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{ NOVEMBER | TWO THOUSAND & TWENTY FOUR | VOLUME TWENTY THREE | NUMBER FOUR }

11.24



Proud To Serve and Be Heard

For every convention that I have attended, I have watched the Michigan Realtors® President deliver remarks to celebrate the year and look to the next chapter of Michigan Realtors® leadership. It's always a very vulnerable, poignant, and, dare I say, bittersweet moment. And based on my own current feelings, one that presents itself very quickly – without a huge opportunity to process the entirety of the experience.

It seems like only yesterday that we were kicking off our year with Achieve and celebrating a national championship at the Big House in Ann Arbor. By the way...hosting Achieve in my beloved Ann Arbor is a memory that I'll cherish forever! I think a big reason that these powerful emotions sneak up on us is the speed in which the opportunities, challenges and ah-ha moments come at you. In the past few years, we have had no shortage of all three.

Not long ago, we rebounded from a pandemic and learned a great deal about overcoming adversity, all while implementing new and innovative ways to serve our clients. And just when we thought we were out of the woods, we faced a shocking jury verdict that most of us, even the lawyers, did not see coming. And now, since August 17th, we've been navigating the settlement terms to which Realtors® have committed. If you have access to the internet, you will note that not everybody has taken the news of change in stride.

Stealing a phrase from Billy Joel, many “real estate novelists” have spun creative and sensational yarns about the value of Realtors®, and the ways in which business will get done going forward. But that's just noise. I, like all of you, am a Realtor®. I believe in what that stands for. I believe it represents a higher standard for professionalism. Part of professionalism is the amount of grace we give ourselves and others as we face adversity and seek to do the right thing.

As I prepare for the conclusion of my term as your 2024 President, I am proud of the ways in which Michigan Realtors®, its staff, its volunteer leaders and all the members I have spoken with, dove in and embraced the change. I think we all operated with the understanding that change is hard. It was important that Michigan Realtors® endeavored to present regular guidance and analysis about the practice changes not only with accuracy, but also empathy. And while we can certainly describe 2024 as a challenging year for all of us, we can also view it as a year in which Michigan Realtors® was able to respond quickly and meaningfully to change, with real member value.

Our legal team crisscrossed the state for over 120 in-person and virtual updates. In June, I was pleased to sit down with the team and broadcast “the Conversation” which covered FAQ's generated directly from our members - putting us in fighting shape for the arrival of August 17th. We also released a full suite of revised real estate forms, with input from Realtors® from across the state. While I'm very proud of these accomplishments, I am equally proud of the fact that we were not derailed by the settlement. We were also able to tackle other initiatives that were very important.

In 2025, you will see a redesigned Michigan Realtors® website. It will be very user friendly and easy to navigate for members and consumers alike. You will have access to relevant, timely and valuable content created by our government affairs and legal team. The new website will ensure that you can find exactly what you're looking for without multiple logins! It will also be great looking.

I am also excited to see how many volunteer leaders apply for our new Michigan Realtors® DEI Committee. This committee was created with the goal of association, emphasizing that we want all Michigan Realtors® to see themselves in our organization, and feel welcome to contribute.

The heart and soul of belonging to an association is engagement. I believe we do that well at Michigan Realtors®, and I was very happy to see such openness from staff and leadership to ideas that might cast the net even wider.

I want everyone to know how much of a humbling privilege volunteer leadership is. During the last few years, from onboarding as a new District Director, to deciding to run for Treasurer, to eventually taking the gavel, I have learned so much through collaboration and many, many, conversations. I am excited to see the great work that Michigan Realtors® does next. I know that Christopher, Mark, Al, and Rob will always put the membership first and continue to innovate in ways that help us learn and support one another.

Working with you over the last several years has been a tremendous honor, and I will be cheering you on with my wonderful predecessors, Natalie, Jamie, and E'toile in the past-presidents club. To all of you who volunteer, thank you for stepping up and standing tall for our profession. I know this has been a challenging year. However, your engagement, and your willingness to share your time and talent, is truly the way forward for our great association. ●

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COMING EVENTS

January 29, 2025
 Professional Standards Workshop
 MotorCity Casino Hotel
 Detroit

January 30-31, 2025
 Achieve 2025
 MotorCity Casino Hotel
 Detroit

April 8-9, 2025
 Broker Summit x Fair Housing Summit
 The Lansing Center
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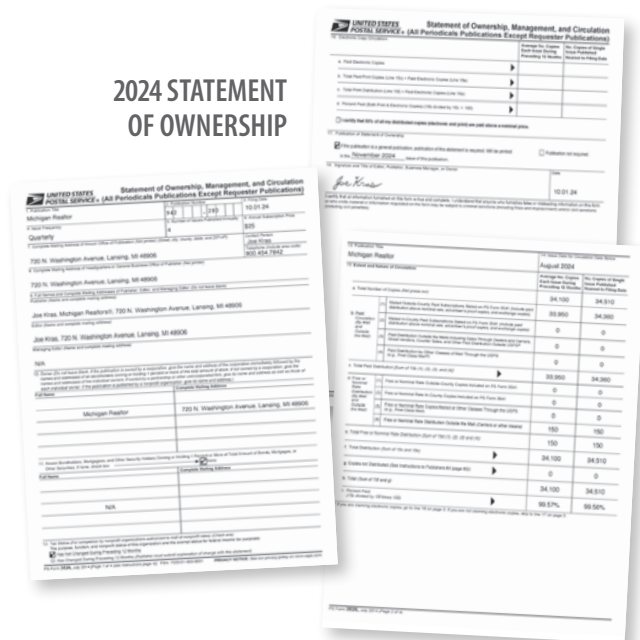
October 8-10, 2025
 The Convention
 Amway Grand Plaza Hotel & DeVos Place
 Grand Rapids

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2024 STATEMENT OF OWNERSHIP



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Autumn In The L

Back in the late 2000's, Fox Sports Detroit ran a marketing campaign called "April in the D." It was a campaign to celebrate the time that the Tigers, Red Wings, and Pistons were all playing games at the same time. Fox Sports ran commercials for it, held contests for the best April in the D songs, and it usually meant the Wings and the Pistons were in the playoffs. As great as it was to have all three professional sports teams playing in April, thanks to an out-of-nowhere late season run by the Tigers, we were celebrating "October in the D!" The Tigers, Red Wings, Pistons, and the Lions were all in action, throw in college football season, and April became forgettable.

Similarly, political competition was at its peak in October with non-stop advertisements thanks to Michigan's battleground state status. Outside of the presidential race, Michigan also had two of the most competitive U.S. Senate and Congressional races in the nation. Not to mention control of the Michigan House up for

grabs with the House Democrats protecting a narrow two seat majority. If you did not get your fair share of sports, you certainly had seen enough political ads to hold you over for another two years. Thank goodness for DVRs.

As the legislature returns this month, we will be entering the period known as "lame duck," the legislative version of the playoffs. Lame duck marks the time between the November election and the end of the two-year legislative session when legislators and interest groups make one last push to finish off their priorities. For some legislators, it may be the last chance to leave their mark on their time in office because of a retirement or lost election, because come January everything resets with new bills and new elected officials.

Michigan Realtors® legislative agenda for the remainder of the year will require both a good offense and a good defense. (Please bear with me as I torture at least one more sports metaphor out of this situation.) With time still left on the clock, we look forward to scoring a

few more victories while keeping our opponents off the board. Michigan Realtors® Public Policy Committee has done a wonderful job this year putting our last few priority bills into position to move in lame duck.

The first is a three-bill package aimed at creating better and broader use of post-closing occupancy agreements. House Bills 5384-5386, sponsored by Representatives Kelly Breen (D- Novi), Denise Mentzer (D- Mt. Clemens), and John Roth (R- Interlochen), define contracts for living arrangements between buyers and hold-over sellers as something other than a traditional landlord/tenant relationship. Many buyers shy away from these agreements not wanting to become a reluctant landlord when a seller asks for time in the home past closing. These bills will help clarify that the post-closing occupancy agreement will dictate the entirety of the rental and ensure a quick legal process for removal should a seller stay past the agreed upon date. These three bills have already passed the Michigan

House and are currently on the Senate floor. We anticipate them signed into law before the end of the year.

Second is SB 480, sponsored by Senator Kevin Hertel (D- St. Clair Shores) which would expand the Land Division Act to allow for ten splits for the first ten acres and expand the number of redivisions at the discretion of local government. This bill would provide local government with additional options to collaborate with private developers to create quicker and cheaper density to lower housing costs. The bill is currently in the House Committee on Local Government. There are a few groups looking to add new requirements to the split approval process beyond what is already provided for in the Land Division Act, but the bill sponsor has done an excellent job in holding off those overtures. The goal is to get the committee and the full House to act on the bills during lame duck.

Lastly, the Uniform Partition of Heirs Property Act will protect familial wealth by laying out a clear

Michigan Realtors®
LEGISLATIVE AGENDA
for the remainder of
the year will require
both a **GOOD OFFENSE**
and a **GOOD DEFENSE.**

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process for dealing with fractured ownership where a family member passes without a will or estate planning. This bill passed the House back in June and garnered some media attention with its potential impact to protect thousands of homes in Detroit with fractured ownership. The bill is through the House and is awaiting a vote on the Senate floor before heading to the governor. Its passage would make Michigan the 21st state with these uniform protections.

On the defensive side, there have been several introduced bills that could get renewed interest during lame duck, especially if the election results in a Republican majority beginning in January. If the House flips, you may see some of the Democratic bill sponsors make a push for items like rent control, restrictions on independent contractors and limiting criminal background checks on tenant applicants. As mentioned in my last Capitol Report, there are competing philosophies on how to address the housing crisis, and we have done a great job in moving forward an agenda focused on affordability through increasing housing supply over the approach of increasing regulations and taxes on property owners. We are not too far removed from our successful call for action against an increase in the real estate transfer tax. As we get further into lame duck be sure to watch our Michigan Realtor® communications for updates and the opportunity to respond to calls for action.

Autumn in Lansing will provide opportunities for advocacy. Hopefully, the legislature delivers victories on our priority legislation. Who knows, we might even fire up a theme song competition.

Please be sure to stay up to date on all the latest goings on with Michigan Realtors® Public Policy by visiting <http://www.mirealtors.com/Advocacy-Initiatives>, or subscribing to and liking our YouTube channel <https://www.youtube.com/MICHREALTORS>. ●

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Realtors® Embrace the Change at Annual Convention in Mt. Pleasant

The Convention, hosted by Michigan Realtors®, was recently held at the Soaring Eagle Casino & Resort in Mt. Pleasant. Over 1,000 real estate professionals and affiliates attended the 3-day event filled with knowledge, networking and recognition. Highlights of Day 1 included:

- *Grand Assembly keynote speaker, Brandon P. Fleming.*
- *The swearing in of 2025 Michigan Realtors® President, Christopher M. Germain of the Upper Peninsula Association of Realtors®.*
- *The announcement of the 2024 Michigan Realtor® of The Year, Carrie Vos of the Greater Regional Alliance of Realtors®.*

Another highlight of Day 1 was the 2024 RPAC Appreciation Luncheon. The winner of the 2024 Michigan Realtor® Active in Politics award was announced: Gene Szpeinski of the Greater Regional Alliance of Realtors®.

Day 2 began with the Rise & Refocus Morning Keynote with Dr. Lawrence Yun, who gave an important real estate and economic update. The session included the announcement of the 2024 Michigan Realtor® Good Neighbor, Margie Haaxma of the Water Wonderland Board of Realtors®.

The RPAC LIVE and Silent auctions were once again a crowd favorite in the Expo. Local Realtor® associations from across Michigan generously contributed unique items

and gift baskets in all price points to raise money that will be used to safeguard the real estate industry. Participants were also able to bid on items through a virtual platform all week. The auctions raised over \$38,000!

Day 3 concluded with the Michigan Realtors® Within The Law Legal Team giving an overview of timely topics followed by audience Q&A. “Legal Friday” continues to be one of the most interactive and informative opportunities for attendees. Knowledge session handouts are available by visiting <https://convention.mirealtors.com>.

The Convention is an absolute must for real estate professionals with a dedication to their industry, their career, their business, and themselves. Mark your calendar now for next year’s event!

THE CONVENTION

(A Michigan Realtors® Event)

October 8-10, 2025

Amway Grand Plaza Hotel & DeVos Place
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Michigan Realtors® is grateful to all the exhibitors, sponsors, and attendees. Your support and participation in The Convention help to make it the exceptional event that it is, year after year. Thank you, for your support in 2024. ●

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2024 Michigan Realtor®
Active in Politics
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2024 Michigan Realtor®
Good Neighbor
Margie Haaxma
Cause: Salvation Army of
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As 2024 comes to a close, we find ourselves reflecting on a year that has posed unique challenges for the real estate industry. This year has brought forth a host of new and complex legal questions, leaving many Realtors® in search of clarity. Our dedicated Michigan Realtors® Legal Hotline attorneys (we're looking at you, Bernie) rose to the occasion, tackling a wide range of inquiries from the NAR settlement to perennial favorites like agency disclosure and earnest money. In this article, we'll delve into the most frequently asked legal questions of the year, providing insights and answers that capture the essence of what has truly been a tumultuous year.

2024 EDITION

Hotline

Agency

Is it a good practice to include a copy of my agency disclosure form with my buyer along with a purchase offer?

Although the law only requires agency disclosure before the disclosure of any confidential information, it is always a good practice to let sellers know of your agency status as soon as possible. However, you do not need to provide the seller with a copy of the agency disclosure form that your buyer signed. The law anticipates that you provide the seller with a new disclosure form directed at the seller in which you would ask the seller to acknowledge that you represent the buyer.

I am working in a designated agency office. Is it true that so long as I check "buyer agency" on the agency disclosure form, a buyer agency agreement is not necessary?

NO. Under the law, unless a buyer signs a buyer agency agreement acknowledging his/her agent's designated agency status, the buyer will have an agency relationship with every agent in the office.

If I, as a buyer's agent, am presenting an agency disclosure form to the seller, do I check "none of the above" since I have no agency relationship with the seller?

NO. "None of the above" is not informative and does not mean the same as "none." The purpose of the form is to make sure the parties to the transaction understand who represents who—and you, in fact, represent the buyer.

My buyer-client is interested in a FSBO home. I have spoken with the sellers, and they are willing to pay me a commission in the event my buyer purchases their home. Do I need to become a dual agent?

NO. You do not need to create an agency relationship with the sellers in order to collect a commission. You should simply have the sellers agree in writing that they will pay you a commission if your buyer purchases the home. Michigan Realtor®'s "One Party Agreement" (Form N) can be used for this purpose. Make sure you also provide the sellers with an agency disclosure form making clear that you represent the buyer.

I own a brokerage which practices traditional agency. Would it be possible to have one of my agents represent the seller and another of my agents represent the buyer in the same transaction without establishing dual agency?

NO. In this scenario, all of the agents in the firm would be dual agents. In order to have your agents represent the buyer and seller exclusively, your firm would have to practice designated agency.

Can I provide a buyer with an agency disclosure form in lieu of signed agreement before touring a property?

NO. The agency disclosure form is not a substitute for a written buyer agreement. This is because the agency disclosure form is not a contract. It is simply disclosure form that informs the buyer or seller of the agency relationships available to them and what fiduciary duties they have as a result of being in an agency relationship.

I am representing seller-clients on the sale of their home. I received a call from someone who is interested in making an offer on my clients' home who is not working with an agent. May I represent that potential buyer as a transaction coordinator?

NO. In Michigan, a transaction coordinator is a neutral party and does not represent either the buyer or seller. You cannot both be a transaction coordinator and listing agent in the same transaction. In this circumstance, you could work with the buyer as a customer, rather than a client. Whenever a listing agent works directly with buyers, they should provide the buyers with an agency disclosure form that makes clear that the agent is working only for the sellers.

Can I, as a listing agent, require an agency disclosure form before I present an offer to my seller-client?

NO. Both the Occupational Code and the Realtors Code of Ethics require you to present the offer to your client upon receipt.

Earnest Money Deposits

The purchase agreement says that if my buyer clients are turned down for a mortgage, my buyers are entitled to their EMD back. That is exactly what happened, but the seller objected so my broker won't release the EMD. Why isn't the contract enforced as written?

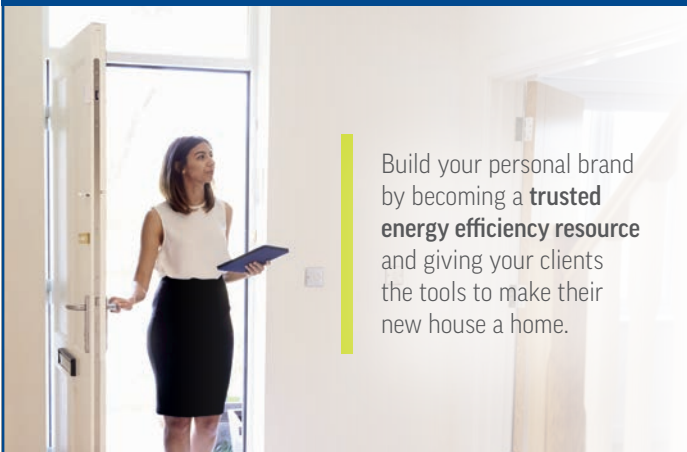
The purchase agreement is to be enforced as written, but the law says that in the event of a dispute, a court, not a real estate licensee, is responsible for interpreting the purchase agreement. This is true even if the correct interpretation seems obvious.

Once a transaction falls through, does a real estate broker need to get a written release from both parties before releasing the EMD?

The law only requires that a written release be signed if there is a dispute. Once a broker is aware that both sides claim a deposit, the law requires that the broker not disburse the funds until he or she has a written agreement signed by both parties or a court order stating who is entitled to the earnest money. Note that some purchase agreements, and many office policies, require a release in all instances.

I represented the buyer in a transaction that fell through. The seller will not sign my firm's standard release form which releases my firm (and me) from any liability arising in connection with this transaction. Am I required to release the EMD without a release?

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You may require a release as to responsibility for the disbursement of the EMD, but you may not require a release from any liability whatsoever in connection with the transaction.

NAR Settlement and Buyer Broker Compensation

What triggers the requirement to have a written agreement in place with the buyer?

There are two things that trigger the written agreement requirement: 1) touring a home (including virtual tours), and 2) working with a buyer. "Working with a buyer" means providing buyer brokerage services (such as identifying properties, arranging a showing, writing an offer, negotiating).

A Buyer Agency Agreement requires the Buyer to pay the Buyer's Agent \$10,000. The Listing Broker's offer of compensation is \$15,000. How is this handled?

The Buyer's Broker cannot receive more than what's called for in the Buyer's Broker Agreement so will get \$10,000. Whether the Seller or the Listing Broker is entitled to the remaining \$5000 depends on the language in the Listing Agreement.

Is it true that the buyer's agent can only be paid what they've agreed to receive via their buyer's agency agreement?

YES. The compensation that the buyer's broker receives (from any source) cannot be more than what was agreed to in their written agreement with the buyer.

Can my brokerage firm enter into a contract with another firm where we agree upon a cooperating split for all cooperative transactions involving our two companies?

NO. Under the NAR settlement, it is the seller, not the listing broker, who decides whether or not there will be a cooperating split offered, and if so, the amount of the split. A listing firm should not enter into an agreement that purports to commit all their future sellers. Moreover, regardless of any agreed upon split between the listing firm and the cooperating firm, the cooperating firm can receive no more than the amount agreed to by the particular buyer in their contract with the cooperating firm. In short, going forward, commissions paid to cooperating firms must be dealt with on a per transaction basis.

A Buyer Agency Agreement requires the Buyer to pay the Buyer Broker \$10,000. The Listing Broker (with authorization from their seller-client) has offered \$10,000 as a cooperating split. Should the Buyer include language in the purchase agreement requiring the Seller to pay the Buyer's Broker \$10,000?

NO. The Buyer Broker should ask that the commission split with the Listing Broker be confirmed in a Broker Compensation Sharing Agreement. The Seller should not also agree to pay that same amount.

Does the written agreement have to be presented to the listing agent (or to anyone else) before the buyer enters a property with their agent?

NO, there is no requirement that the written agreement be presented before entering a property.



A Buyer's Agency Agreement requires the Buyer to pay the Buyer Broker \$10,000. The Listing Broker indicates that while it might be willing to pay some amount to Buyer Broker, it will not commit to a specific amount until the Seller has a chance review the terms of a specific offer to purchase. How does the Buyer Broker protect their client?

The Buyer and their Broker have two options. First, they can handle this situation just like they would if the Listing Broker was not offering any cooperating compensation and include a provision in the purchase agreement requiring the Seller to pay the \$10,000. Or, they can submit with the offer a proposed Compensation Agreement Between Brokers for \$10,000 and include a provision in the purchase agreement making it contingent upon the Listing Broker's signature to that Broker Compensation Sharing Agreement.

Is a written agreement required for unrepresented buyers attending an open house?

NO. Written agreements are only required for agents who are "working with a buyer." An agent hosting an open house is working on behalf of the seller – not the buyer – and would not be obligated to enter into a written agreement with the buyer before showing the property.

If a Buyer Agency Agreement requires Buyer to pay Buyer's Broker \$15,000, and the Listing Broker has offered a \$10,000 cooperating split, what happens with the \$5000 shortfall?

If nothing else is done, the Listing Broker will pay the Buyer Broker \$10,000 and the Buyer will be responsible to pay the \$5000 shortfall to the Buyer Broker. Alternatively, the Buyer can include a provision in the purchase agreement asking the Seller to pay the \$5000 shortfall. If the Seller agrees, Buyer Broker will receive \$10,000 from Listing Broker and \$5000 from the Seller.

Listing Agreements and Buyer Agency Contracts

My seller tried to terminate my listing agreement two months before it expired. After I said "no," the seller will no longer answer my calls/texts or permit any showings. Isn't my seller required to honor the listing agreement and continue to work with me?

NO. The law says that a person must either honor their contract or be potentially liable for breach of contract damages. But you cannot force a seller to continue to work with you. The law on damages in the event of the seller's wrongful termination of a listing agreement is complicated, so you should consult with an attorney.

I am the listing agent on a listing that is about to expire. There is a contingent purchase agreement in place, but closing is not scheduled until next month. Do the sellers have to re-list with my company?

NO. The sellers are not required to re-list with your company because there is a pending purchase agreement in place. Most, if not all, listing agreements provide that the commission is owing even if the closing occurs after the expiration of the listing. Sellers should be advised, however, that if they list with another company, they should exclude the pending sale from the new listing (so they don't find themselves inadvertently liable for two commissions).

A competitor's listing agreement has a clause that provides for an automatic 6-month renewal period if the seller does not cancel the contract before the listing expires. I don't believe this is a legal contract. Am I correct?

YES. There can be no automatic renewals of listing agreements.

I currently have two buyers under buyers' agency contracts that are both interested in making offers on the same home. Does this create a dual agency situation? How should I handle this?

This scenario does not create a dual agency situation, but it does create a conflict of interest. Your buyers' agency contract should contain language notifying buyers of the possibility of competing offers. The contract should contain language that puts buyers on notice that other buyers you represent may make offers on the same property. The contract should also contain a provision that states that you will preserve any confidential information gained from the agency relationship.

I have a house listed. A buyer went directly to the seller with an offer which was accepted. Is this a valid purchase agreement?

YES. Although the buyer went directly to the seller instead of the listing agent, there is still a valid purchase agreement. Assuming the listing contract was an exclusive right to sell, the seller still owes a commission to their listing broker.

Final Thoughts For 2024...

The Michigan Realtors® Legal Team is dedicated to helping you navigate industry changes while minimizing legal liability. We strive to develop resources that offer comprehensive legal insights on both current trends and the ever-green challenges faced by Realtors®. As always, our Legal Hotline attorneys are standing by take your calls, and we encourage you to reach out with any legal questions you may have! ●

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2. Submit an **Interest Form**.
3. Complete a **one-hour guided walk-through training** to help learn more about DTE energy-saving programs and how you can help your customers save money and energy.
4. Gain access to the **Real Estate Energy Consultant Marketing Toolkit** and **FREE promotional materials**.

Key Benefits to Participating

As a trusted resource for your clients, you will:

- ✓ Elevate your brand above competitors
- ✓ Provide a superior client experience
- ✓ Offer solutions and reduce risk through DTE programs and rebates
- ✓ Give your clients the tools to make their new house a home



Learn more at
dteenergy.com/realestate

DTE CleanVision
Energy Efficiency

HELP YOUR CLIENTS UP TO \$10,000 AT A TIME.

Tell them about down payment assistance loans up to \$10,000 with MI 10K DPA.* Combined with a Conventional, Rural Development, or FHA home loan, they can buy the home they've been eyeing. More at Michigan.gov/Homeownership or call 1.844.984.HOME

*Terms and conditions apply.

\$10,000 DOWN PAYMENT ASSISTANCE LOANS



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A Guiding Light. A Path Forward.



Business is changing. Realcomp is here to help you navigate these changes with a host of resources, including new and revised form options, built-in listing data entry compliance tools, updated MLS rules and policies, training offerings, and a support team well-familiarized with industry changes.

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