as interpreted by Standard of Practice 12-4, simply prohibits a Realtor[®] from advertising property without authority. In Michigan, the only regulation governing advertising by real estate licensees is Rule 329. Rule 329 simply requires that the name of the broker and telephone number or street address be included in the advertisement and that the advertisement indicate affirmatively that the party advertising is a real estate broker. Thus, if the advertising Realtor[®] does have the authority of the owner of the property to do the "coming soon" advertising and the advertising contains the required identification of the broker, the advertising does not violate the Code or Michigan law.

Second, if the advertising Realtor[®] has an arrangement with a property owner under which the Realtor[®] is authorized to announce the coming availability of the owner's property under a future listing agreement (or an existing listing agreement which is dated to become effective at a future date), then there is nothing in the Code or Model MLS Rules of the National Association of REALTORS[®] which would require the advertising Realtor[®] to do anything more. On the other hand, if the advertising Realtor[®] is advertising a property as a future listing, when in fact there is a current listing agreement in place, then most likely the advertising Realtor[®] would be in violation of both the Code and typical MLS Rules.

It should be noted that there is no requirement that a written agreement exist between an owner and an advertising Realtor[®] with respect to the promise that the owner will list his or her property with the advertising Realtor[®] at some specified time in the future. If no written agreement exists, however, the advertising Realtor[®] is risking that the owner will not honor the oral agreement to list the property and pay the advertising Realtor® a commission upon its sale. Such an oral agreement is totally unenforceable under Michigan law. Even if the advertising Realtor® has a written agreement with the owner which authorizes the "coming soon" advertising and contains a promise that the owner will list the property with the advertising Realtor® in the future, upon the owner's breach of such an agreement (i.e., refusal to list), the advertising Realtor® will not be able to get a court to compel the property owner to sign a listing agreement. Moreover, any damage claim for the breach would be pretty speculative. An additional risk to the advertising Realtor® would be that the "coming soon" advertising is effective in delivering a buyer to the property owner prior to the execution of a listing agreement. Again, in this situation the advertising Realtor[®] would have no claim for a commission.

It is understandable that there is a certain amount of frustration about this practice. Many "coming soon" properties end up being listed and sold by the advertising Realtor® almost simultaneously without any other Realtors® having an opportunity to present an offer on the property, let alone show it to a prospective buyer. Realtors® should understand that an advertising Realtor[®] is subjecting himself or herself to another risk when he or she carries out "coming soon" advertising. If another Realtor[®] sees a property advertised as "coming soon," he or she could contact the advertising Realtor® and inquire as to whether there was an exclusive right to sell agreement in place for the property. If the advertising Realtor® indicates that no such agreement exists, then the advertising Realtor® has no exclusive agency relationship with the owner. If that is the case, then any Realtor[®] could contact the property owner to offer his or her services with respect to the sale of property without violating the Code. An advertising Realtor[®] in this situation runs the risk that the property owner for whom he or she is doing the advertising will be deluged with proposals from other Realtors® prior to the time the advertising Realtor® can enter into a listing agreement with the property owner.



THE WAYWARD BUYER

Any Realtor[®] who has been in the business for a substantial period of time has dealt with something akin to the following situation. Realtor® A has listed 123 Elm Street and holds an open house for the property. The Smiths, potential buyers for 123 Elm Street, appear during the open house on Sunday and spend a great deal of time with Realtor® A discussing various aspects of the property. Realtor® A gives the Smiths her card and indicates she would be happy to follow-up with them if they decide to purchase the property. The following Thursday, Realtor[®] B calls Realtor[®] A and advises that he is the buyer's agent for the Smiths and will be submitting a full price and terms offer for 123 Elm Street. Realtor® A asserts that she was the procuring cause and collects the entire commission at closing. Realtor® B files a request for arbitration with the local association of Realtors®.

While for purposes of determining which Realtor® was "procuring cause," the NAR Code of Ethics and Arbitration Manual (the "Manual") provides that a hearing panel should consider who first introduced the purchaser to the property and factors related to that first introduction, these are just a few of a multitude of factors listed. There is no bright-line test and certainly no "first across the threshold" rule. The Manual provides, for example, that the panel should also consider whether the second cooperating broker "performed services which assisted the buyer in making his decision to purchase." It is also relevant whether the listing broker introduced the property to the buyer or whether the buyer found it on his own, and whether there was any follow-up after the open house.

In our hypothetical, the hearing panel ultimately decided that the Smiths desired full representation in the transaction which could not be provided by Realtor[®] A. Based on a number of factors, the hearing panel ruled in favor of Realtor[®] B. Realtor[®] A was obviously unhappy with the result of the arbitration and vowed that she would not be put in that position again. In order to prevent this from happening again, Realtor[®] A decides to include the following commission comments in all of her future listings submitted to the MLS:

> If the Listing Agent initially shows this property to a prospective Buyer(s) and then that/those Buyer(s) elect to hire a Buyer's Agent to represent them in the purchase of this property, the commission paid by the Listing Broker to the Selling Broker at closing shall be 1/2 of 1% of the selling price.

In other words, if Realtor[®] A is otherwise offering 3% of the purchase price to a cooperating broker, she will only pay them ½ of 1% of the purchase price if she has previously dealt with the buyer(s). In our hypothetical, presumably Realtor[®] B may not have worked for the Smiths if in fact he was only going to receive a commission of ½ of 1% of the purchase price. Even if he did, presumably Realtor[®] A feels that ½ of 1% is more appropriate compensation for the service provided by Realtor[®] B. Problem solved.

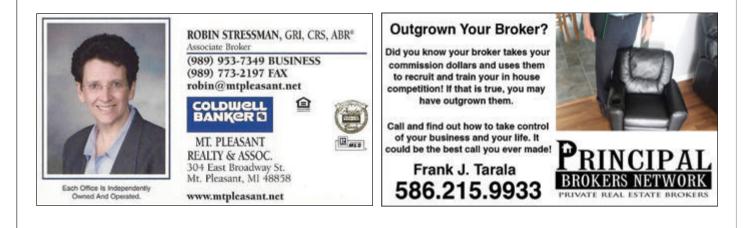
Unfortunately for Realtor[®] A, the commission comments quoted above include language that the National Association of REALTORS[®] prohibits as a "conditional offer of compensation by a listing broker." Thus, any such commission comments should not be published in an MLS. Realtor[®] A's solution will not work. •

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

Many Realtors[®] who see this advertising quickly conclude that there is something wrong with this arrangement both legally and ethically.

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MICHIGAN **REALTORS®** Upcoming Events

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Achieve January 20-23, 2016 The Dearborn Inn a Marriott Hotel

Broker Summit

April 21, 2016 MSU Breslin Center East Lansing

Xplode Conference

June 8, 2016 Location TBD Brought to you by Michigan YPN Network

Convention & Expo

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

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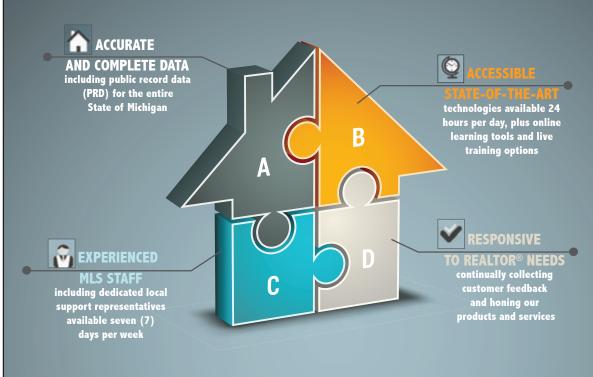
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