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

BY E'TOILE L. LIBBETT



Making Time to Reflect, Restore and Give Back

My Fellow Realtors®,

Over the last 17 months, each of us has faced hardship from the Pandemic that can be understood and appreciated in a universal sense. To put it another way, we have all put our heads down, kept our noses to the proverbial grindstone, and sought to make the best of a monumental challenge. As Realtors®, this kind of work ethic and pragmatic approach is a necessity. Taking time to reflect and restore from the daily cycle of listing, selling and marketing is often not a routine that our profession builds into "the schedule." However, the schedule has certainly changed of late. The pandemic has taught us many things about ourselves and our relationships, both personal and professional. As a result, I would like to dedicate this column to an area of significant concern that has been vastly ignored: the importance of mental wellness and selfcare.

So many of us have experienced, either individually or through our personal relationships, a struggle with mental wellness. Isolation, anxiety and uncertainty have encompassed our daily lives for the last year and a half and these variables have not only highlighted the problem but most certainly exacerbated it for those that suffer in silence. I am not a psychologist, but I know that there is a through line that imbues the story of our profession suggesting that we can overcome most anything; and we do not always ask for help. That mindset may be beneficial at times when the deal needs to get done. However, when it comes to mental wellness, it only serves to heighten the anxiety and isolation, while making the path to healing a more winding and difficult journey. Thankfully, NAR and Michigan Realtors® have chosen to shine a light on this struggle, seeking to destigmatize the road to mental wellness, while developing resources to support our membership.

Earlier this year, I had the honor of helping to develop NAR's Mental Wellness program, as well as moderating a panel for the July 14th launch of this important initiative. While we have been promoting this resource in advance of the launch, the program has also been recorded and will be made available for our members. The development of this program serves as an important glimpse into areas in which the Realtor® family can make an important difference, breaking

down hurtful stigmas and developing a safe space for our members to start the process of healing. Please find the time, either individually or as a brokerage, to receive the information. The panelists and participants put their collective heart and soul into the program. I am confident that this resource will build into the future to the benefit of all members. For more information, visit <https://www.nar.realtor/safety/safety-webinars>.

Michigan Realtors® Launches Initiative to Support our Military Veterans

Another initiative in which I am very invested is our ongoing efforts to support our Michigan Military Veterans. Our association is a proud partner with the Michigan Veterans Affairs Agency and the Michigan Veterans Trust Fund in aiding Michigan Veterans, as well as providing educational resources to the Realtor® membership on Veterans issues, including VA home loans.

Through this partnership with the Michigan Veterans Trust Fund, we will assist up to five retrofitting projects per year for Michigan Veterans. A key component of this project will be grassroots Realtor® involvement. As the projects are announced, Michigan Realtors® Field Staff will be reaching out to our local associations to communicate the project volunteer opportunities in their area with the hope to get Realtors® to the project to assist with home repairs that would not require a licensed contractor. I am excited to see this initiative take flight! For more information, visit our dedicated page for Veteran Resources at www.mirealtors.com.

Thank you so much for taking the time to read this column. As a closing note, I know this selling season has been a season like no other. Stress levels are understandably high. Inventory continues to go quickly. Competition on behalf of our clients has never been more pronounced. I hope that we can all continue to conduct ourselves with the utmost professionalism and show Michigan buyers and sellers that there is no better option than working with a Michigan Realtor®. Take care of your clients and make time to reflect and take care of yourself. And as always, AIM HIGH! •

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CHIEF EXECUTIVE OFFICER

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

EDITOR/ADVERTISING

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

CHANGE OF ADDRESS/UNSUBSCRIBE

Kaetana Beech
kbeech@mirealtors.com

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CORRECTION NOTE

Michigan RPAC Major Investors Tribute
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BY BRAD WARD, ESQ., VICE PRESIDENT
OF PUBLIC POLICY AND LEGAL AFFAIRS



Post COVID, Legislative Reboot

The Covid-19 restrictions have lifted in Michigan. The work to get here has been difficult and trying on us all as individuals and families. We've waited for these opportunities to get back together, and it feels exciting and strange as things begin to ramp up. All the plans that we put on hold in 2020, we can now put into action.

Things are also ramping up in Lansing, looking beyond pandemic response at broader policy issues. Michigan Realtors® is moving some of our key priorities from last year forward early in this legislative session. With the House and Senate scheduled to return in September, here are some of those lingering issues that we would like to finalize in 2021:

Short-Term Rental Protection (HB 4722 and SB 446)

Last year the issue took a backseat to advocacy during the pandemic response that included getting Realtors® back to work safely and responsibly. Michigan Realtors® has their sights set on this fall for sending these bills to the Governor's desk. A long time in the making, this issue has gone through several iterations and seemingly endless workgroups.

This year's bills boil the issue of short-term rental protection down to its core by amending the Michigan Zoning Enabling Act to define "short-term rental" and clarify it as a residential use. Amending the Zoning Enabling Act is perhaps the deepest philosophical divide with local government groups on the issue, but any legislation moving forward on vacation rentals must include a response to zoning to protect the property right.

The House and Senate bills, sponsored by Representative Sarah Lightner (R-Springport) and Senator Aric Nesbitt (R-Lawton) respectively, moved out of committee before the brief summer recess and work continues building support for the legislation on the floor of each chamber.

First-Time Homebuyer Savings Accounts (HB 4289 – 4290 and SB 145-146)

Another issue whose time is now in the legislative process, these bills were vetoed by Governor Rick Snyder as one of his final acts in office and have since been met with opposition from the Michigan Department of Treasury. The House and Senate bills crossed

chambers in the spring and have since been subject of negotiation with Treasury and the Governor's office.

Over these past weeks, Treasury's opposition has become less about the revenue impact of the bills and more about the enforcement and potential success of the program. Treasury points to underuse of the program in some of the other states that have created these programs in recent years. In response, first – these programs are relatively new and require time to take root in the public conscience, second - Michigan's proposed program offers an increased incentive of both tax deductibility and tax-free growth of the investment, making it a more attractive investment vehicle.

As a potential compromise, Representatives John Damoose (R-Harbor Springs) and Mari Manoogian (D-Birmingham) along with Senators Ken Horn (R-Frankenmuth) and Jim Runestad (R-White Lake) are considering including a potential sunset in the legislation to bring Treasury on board. Sunsets are commonly used in tax incentive programs to allow the legislature to reassess the success and cost of a program after a period of years.

Expect a vote on the bills in the legislature early in the fall as the legislature returns.

Mobile Home Titles (HB 4304)

This solution to the current problems Realtors® are experiencing in procuring new mobile home titles has passed the House and is currently in the Senate Committee on Regulatory reform. HB 4304, sponsored by Representative Kevin Hertel (D-St. Clair Shores) outlines a new process for mobile home park owners to take possession of abandoned mobile homes within their communities, while preserving the long-available surety bond process for homes located on individuals parcels of property.

Real estate transactions requiring Affidavits of Affixture have been affected for the better part of a year by the Secretary of State's requirement that new titles only be issued with a court order. Homeowners and Realtors® seeking court orders find the court order process to take a few months and a few thousand dollars to finalize...a situation that is untenable in today's market with the lack of inventory.

We expect the bills to continue moving forward in the Senate this September.

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Audio and Video Surveillance (HB 4724)

The legislative clock ran out on the previous version of this bill last year, as well. The latest version is through the House and currently before the Senate Committee on Judiciary and Public Safety.

Sponsored by Representative Graham Filler (R-Dewitt), HB 4724 clarifies the ability of a homeowner to use audio and video surveillance to secure their private residence. The bill does not allow recordings used for "lewd and lascivious" purposes, but it protects homeowners from the current felony of recording without consent.

Michigan Realtors® is working with Chairman Roger Victory (R-Hudsonville) on a committee hearing and vote this fall.

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Examining Your 2021 Assessment Records for Accuracies

BY MICHEAL R. LOHMEIER

The past 12 to 18 months have presented unprecedented challenges to Michigan's taxpayers; all awhile during that same period we've seen the market landscape change dramatically for many properties with respect to their uses, prices and values. Whether you own or rent your property you have undoubtedly been influenced in some way by what has occurred.

During the Governor's 2020 "Stay Home, Stay Safe" Executive Order, many residential property owners took advantage of that time and made home improvements (other than cosmetic) and as a result, may have experienced decreased assessed values this year, but still experienced growing taxable values, increasing beyond the required 1.024 inflation rate multiplier (IRM).

As owners are getting back into more normalized routines and into their personal lives, it's important to examine your property's assessment records for accuracy, including reviewing your: (1) 2021 *assessed* and *taxable values*, (2) record card, (3) building sketch and (4) principal residence exemption percentage.

Understanding Assessed Value

Article 9, Section 3 of the Michigan Constitution requires properties to be *assessed* uniformly and not exceed 50% of *true cash value*. True cash value is the *usual selling price* of your property as of December 31st (i.e., "tax day"). This means your property's 2021 assessed value is based on what physically exists as of December 31, 2020, for the 2021 assessment year.

For example, if a property's 2021 assessed value is \$100,000, the assessor believes its worth \$200,000. If the property was only 50% built as of December 31, 2020, then that assessment only reflects that the property is physically constructed at 50%. If it's completed sometime in 2021 then that additional construction will be considered for the 2022 assessment year.

To consider whether you are properly assessed, review comparable property sales in your local neighborhood in comparison with your property's true cash value, taking note of any value-related differences between those comparable properties and your property (positive and negative). Keep in mind your date of value is tax day, so keep your property sales is reflective of December 31st.

Although value-related appeals are heard at the March

board of review, you should still consider bringing the sales information you've reviewed to your assessor's attention throughout the year. This includes any atypical depreciation considerations, such as *functional obsolescence* and/or *external obsolescence* items you might recognize about your property. These items may be things the assessor didn't know about your property and may find useful for the next year's assessment cycle.

Determining Taxable Value

Since Proposal A, property taxes are based on a property's *taxable value* rather than its *assessed value*. When calculating a property's taxes, the community's millage rate is applied to the property's taxable value.

Every year the assessor calculates each property's capped value using a capped value formula. The capped value = **Prior Year Taxable Value – Losses) x IRM + Additions**

This formula is CRITICAL to understand as a Michigan taxpayer because if you have not made any physical changes to your property in the prior year, then the Losses and Additions part of the equation would be \$0, and the IRM would be 1.014 (2021) and the calculation is straightforward. *Losses* are reductions in a property's taxable value and can include items such as property that is destroyed or removed, exempt property, decreases in occupancy rate and environmentally contaminated property. *Additions* are increases in a property's taxable value and can include items such as omitted property, new construction, previously exempt property, replacement construction and remediation of environmental contamination.

Even when no improvements are made to a property, owners may have still experience assessed value reductions in 2021 and still experience taxable value increases due solely to the IRM increase caused by the calculation. The reason the taxable value is still increasing is because there was enough of a "cushion" between assessed and taxable value from the prior year and the decrease in assessed value was not enough to cause taxable value to decrease as well.

For example, your property's prior state equalized value was \$100,000 but now has decreased to \$90,000 and your property's prior taxable value was \$80,000 and the 2021 IRM is 1.014, there was no Losses or Additions. Using the capped value formula, the



calculation would be $(\$80,000 - \$0) \times 1.014 + \$0 = \$81,120$. In this example the property's assessed value decreased but due to the IRM the property's taxable value has still experienced an increase by 1.4%.

There are two exceptions to the capped value calculation. (1) The year following the transfer of ownership of a property the property uncaps and the state equalized value of the property becomes its taxable value that year, and it is then recapped until ownership is transferred again and (2) The law provides that the taxable value is the lesser of the state equalized value or the capped value. Therefore, whenever a property's state equalized value drops below its capped value then the property's state equalized value becomes the taxable value that year.

Review Your Record Card

The record card is a descriptive inventory and calculation sheet of your land and improvements. It has information including owner and contact identification, legal description, land size, land improvements, building descriptions such as year built, exterior wall types, basement/foundation type, square footage, heating, plumbing, water and waste, built-ins, fireplace(s), porches, garage, class of house and size for rates. Similar type of building characteristic information is recorded for non-residential buildings. Some of this information is often available on-line for most municipalities. You should obtain a copy of this information and review it for accuracy.

Review Your Building Sketch

Reviewing the measurements on your property's building sketch is equally as important as reviewing your land and building description. The land area and building area drives a major part of the valuation process. Review your building sketch to ensure the assessor's accuracy for its dimensions.

Review Principal Residence Exemption

For most property owners, the principal residence exemptions are the single most important exemption they will apply for as a property owner in Michigan. If qualified, a person's principal residence is exempt from the tax levied for school operating purposes up to 18 mills.

As owners are getting back into more normalized routines and into their personal lives, it's important to **EXAMINE YOUR PROPERTY'S ASSESSMENT RECORDS FOR ACCURACY...**

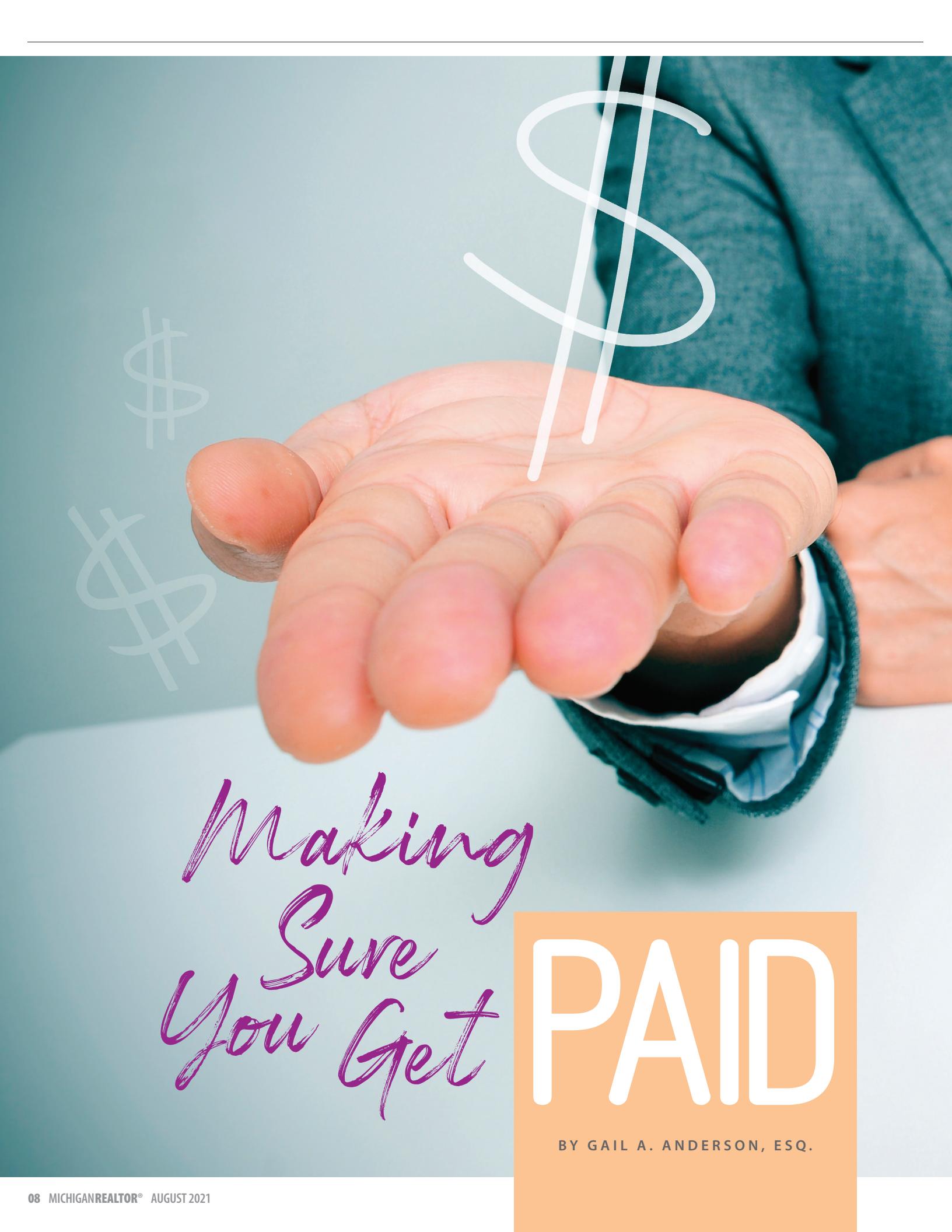
The person must own and occupy on or before June 1st to claim the exemption for summer tax levy or November 1st to claim the exemption for the winter tax levy. You do not have to file annually for this exemption; however, it is a good practice to always double check your records to ensure that you continue to receive this exemption.

Know Your Local Assessor

Many Michigan taxpayers and professionals understand that valuation and classification appeals are done at the March board of review. Although July and December boards of review don't have the authority over classification or valuation appeals, they do have jurisdiction over other activities such as principal residence exemptions, qualified agricultural exemptions and correcting clerical errors, mutual mistakes of fact and qualified errors. So, meeting with the assessor when you find inaccuracies in your assessment records may help uncover whether the inaccuracies rise to a level within the jurisdiction of the July and December board of review or whether it should instead be corrected moving forward on the property's assessment for future years only. ●



Micheal R. Lohmeier, MMAO(4), PPE, FASA, MAI, SRA, is the City Assessor for the City of Novi. He is past-President of the Detroit Chapter American Society of Appraisers, Great Lakes Chapter Appraisal Institute and Oakland County Association of Assessing Officers and has authored and taught extensively on subjects involving valuation and property tax. He is available for further questions at 248.347.0493 or his email at Mlohmeier@cityofnovi.org.



*Making
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BY GAIL A. ANDERSON, ESQ.



In a recent Michigan case, a buyer's agent's shortcuts in connection with a FSBO sale cost him his commission. In this case, rather than negotiate a separate one-party commission agreement with the FSBO seller, the buyer's agent simply added a sentence in the purchase agreement calling for a "2.5% sales commission" on a sale for \$440,000. The notation in the purchase agreement regarding the sales commission did not even indicate who would pay the commission or to whom (although everyone involved in the case later agreed that the intent was that the commission would be paid by the seller to the buyer's broker).

The purchase agreement had a closing deadline and a boilerplate "time is of the essence" clause. As the closing deadline approached, the buyers' lender advised that it was not quite ready to close. The buyer's agent presented the seller with a proposed written extension which the seller refused to sign. Three days after the closing deadline, the seller contacted the buyers directly and asked them to sign a new purchase agreement. The new purchase agreement was identical to the first except that it called for a later closing date and made no mention of the buyers' agent or any sales commission. The new purchase agreement expressly stated that it "superseded all prior understandings and agreements,

written or oral." The buyer and seller closed under the second purchase agreement. The buyer's agent, who was not paid, sued the seller for his commission.

The trial court awarded the buyer's agent his commission, finding that the second purchase agreement was the same as the first and that the seller had, through his actions, waived the "time is of the essence" provision. The seller appealed and the Michigan Court of Appeals overturned the trial court's decision. The Court of Appeals' reasoning for its finding on behalf of the seller was fairly straightforward. The buyer's agent was not a party to the first purchase agreement but only a third-party beneficiary. The actual parties to the first purchase agreement – that is, the seller and the buyers – had agreed in writing that the second purchase agreement replaced the first one in its entirety. Not being a party to the purchase agreement, the buyer's agent was stuck with that decision.

The moral of the story is a simple one. When dealing with a FSBO, if the buyer's agent is looking for a commission from the seller, they need their own written contract with the seller. A one-party listing agreement will work for that purpose; however, it will establish an agency relationship with the seller and require the agent to serve in a consensual dual agency capacity.

“

...the KEY TO COLLECTING A COMMISSION is for the real estate agent to have an ENFORCEABLE CONTRACT.”

”



A one-party commission agreement, on the other hand, allows the buyer's agent to continue to represent only the buyer, but requires the seller to pay the buyer's agent's commission. Unlike a purchase agreement, a one-party commission agreement is an agreement between the buyer's agent and the FSBO seller and therefore cannot be changed without the consent of the buyer's agent.

YOU MUST HAVE A CONTRACT

As was made clear in the case discussed above, the key to collecting a commission is for the real estate agent to have an enforceable contract. A number of Realtors® mistakenly believe that as a buyer's agent, all that is necessary is to have been the “procuring cause” of the transaction. This is incorrect. There is no Michigan law that entitles a real estate licensee to a commission simply because they are the “procuring cause.” Under Michigan law, in order to be entitled to a real estate commission, a licensee must have a contract. If the contract is between a seller and a listing broker, the contract must be in writing. If the contract is between two real estate brokers – for example, between the listing broker and the buyer's broker – the contract need not be in writing. Without an enforceable contract, there is no legal right to a commission regardless of whether the real estate licensee was the “procuring cause.”

If two brokers are members of the same Realtor® MLS, the commission contract is established through the operation of the MLS. As Realtors® are well aware, a contract requires an offer and an acceptance. Under MLS rules, by listing the property in the MLS, a listing broker is making an offer of compensation to any member of that MLS who finds the buyer for the listed property. Under MLS rules, a buyer's agent accepts that offer of compensation by becoming the “procuring cause” for the sale. And again under MLS rules, any dispute over who was actually the “procuring cause” in a particular transaction is settled by a Realtor® arbitration panel in accordance with NAR's rules and procedures. This is the only context in which the concept of “procuring cause” is relevant to a claim for a commission. In other words, “procuring cause” is a Realtor® concept used to decide

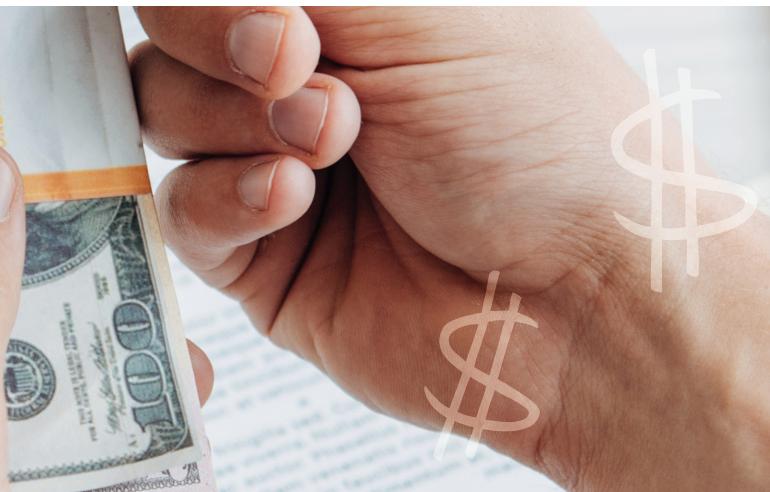
Realtor® arbitration disputes involving conflicting claims to a cooperating commission offered through an MLS.

If the transaction does not involve an offer made from one Realtor® to another through an MLS, then there must be a separately negotiated commission agreement. If, for example, a buyer's broker introduces a buyer to a builder, unless the property was listed in the MLS, the buyer's broker has no legal right to a commission in the absence of a written contract. Likewise, if a buyer's broker produces a buyer for a home that is not listed in an MLS in which the buyer's broker is a member, there must be a commission agreement between the listing broker and the buyer's broker (although here, because the commission agreement is between two real estate licensees, the contract need not be in writing). In either of these examples, it does not matter whether the buyer's broker was the “procuring cause.” Unless the buyer's broker had a separately negotiated commission agreement, the buyer's broker has no legal right to a commission.

NEGOTIATING THE COMMISSION

Most Realtors® are familiar with the rule that Realtors® cannot use a purchase agreement to change the commission amount offered through the MLS. In other words, a buyer's broker cannot include a provision in his/her client's offer that purports to require a higher commission split than that being offered through the MLS. The reason for this is simple. The buyer's broker's right to a commission is from the offer made by the listing broker in the MLS, and the listing broker is not a party to the purchase agreement. The buyer and seller have no right to amend a contract to which they are not a party.

The buyer, on the other hand, can use the purchase agreement to ask the seller to pay a commission to the buyer's broker, just like he can ask the seller to pay the buyer's loan costs or other expenses. So, for example, if the buyer's broker agreement obligates the buyer to pay a certain commission amount to the buyer's broker (and, as is often the case, gives the buyer a credit for any amounts paid to the buyer's broker by the listing broker), then the buyer may include a provision in the buy/sell agreement which states that the seller agrees to assume the buyer's

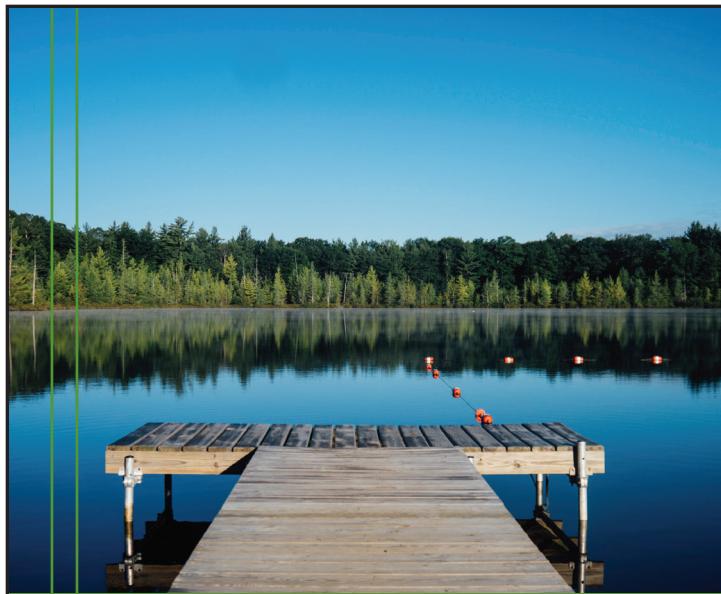


obligation to pay the buyer's broker. Keep in mind though that this negotiation would not affect the listing broker's contractual rights under the listing contract. Assume that the buyer's broker agreement obligates the buyers to pay the buyer's broker a 3% commission with a credit for any amounts paid by a listing broker. Assume further that the listing contract called for a 6% commission and the cooperating split offered by the listing broker through the MLS was 2 ½%. If the buyers passed on their ½% shortfall obligation to the seller, then the seller would be contractually obligated to pay a total commission of 6 ½% -- that is, 6% to the listing broker pursuant to the listing contract and ½% to the buyer's broker pursuant to the purchase agreement. The buyer's broker would collect ½% from the seller and 2 ½% from the listing broker.

Most Realtors® are also familiar with the rule that a listing Realtor® cannot unilaterally modify the offered compensation split after the buyer's broker has submitted an offer. This rule means only that the listing broker cannot change the cooperating split without the consent of the buyer's broker. This rule does not mean that the listing broker cannot ask the buyer's broker to reduce his/her commission as part of the sale negotiations. If the listing broker asks the buyer's broker to agree to a lesser amount and the buyer's broker agrees, the buyer's broker cannot later claim the balance of the commission on the grounds that he/she was coerced into accepting the lower commission so that the transaction could close. The buyer's broker's consent to accept the lower commission amount is itself an enforceable contract.

DISPUTE RESOLUTION-FINAL DECISION-MAKER

Commission disputes between Realtors®, whether based on an offer of compensation through an MLS or a separately negotiated contract, are to be resolved by an arbitration panel through the NAR process. (Under the NAR rules, a Realtor® has no "procuring cause" claim unless there has been a "successful transaction." If a transaction falls through, the agent who procured that buyer is not the "procuring cause," regardless of fault.) Contractual disputes between a Realtor® and the Realtor®'s client may be settled through either the arbitration process or the courts, at the option of the client. ●



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REGISTRATION PACKAGES

Level	On or before 9/7	After 9/8 thru 9/22	Onsite
Full Registration - Michigan Realtors® Member	\$230.00	\$255.00	\$280.00
Full Registration - Non-Member	\$280.00	\$305.00	\$330.00
First Time Attendee Member *	\$175.00	\$200.00	\$225.00
Local Association AE, Board Staff Full Registration	\$190.00	\$190.00	\$190.00
Michigan Realtors® Committee or Task Force Member*	\$175.00	\$230.00	\$255.00
Additional Exhibitor Registrations***	\$85.00	\$95.00	\$110.00

*Additional information and limitations available on convention.mirealtors.com



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Grand Assembly Keynote



Ben Whiting
Rise & ReFocus Morning
Keynote



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McClelland & Anderson, LLP



Leslie Appleton-Young
National Economist



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Marty Rueter
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John Tuccillo
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Brian Westrin, Esq.
General Counsel,
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2021 President,
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Installation of 2022 President
James Iodice (GMAR)



Legal Thursday
Within The Law Legal Team



Good Neighbor Award
Announcement



**YPN Perspective Panel
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Expo & Networking Breaks



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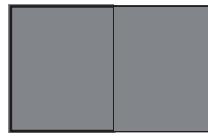
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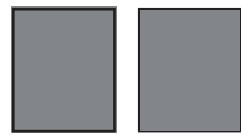
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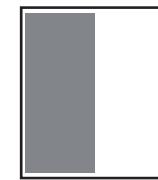
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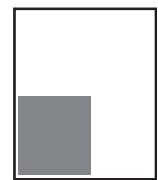
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