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The Evolution of the 21st Century REALTOR®

REALTOR® sophistication today is at an all-time high. Admittedly, the changing face of business and the wave of technological change breaking on us bring their share of challenges. But, being a REALTOR® comes with unique opportunities to delve into our communities, meet families, and learn about new businesses and organizations in town.

But our postwar forebears did not have it so good. Real estate was a bit of a rough and tumble business in the fifties. Business agreements were often informal. Agency was where you usually went to make your travel arrangements.

"It was an occupation that retirees went into, and usually men," according to Harry Griffith, 82, who went into the business in 1955, right after Michigan State awarded him his M.A. in real estate. Griffith Realty, which he founded, is still operating in Brighton, Michigan.

The much-heralded Elliott-Larsen Civil Rights Act (1977) was a turning point for the real estate business in Michigan -- and the way in which it was practiced. The bill's co-sponsor, Rep. Mel Larsen, recalls that Rep. Daisy Elliott from Detroit needed a Republican to join her in sponsoring the bill, thus providing the necessary bipartisan support for passage. "Redlining" was rife in the seventies and neither the Civil Rights Commission nor the ensuing creation of the Department of Civil Rights had the teeth to deal with it.

"Those civil rights discussions we had in the seventies were awfully contentious," said Larsen, a former high school principal and coach. "But passage of our Civil Rights Act was the right thing to do." It built upon provisions of Michigan's 1963 Constitution and, with the amendments that followed, afforded protection against discrimination to broad classes of Michigan citizens.

Some members of our REALTOR® community were slow to embrace the Elliott-Larsen Civil Rights Act, but REALTOR® leadership recognized that something had to be done. Rather than engage in the legislated approach of enforcement and fines, the Association weighed how to broadly educate its membership on civil rights and fair housing.

Paul Scott, 1983 president of the Association, recalls how Dick O'Neal, our association executive through 1985, negotiated with members of the legislature to win approval of a program of mandatory continuing education. But in 1984, the framework for the program of continuing education we know today became mandatory.

"We've come a long way from those days fifty years ago," says Scott, citing some of the highly-publicized cases of the day in which REALTORS® were charged by State regulators for violations of civil rights law.

Today the environment has changed dramatically. REALTORS® are bound by the National Association of REALTORS' Code of Ethics, which was first adopted in 1913. And in Michigan, licensees have been being "educated" for twenty-eight years. The coursework is subject to pre-approval by the State and it requires eighteen hours of "con-ed" study every three years, with an annual requirement of two hours of legal education.

So the times continue to change; today's REALTOR® is cut from different cloth. Brokerage responsibilities now cross state lines and international borders. The active involvement of our membership is driving REALTORS® to serve at all levels of government, forged in their professionalism by meeting the changing demands of our business. You can easily find examples of this in the corridors of the State legislature and Congress. State Representative Margaret O'Brien (R –Portage) served in a volunteer capacity at both the Greater Kalamazoo and Michigan Association of REALTORS® before being elected to her (Kalamazoo) County Commission and then the Michigan House of Representatives in 2010. "As a real estate agent, we are taught to put our client's interest above our own, to never let personalities negatively impact negotiations and to find common ground when possible," says Representative O'Brien. If you've met her, you might add relentless energy and predisposition for closing the deal to be amongst her identifiably REALTOR® qualities.

Congressman Bill Huizenga's (R- Holland) experience as a REALTOR® continues to play a significant role in his service to the people in Michigan's 2nd District. Both polished and thoughtful, his knowledge of real estate financing made him an ideal bill sponsor for H.R. 4323, the Consumer Mortgage Choice Act. Among, of course, many other and more general legislative accomplishments, Congressman Huizenga put forward his NAR supported legislation to increase competition and expand consumer choice for mortgage lending and settlement service providers.

"Growing up in and around the brokerage business, I have always tried to emulate the best qualities of the industry and the professionalism and integrity it requires. Being a REALTOR® taught me the value of earning the confidence and respect of both my clients and colleagues and how crucial it truly is. Today, Washington suffers from a trust deficit, and relationship building is a must. With the challenges that lie ahead for the nation, the skills I developed as a REALTOR® are more important today than any other time in my professional career."

The real estate profession has come a long way; we have both standards and role models today. We can take pride in our ever-improving service to our communities and the people we represent. As time moves us forward, let's never miss an opportunity to distinguish ourselves in that light. **MAR**

by Bill Milliken Commercial Board of REALTORS®

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COMING EVENTS

April 25, 2013
Broker Summit
Michigan Motion Picture Studios
Pontiac

August 28-29, 2013
Go Grand With Knowledge
Grand Hotel
Mackinaw Island

September 25-27, 2013
MAR Convention & Expo
Soaring Eagle Casino & Resort
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Modest Goals Can Still Require Herculean Efforts

Our MAR Public Policy Leadership has identified our priorities for the year, if not the entire two-year session, and the Governor put his chips on the table early with an immediately scheduled State of the State address. Your Association's goals are comparatively modest, but not altogether easy to attain. The Governor's goals, as usual for him, are more audacious and "relentlessly positive." He has challenged the new legislature and us, the voting public, to recognize and address some of Michigan's immediate needs.

As is his protocol, Governor Snyder highlighted many of his *Reinventing Michigan* strategies and overviewed his "dashboard" priorities. The primary and most memorable point of his vision is to strengthen Michigan's deteriorating infrastructure. In order to successfully turn Michigan's economy around, he asserts, the state needs to revitalize and reinvest in Michigan's roadways. His *Better Roads Drive Better Jobs* covers all facets of transportation: funding for Michigan's roads and bridges, alternative transit, sewer/water upgrades, and integrating a broadband telecommunications network to connect every business and household to the internet. However, this plan comes with a hefty $1.2 billion price tag, and to many a taxpayer, it will not be an easy sell.

Legislative leaders will have to consider legislation to secure this funding with options like replacing the gas tax with a uniform tax at the wholesale level on motor fuels, some other hike on the gas tax, and higher vehicle registration costs, or any combination thereof. Senator Roger Kahn (R-Saginaw) was one of the first out of the gate to propose legislation to give voters the option of amending the Constitution to increase the 6% sales tax on all goods by 2 cents with the additional portion earmarked for infrastructure. Other members of the majority caucuses in the House and Senate are scouring other budget areas and hoping for an uptick in the economy that will make the need for any tax hike to be obsolete. 'Fat chance' say the number crunchers. Still, while this is going to take new revenue, paying for improvements now will save the state billions in the long run. So, the logic is undeniable, but it is going to take real leadership by our policy makers to get buy-in from a voting public facing some new federal and state taxes without a national economic boom in sight.

Although the MAR Public Policy committee has yet to analyze the plan, our association will be carefully considering the infrastructure debate and how if effects our industry. Early discussions would indicate strong support from our leadership for the stated goals, with scrutiny on the funding mechanisms to ensure that the revenue sources stay somewhat connected to the benefit. Overall, this is yet another example of this Governor looking at the balance sheets and applying common sense; saving money in the long-run makes us more economically competitive to help provide more jobs. Whereas normally I would make a joke here about common sense and government having little in common, Rick Snyder's track record of accomplishments would make it trite to do so. He has cut a lot of money out of the budget and accomplished some major reforms. If the public pays attention to his track record, he has developed enough credibility to pull this one off.

MAR Priorities for 2013

In the meantime, we have some long-sought goals of our own in need of legislative solutions. One is the affordability and quality of public tax data. The MAR hopes to address the cost of this data, and aims to work with the legislature and interested parties to make sure online information is accurate and beneficial to all. We have already met with Lt. Governor Calley on these concerns and will continue to look into innovative ways for recording and dispersing tax data. Part of this issue is the substantive difficulties of tying together all the disparate means of collecting and storing this data in a uniform way, but that is easily accomplished compared to the political problems associated with local government budgets and their relationship to state government. As I've stated before, if there will ever be a technologically proficient Governor with whom we can work, this is the one. Nonetheless, there will be a thousand local government paper cuts and a pool of county-level lemon juice for the legislature to swim through before we reach success. Our charge is to demonstrate that the results will be worthwhile.

Another broad category for accomplishment involves further refinements to the foreclosure process, both in its duration and tax treatment. It would seem, and don't shoot me, I'm only the typist, that our worst assumptions about bank

by Robert Campau MAR Chief Operating Officer management might be true. Banks aren't taking advantage of the special 6-mil treatment for foreclosed properties that the legislature passed as part of the *Principal Residence Exemption* enhancement last year. As far as we can tell, banks believe that the cost of the paperwork doesn't justify the return. Now that we're a little less engulfed in the foreclosure mess, perhaps the time has already come to consider legislation that would just let the financial institutions keep the tax rate on these properties at 6-mils. This makes those properties more salable and, hopefully, gets the last of this glut out of the pipeline by making them more immediately affordable. We had held back on pushing for "principal residence" treatment on the basis that no one cries for the banks (least of all REALTORS® trying to work with a difficult one) even if everyone would finally be better off breaking free of the worst depressor to our markets. Add this issue to a renewed call to (potentially) shorten the redemption process, and we have plenty of discussions ahead with your elected public servants.

As for passage of a sensible statewide septic statute, this could be the year. You've read in this space before about our call to the Department of Environmental Quality to truly consider and approve some of the new technologies available that could keep Michigan properties marketable and environmentally safe. Under Governor Snyder, we have been pleased with the discussions that we've had with the Department over the past year. Hopefully, we'll finally rid our markets of the patchwork system presently in place with both of those goals accomplished.

Finally, we will be working closely with the Administration, the Department of Licensing and Regulatory Affairs and the Legislature to make your licensing fees and enforcement of your continuing education requirements more efficient and helpful. As mentioned in the January Capitol Report, the MAR Education Task Force recommended increasing real estate professionalism through greater continuing education in this state, but that has run into competing philosophic ideals within the legislature and Administration. Accepting that premise, the MAR continues to meet with all of the players on these issues to generate greater consistency and clearly defined rules when it comes to continuing education courses.

Look for updates on these issues (and all the others that will jump out of nowhere) in this space and on our website at *www.mirealtors.com*. **MAR**

Fair housing is your

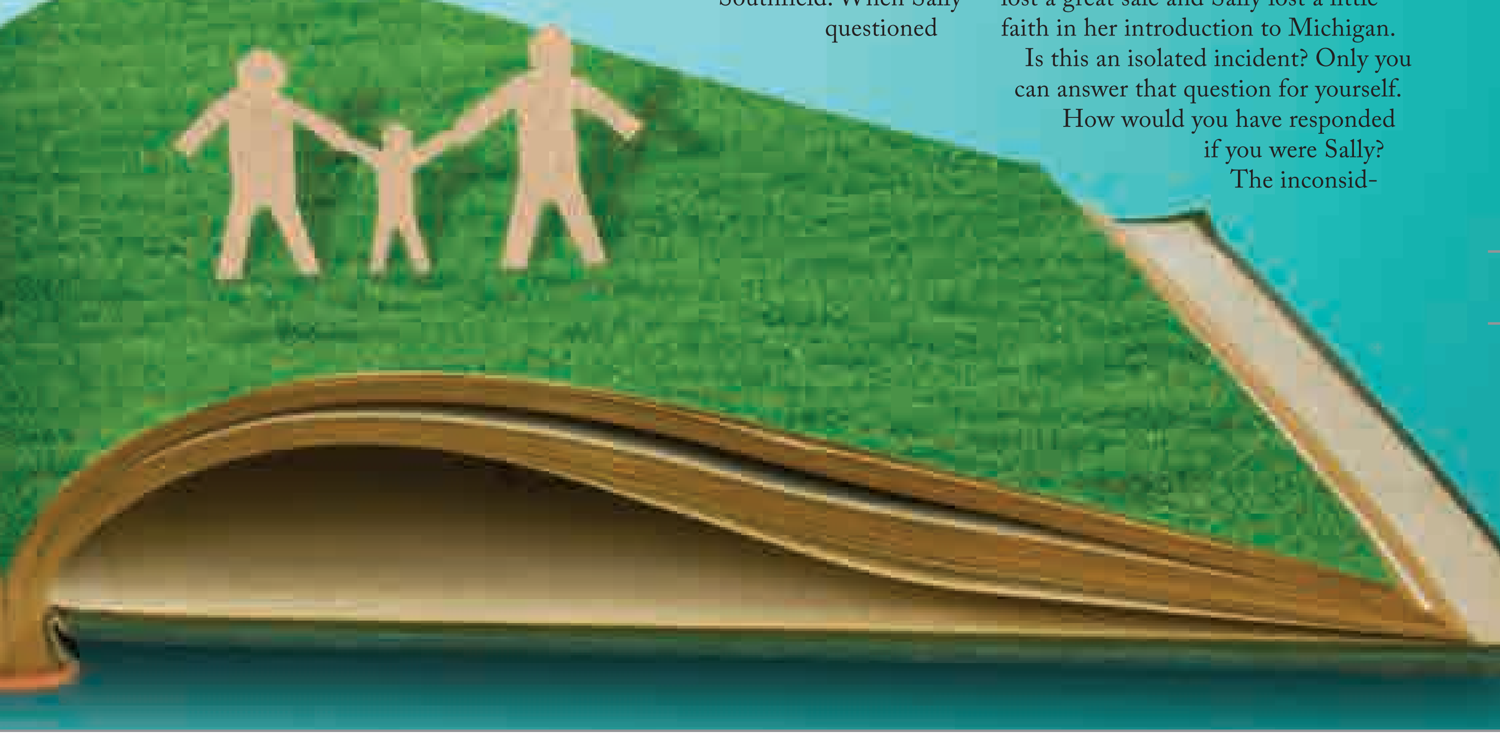
BY THOMAS F. KOTZIAN, J.D.

Right and Responsibility

Fair housing is a constitutional right of every U.S. citizen. Yet, the "fairness" often depends on just whose eyes it is through which you are looking. Realtors may experience buyers, sellers, landlords or tenants who make reference to people in protected classifications with discriminatory comments or intent. It would seem virtually impossible for a licensed agent to express any type of discrimination in today's market with all the training, continuing education, legal updates and articles written in our professional journals. Applicants for a Michigan salesperson's license are required to complete a minimum of 4 hours of civil rights and fair housing, while broker license candidates must complete a minimum of 9 hours. In addition, all Realtors must attend Code of Ethics training every 4 years that includes Article X – Fair Housing. This certainly should be enough training to insure compliance with the law, correct?

Based on an incident reported to by another fellow Realtor, I'm not quite sure. The Realtor who reported the incident to me recently moved to Michigan as a result of her husband's job transfer to the Detroit area. As a very successful African-American Realtor in another state, she never expected any problems in her search for a new home in Michigan. We will call her "Sally" for this article. The relocation company assigned a top agent in Oakland County to assist Sally and her husband in finding their new home. Sally spent considerable time on her computer researching the various communities in which she and her husband would like to reside. After researching many communities near her husband's place of employment, the cities of Troy and Rochester were selected for viewing homes. However, when the time came to view properties, the only appointments made by the relocation agent were in Oak Park and Southfield. When Sally questioned why only homes in these two communities were scheduled for appointments, the agent explained without hesitation, that she felt Sally and her husband would be more comfortable in cities with similar people. The agent did not believe she was practicing discriminatory conduct, but was only helping because Sally and her husband were not familiar with the area and she wanted to prevent any future problems. She honestly believed she couldn't possibly be discriminating when all she was trying to do was make sure the Sally would be comfortable in their her new neighborhood. The agent had no idea that Sally was a Realtor in another state and was very familiar with the term "steering." Sally did not file a complaint, but immediately terminated her relationship with the relocation agent. Sally made it very clear that her type of so called "kindness and looking out for her best interest" attitude was blatant discrimination and steering. The relocation agent lost a great sale and Sally lost a little faith in her introduction to Michigan.

Is this an isolated incident? Only you can answer that question for yourself. How would you have responded if you were Sally? The inconsid-



erate or discriminating act of one Realtor affects all of us. We are, unfortunately, judged by the acts of others and the media is ready to provide coverage. A broker-owner works a lifetime to build a reputable, honest business. Yet, in one swift move, it can all come tumbling down by the discriminatory act of one uneducated agent. The publicity alone is devastating to a company.

There are several proactive items that a broker can implement to reduce his or her exposure to fair housing liability. Those items include:

1.) Having a detailed fair housing policy which includes the company policy statement on fair housing; company-wide training and compliance; a company designated fair housing officer; an equal service checklist; advertising and marketing guidelines; prohibited activities; reporting procedures; and corrective action and discipline. Rule 310 of the Administrative Rules for Brokers and Salespersons requires that *A broker or associate broker shall supervise the work of a licensee. Supervision shall include, at minimum, all of the following: (e) Provision of written operating policies and procedures.*

2.) Display of a "Fair Housing" poster in the lobby for public (and testers) view.

3.) A written agenda for office meetings which includes a standing section on "Fair Housing" for review of company policy, questions and model answers, NAR videos, and short quizzes or guest speakers.

4.) The use of *FairHousingInMichigan.org* on the company website to provide educational and informational fair housing resources to the public.

5.) Administrative training for staff and receptionists regarding equal treatment to customers, clients and walk-in's.

6.) Becoming a member of your local Fair Housing Center, if available. Fair Housing Centers are located in Metropolitan Detroit, Grand Rapids, Jackson and Kalamazoo. The Fair Housing Center of Metropolitan Detroit offers annual basic organizational membership for $50 and individual membership for $15.

These are a few of the more important examples of how a brokerage can demonstrate a proactive approach to fair housing and reduce the risk to the company for any agent who acts outside the scope of their authority and the law. It is much easier and less costly to be the advocate rather than the defendant. **MAR**

"it would seem virtually impossible for a licensed agent to express any type of discrimination in today's market with all the training, continuing education, legal updates and articles written in our professional journals."

*

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6 APPS TO MAKE YOUR SMARTPHONE SMARTER

BY BILL LUBLIN

With just about every businessperson and teenager sporting a shiny new smartphone, the big question seems to be how useful your apps make your phone. Here are 6 all-star apps for the Android and the iPhone to make your smartphone more than just another pretty face.

1

Android users can get over their "Bump" envy at last. **Bump**, originally an iOS app, was made to simplify the transfer of address information between smart phones. With so many ways for us all to connect, just getting a phone number hasn't been enough for a while. Now, Android users can join their iPhone friends in transferring photos, contacts and apps by simply bumping phones together. Sporting a new design, bump now has the ability to share as many photos as desired, sync devices and find out what mutual friends you have. Working across operating systems, it just makes the distinction between Android and iPhone users a little less confusing.

2

Note-taking apps are very useful, and **Catch Notes** is an Android and iOS app that lets you capture and share photos, voice memos, maps and reminders, using a cloud based auto-sync approach similar to Evernote. You can also create collections that can be stored or shared for collaboration. In addition, you can email notes and scan product barcodes to capture gift ideas. Catch Notes is provided as a Freemium model, like so many other apps, but there are additional features available in the paid version.

3

Having mentioned **Evernote**, I would be remiss if I didn't add it to the list of must haves. Available for both the Android and iOS operating systems, Evernote allows you to keep your phone, your tablet, and your computer synchronized with photos, web clippings, audio notes, and text, letting you to Geo-Tag as you add data, and organize them into useful notebooks to use and share. I have Evernote on every device I own, and I keep finding more and more ways to use it in my business and personal life. It's a real must-have, and I even use the paid version for myself.

4

Lemon is an iOS app that makes it easy to track expanses by using your phone's camera to scan an unlimited number of receipts. It provides the ability to assign labels and categories for different types of spending, and allows you to create spending summary reports, export receipt scans and store receipts with encryption. The app provides you with merchant data as well.

5

Wikitude lets users find points of interest around them by using Augmented Reality Technology. It allows you to simply hold your phone up and use the camera as a viewing device to see restaurants, ATMs, events, and user reviews. With more than 150 million points of interest and content furnished by over 2,500 providers, the tool is useful for travelers, or even consumers entering new neighborhoods in their own cities. Search abilities and coupons just make the app even better.

6

Teambox HD is a free iOS-based collaboration app that allows you to avoid emailing back and forth when you're working on a project with others. Install the app on all of your team's iOS-based smartphones, and you can establish sharing and cloud sync settings using Google docs and calendar as well as other services. Using Google Docs and Calendar will allow your Android-toting friends easy access to your data until the Android version comes out.

According to eMarketer 44% of all cell phone users carry smartphones today, and by 2014 that number will increase to almost 53%. Every phone, no matter what the OS, relies upon the user to determine what apps will increase its functionality. I hope that you have found at least one or two new ones here. MAR

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2013 A YEAR IN PREVIEW

BY NOBU HATA, NAR DIRECTOR OF DIGITAL ENGAGEMENT

Real estate is in a constant cycle of technological evolution and adoption, and with the advent and increased integration of technology into the real estate ecosystem, that cycle has only quickened the last couple years. With it all has come a whole cottage industry of prophets, gurus and hype, plus the predictable backlash. Factor in that the market is, by and large, getting better, and you have the genuine risk of the real professionals in the industry taking their eye off the ball.

Never mind how Facebook-this and Twitter-that will supposedly change the way REALTORS do business. The fact is that data, technology, social media; none of it sells homes. But, how one communicates and conveys value proposition and delivers it all to the masses has sold homes, and the trends signaling that sea change are there and they are very real.

Here's my list of trends set to hit the big-time in 2013…

MOBILE MEANS SOMETHING.

Are you mobile, paperless, productive and real-time? How about your marketing? Better yet, are you training your clients to be mobile? 2013 will be the year mobile breaks out, and your clients will expect you to be it, and so much more. Stop paying for "paperless office" webinars, grab an iPad and be it. Ensure that your website is mobile friendly, beef up social search presence on Google+ and Yelp, and consider using real-time platforms like tumblr.com to augment your marketing. Mobile is not going away, and the numbers are exploding. Studies show that 77% of people are using their mobile device IN THEIR HOME, on the couch while watching TV, while they're cooking, as their alarm clock. It's cheap, convenient, and ubiquitous in every day life.

Pro-tip: Rethink your client-orientation by making a good, old fashioned chat about social media, websites and apps a part of it. Source your clients. Ask them where they go online, what sites they use and what apps they bought. Not savvy… learn. Super savvy… train your clients. Regardless, educate and enlighten your clients on the front end of the relationship, rather than fighting it during and at contract-time. Take it another step and express what you learned through personal stories in your marketing.

BIG DATA HITS FULL-STRIDE.

2013 will see data starting its evolution toward critical mass because of the renewed realization of the connection between the treasure-trove of real estate data and its actual real-world business use, all of which has become cheap and accessible. Visualization of MLS data for REALTOR use is prevalent. Big brands are implementing user-generated data like Streetadvisor.com into their agent benefit systems. RPR has mingled public data with MLS data, and there's more to come. How one uses it in their business takes the form of the next two trends.

Pro-tip: The intricacies of data vary wildly from market to market, so take everything you know about your definition of data and public information and throw it out the window. Don't count on going online and starting up some grass-roots effort to bottle data back up, that ship has already sailed. Pick up the phone and call your board and MLS leadership and inform yourself about data in the real estate context in your market and factor in what is public data. Then, and only then, can you inform yourself, your peers, and your clients.

ONLINE MARKETING GOES CONSUMER-ORIENTED, LIFESTYLE-CENTRIC AND VISUAL.

This is a horse that has been beaten to death, but fundamentally this is where the REALTOR marketing wagon train is going. Anyone who has actually been in the trenches with clients knows it, and now the data is screaming the facts. Check out this Google-partnered NAR study: *realtor.org/reports/digital-house-hunt*. Savvy buyers and sellers are getting more granular and specific in their search queries, are increasingly turning to video platforms and are treating websites as relationship incubators. Where is your online presence in relation to all of that?

This is a trend that hits especially close to home for me, as I am a recovering REALTOR now Chicago transplant. I know nothing about the city and the neighborhoods within Chicago and the last thing I want to do is annoy the myriad of real estate pros I know with a litany of questions. I ask my Chicago friends who are weirdly loyal to their "hood" and only their "hood," leaving me to the web for research, and all the Chicago real estate sites do the same thing. Home search, home search, home search - right now, right now, right now. Moreover, they all assume that I have in-depth knowledge of the Chicagoland neighborhoods, which is strange because every Chicagoan I know is a fish out of water outside of their own area. My wife and I are left to troll the Internet, looking for information (housing styles, average price per square foot, proximity to amenities, demographic breakdown, cost to buy comparisons, etc.) on the neighborhoods we think we'll like. I've spent half my life in real estate and I've never been more frustrated in my life. No wonder the average consumer spends so much time online searching before they reach out to the professional.

Pro-tip: Imagine a world where the REALTOR online calling card, a display of listings, is no more. You're left with what REALTORS have been selling for years; the lifestyle in which a client lives when they buy the home. The closest dog park, grocery store, hot local eateries and shopping destinations, idiosyncrasies that set a neighborhood apart from another; local information that only you, the REALTOR, know. Use flexible, mobile platforms like Wordpress and Tumblr on your smartphone and share this experience, then let your clients share your brain on social media for you. Video, blog posts, and sharing of content from local business owners through their social media are examples. The marketing potential is limitless.

APPS, SHMAPPS – GO FOR SOCIAL-BUSINESS CONTENT INSTEAD.

Apps are easy, and they aren't all that special. Case in point: The vendor you're talking to has already built your app for a thousand other clients, perpetuating "sameness." Furthermore, Apple's stranglehold on the tablet and smartphone market is based purely on apps, which will wan as websites become smarter and Google's Android operating system becomes more prevalent. So unless your app can do something cool (like Homesnap), concentrate on content instead. Content that can be "found" online and shared by your clients. Content that can't be Googled, information that many don't know that NEEDS TO BE Googled. The average REALTOR is a smorgasbord of information, from the process of real estate, to a glossary of terms that is of a huge benefit to John and Jane Doe buyer and seller. It's your strategic advantage, so leverage that!

Pro-tip: View your website through your smartphone. Is it easily viewable? Is it easy to use? Can you read your content? Make changes where necessary. Make everything you do "shareable" with "Share This," "Facebook Share," "Tweet This," and Google's "+1" buttons, all of which are free to use. This is the essence of social business, and your potential clients and Google will love you for it.

COLLABORATIVE TECH REIGNS.

Apps, websites and content search engines are all taking the turn into a much more pronounced collaborative environment, encompassing all the best concepts of social media. In the real estate context, imagine a world where you, your clients, a mortgage professional, inspector, title rep and contractor all share information in one unified space. Consider an environment wherein the whole process of a real estate transaction is broken down into bite-sized pieces. Well, that world is here. Need a client collaborative solution to fit your business needs? Take your pick: there's Cartavi, Nest4Less, DotLoop, Docusign, REALTOR.com, Doorsteps.com, among others, that'll do it all for you. Inman News' "Startup Alley" at Connect in New York was filled with them. Embrace this concept peeps! Your favorite website already has.

Pro-tip: You don't know everything (and that's ok!), so start collaborating now with the thought leaders and small business owners that surround you and flesh out the experience of working with you. Your mortgage guy, title rep, short sale lawyer, and home inspector all have stuff to share. Make your website the focal point of that experience, and a hub for all that information. Hire an intern from your local college's marketing or information technology departments to put it all together for you.

> "NEVERMIND HOW FACEBOOK-THIS AND TWITTER-THAT WILL SUPPOSEDLY CHANGE THE WAY REALTORS® DO BUSINESS – DATA, TECHNOLOGY, SOCIAL MEDIA, NONE OF IT SELLS HOMES."

THE RISE OF THE CHIEF DATA/ NERD/DORK OFFICER.

No matter where you are in this industry; agent, broker, manager, or association executive, some sort of technology has impacted you in some way. Sometimes, this happens whether you know it or not. Navigating this new world now takes a specialist; one who knows not only the way of the tech-nerd, but the market and climate in which you and your peers use it. Eschew the consultant (who never sold real estate) and go with a local expert to help you make the leadership decisions that impact the greater whole of your organization. Organizations across the country have some one, or thing, helping the group discern the signal amid the noise. Don't know one? Ask. AE's ask your top brokers who innovate every day. Brokers and managers, ask the guy or gal in your office that was speaking tech-gibberish years ago and is now saying "I told you so." Whether it's a formal member of your organization, or an ad-hoc task force, it's time to sit down, shut up, listen, and keep innovation happening in–house.

In the end, the one commonality in all these trends, and in all the trends years passed, is the human element. Real estate is fundamentally a people process, but one where the expertise and value of that person lies within it is constantly evolving. There's no better time than now to experiment with any of the ideologies laid before you, just don't take your eye off the ball: tech doesn't sell houses, people do. Leverage YOU, show YOUR expertise off, and prove that YOU are the signal amid the online noise. MAR

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Nobu Hata is the National Association of REALTORS® Director of Digital Engagement. An industry veteran since 1996, he is a student of marketing, communications trends, social media, and technology in the real estate industry, having implemented and adapted various new school techniques to his successful brick and mortar business. A former REALTOR®, accidental speaker, instructor, and volunteer member leader, Nobu brings to NAR a skill set that includes insight and context of agent, brokerage and association issues up the pipeline, and delivers value-added information down, both in-person and through the digital domain. Connect with him here: about.me/nobuhata

Farming in Winter? Why Not?

Although the weather outside may be frightful, winter can be a wonderful time to turn your soil, re-dig your rows, and get prepared to plant new seeds for a bountiful spring harvest. Staring a new year is the best time to set new goals and establish new routines, and one of the best ways to raise your game in 2013 is to develop and strengthen farm areas. If you have one or two, fertilize and water them consistently so this years production is record breaking. If you are new to this, start a farm area now.

In real estate we often speak of developing a farm area and working that area to cultivate new customers and clients… just like a farmer cultivates his crops to ensure a robust harvest.

Choosing an area to farm is most critical. My suggestion would be to pick an area in which you have a personal interest. And, perhaps the very first choice should be your own neighborhood… your own backyard. One of my strongest and most productive farms is the condominium community where I live. I have lived there for 12 years and have gotten to know all my neighbors and have even volunteered to be on the board of directors to help maintain our values.

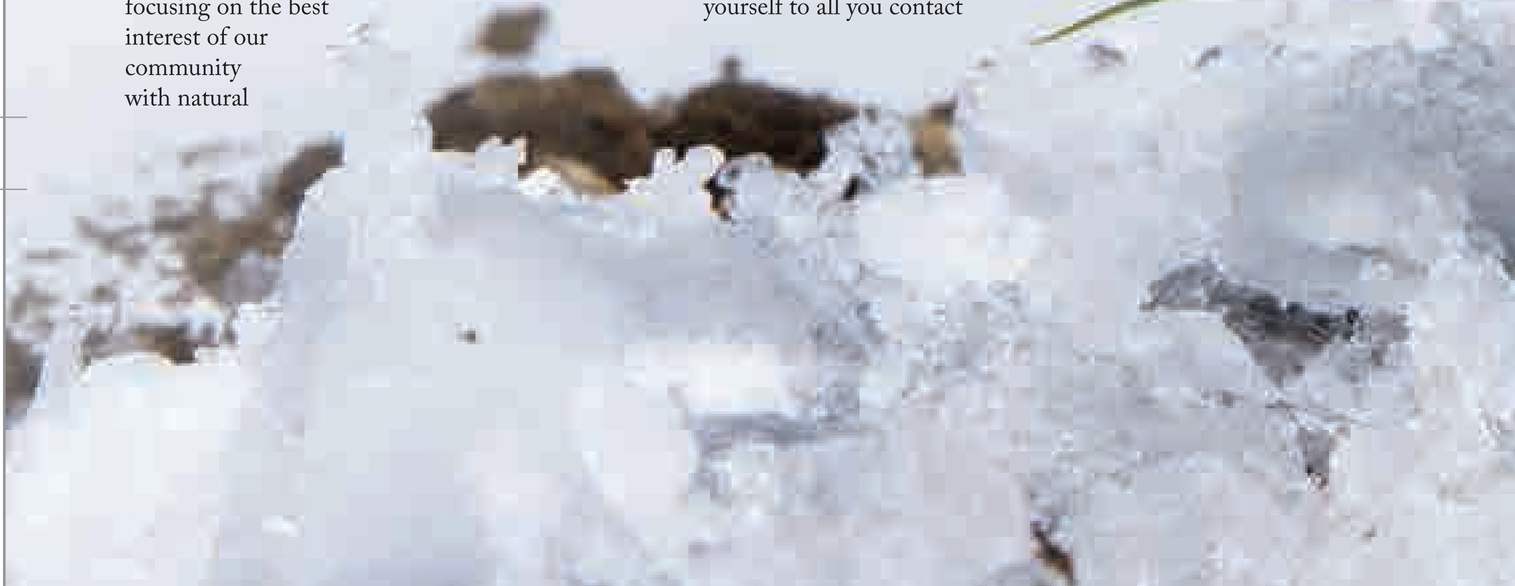
Being a local real estate expert, I am able to share my knowledge and expertise will all the owners and while focusing on the best interest of our community with natural overflow business coming my way. I was our president for the last two years and my neighbors appreciate the way I have taken a personal interest in everyone's values. Needless to say, I am proud that most all the condos that are listed and sold are handled by me… not all of them, but most of them. And, this comes naturally, as I live here and have learned lots about the community/property and have its best interest at heart. Who wouldn't want to do business with me when I have proven to be a proactive member of our neighborhood? This all is true for you and where you live I'm sure! Not surprisingly, my condo is my strongest farm area.

At the very core of developing new business is being able to be open to all the business that surrounds you everywhere you go. One of the founding ways our business was initially developed (long before the Internet, emails and digital photography) was walking neighborhoods to get to know folks personally. So it might not surprise you that 100 plus years later, direct face-to-face contact is still one of the strongest forms of earning business.

Where I consistently get my best results is from *door knocking*. Going door knocking can even be more effective than direct mail. Now, make sure you are dressed for success, with you name badge on and prepared to introduce yourself to all you contact as the neighborhood real estate professional. You must have the belief in yourself for others to follow your lead and believe in you too. Success is contagious.

Here are my tips that will make even the people who don't like solicitors enjoy your visit.

- **Visit a neighborhood where you have a listing or have just sold a home.**
- **Start with nearby homes and fan out.**
- **Create an address log containing a list of every house you intend to visit leaving space for notes.**
- **Ring the doorbell or knock, and then take a step or two back. Put your smile on and wait 30-45 seconds. If no one answers, ring or knock again and wait another 30-45 seconds before moving on.**
- **Come with a goodie to share… a 2013 calendar, a refrigerator magnet, pen or notepad that bears your name, email address, website and phone number. People love to get free stuff.**
- **Introduce yourself and share with the homeowner what you do for a living.**
- **Give the homeowner two (2) of your business cards (one for them to keep and one for them to share (setting them up for a referral) and invite them to contact you anytime.**



BY MARCUS WALLY

A play off on door knocking is my 5, 5, 5 rule. This is a super method guaranteed to lead to some sort of new business. Each time I get a new listing I immediately make 15 copies of my MLS data sheet with color photos and I head out to meet the neighbors of my new listing. I go introduce myself to 5 neighbors to the left of my new listing, 5 neighbors to the right of my new listing and to 5 neighbors across the street from my new listing. After introducing my self and offering a data sheet of the new listing, I point out my car so that all the neighbors are aware of a new vehicle that they may not have seen prior to my arrival. This safety step (manners/courtesy) is always appreciated.

Being consistent and persistent are my final thoughts for you as we tackle 2013. If homeowners aren't interested in selling until next summer, commit to following up with them, as next summer will be here before you know it. That bit of business is like waiting for a CD to mature. Put these folks on a consistent mailing, calling, or pop by program so they get accustom to seeing your name and photo and be proactive/persistent and never give up on this warm lead.

Trust yourself and make a solid commitment to your marketing efforts. Build your personal brand by building recognition in your target market. Become the go to REALTOR.

Make one more phone call before you go home tonight, send out one more hand written note to someone you saw most recently in town, knock on one more door even though you are tired and ready to stop. KEEP PUSHING AND NEVER GIVE UP because that's when you will get the business... BY NEVER GIVING UP!! **MAR**

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IN REAL ESTATE WE OFTEN SPEAK OF DEVELOPING A FARM AREA AND WORKING THAT AREA TO CULTIVATE NEW CUSTOMERS AND CLIENTS... JUST LIKE A FARMER CULTIVATES HIS CROPS TO ENSURE A ROBUST HARVEST.

REALTORS® and the UNIFORM APPRAISAL DATASET...

Insights from those who teach it to Appraisers

BY RICHARD HEYN, SRA AND DAWN MOLITOR-GENNRICH, SRA

You may have noticed that appraisal reports for lending purposes are a little more difficult to understand these days. The responses that appraisers use to fill in the forms are more cryptic than ever, and many of the abbreviations used may not make sense to you or your clients. Worse yet, perhaps you have lost a transaction because of the new condition or quality rating requirements.

In this article, we want to point you to some resources that will enable you to better understand the UAD appraisal reports. We will also concentrate on the new UAD property condition requirements in an effort to prevent you from losing a transaction because you may not understand the potential ramifications. First, we'll provide some background.

THE GSES AND LOAN ORIGINATION

Prior to September of 2011, Fannie Mae and Freddie Mac, referred to here as the GSEs (Government Sponsored Enterprises), received almost no information about the subject property *before* they purchased a loan. They did not receive a copy of the appraisal report. Rather, they relied on a lender to "represent and warrant" that everything in the loan file (including the appraisal report) would be consistent with the requirements outlined in their respective selling guides.

If the loan defaulted, the GSE would then take a critical look at the file to determine if the lender had complied with GSE requirements. If the lender had not complied, the GSEs would force the lender to repurchase the loan. Unfortunately for the GSEs and taxpayers, these policies were ineffective during times of high levels of defaults.

Realizing that relying on lenders to represent and warrant compliance was ineffective, the GSEs, in 2009, began laying the foundation for a new lending initiative called the Uniform Mortgage Data Program (UMDP). The appraisal portion of this new program, which became effective in September of 2011, requires lenders to deliver appraisal reports electronically to the GSEs, *prior* to the GSEs purchasing of the loan from the lender. The GSEs now subject the appraisal report to an automated, computerized review, allowing them to either decline the purchase or require the lender or appraiser to correct issues identified prior to acceptance.

THE UNIFORM COLLATERAL DATA PORTAL AND THE UAD

Given the volume of loans processed by the GSEs, delays caused just by the logistics of receiving a copy of the appraisal report, plus subjecting it to an "eyes on" review prior to purchase, were unacceptable. Consequently, the Uniform Mortgage Data Program introduced two components to initiate the electronic review of appraisals; the Uniform Collateral Data Portal (UCDP) and the Uniform Appraisal Dataset (UAD).

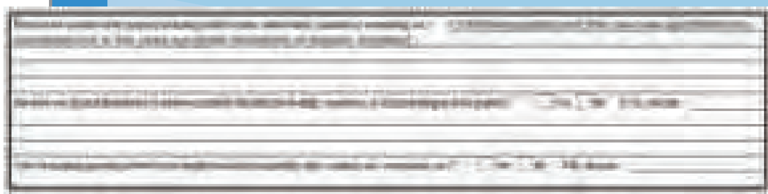
The Uniform Collateral Data Portal is a means of electronically collecting the appraisal report data, but it requires a standardized data file format (XML). Once in this format, the lender can transmit the appraisal report data electronically to the UCDP prior to loan delivery. The lender provides the GSEs with both a PDF version of the appraisal report and an XML version. The XML version allows the GSEs to "test" the report electronically and determine if it passes their "Rules Set," which includes requirements for completeness and standardized responses. The PDF allows for the GSEs to do an old fashioned "eyes-on" review if deemed necessary.

If you think of the UCDP as the "electronic mailbox" that the GSEs use to receive appraisal reports from lenders, you can think of the UAD as the new "language" that appraisers are required to use when they write their reports. In addition to Fannie Mae and Freddie Mac, the Federal Housing Administration (FHA) and Veteran's Administration (VA) also adopted the UAD "language." Consequently, the overwhelming majority of appraisal reports for lending purposes are now written in compliance with UAD requirements.

Essentially, the UAD is a series of appraisal data definitions and standardized responses created by the GSEs that must be used in UAD-compliant appraisal report forms. According to the GSEs, the objective is "to enhance data quality and promote consistency in appraisal data." In layperson's terms, it simply means that if a computer is going to "read" the report, the responses must be from a list of items that the computer has been programmed to understand. For example, prior to the UAD, if an appraiser was reporting on a property that had a view of a golf course, he or she might state "Golf Course" or "Fairway" in the data field for View. Under UAD requirements, however, appraisers now pick from a GSE-defined list of terms imbedded in their forms-preparation-software. There is a line item for Golf Course view. When the report prints to PDF or to paper, the cryptic abbreviation "Glfvw" appears on the report.

In addition to dozens of new abbreviations and acronyms that appraisers must use, the GSEs have implemented new rating requirements for condition and quality. These new requirements are of particular interest to REALTORS ® as loans involving *properties with certain ratings are ineligible for delivery to the GSEs.*

CONDITION RATINGS C1 - C6



The GSEs have instituted some significant new requirements regarding how appraisers report property condition and quality. The new requirements call for the appraiser to select a condition rating of "C1" through "C6"and a quality rating of "Q1" through "Q6." It's important to note that appraisers are given no latitude on the application of these ratings but must strictly adhere to the definitions published by the GSEs. As stated earlier, this new rating system is of keen interest to REALTORS® because, depending on the type of loan, properties with condition ratings of C5 or C6 or a quality rating of Q6 may be unacceptable to the GSEs.

We'll provide information at the end of the article as to where to find complete condition and quality definitions, but for illustration, here are short paraphrases of each condition rating:

Rating	Condition Definitions Paraphrased
C1	New; never before occupied and in "brand-new" condition.
C2	Almost new condition; could be a few years old but still in near-perfect condition or an older dwelling that has been totally renovated and is in near-new condition.
C3	Well maintained and displays little (if anything) in the way of deferred maintenance.
C4	Adequately maintained and needs only minimal repairs.
C5	Livable condition but shows obvious signs of deferred maintenance and needs repairs, rehabilitation, or updating.
C6	Severe deficiencies or defects in structural integrity that could affect the safety of the occupants.

It is important to understand that the required condition ratings are absolute and not relative. In other words, a "fixer-upper" does not assume an "average" condition just because all of the surrounding homes are 'fixer-uppers" as well. That's one of the objectives underlying the new rating requirements. The GSEs were finding that many improperly trained appraisers were using a rationale of "average for the area" and applying the term "average condition" to homes that were actually in fair or poor condition. Under the new rating system, terms like "good," "average," "fair," and "poor" are not acceptable descriptors.

CONDITION RATINGS THAT MAY "KILL THE DEAL"

Fannie Mae will, under specific criteria, purchase loans that involve C5 properties while Freddie Mac will not. Neither Fannie Mae nor Freddie Mac will purchase a loan involving a C6 dwelling. Also, many lenders have decided to simply avoid making loans on properties that are not rated C4 or better. Keep in mind that a C4 rating is an improvement, which is "adequately maintained" meaning it only needs "minimal repairs," and is "functionally adequate." Anything less is either a C5 or C6. The C6 rating is a special case and triggers requirements (typically repairs) that must be fulfilled before the loan is saleable to either GSE. Expect a C6 rating to cause delays in processing a loan and obtaining financing. Whereas the other ratings are based on an "overall" condition that holistically considers all aspects of the dwelling, C6 is an "either/or" rating. Either a dwelling does have or does not have issues related to safety, soundness or structural integrity. Even if *just one portion* of a dwelling is affected by issues of safety, soundness or structural integrity, the *entire dwelling* must be rated C6. A dwelling in otherwise very good condition with an easily curable safety issue like a missing handrail must be rated as C6 by the appraiser and would fail to qualify for financing that involved selling the loan to one of the GSEs. Conversely, a "fixer-upper," no matter how much "fixing" was needed, would not qualify for a C6 rating if issues affecting safety, soundness or structural integrity were not present.

Recommendations for REALTORS® regarding C5 and C6 properties:

- **Be realistic about the property's condition with yourself and your clients. Waiting for the appraiser to state obvious inadequacies and/or deficiencies will only forestall inevitable conflicts.**
- **Be familiar with the policies of the lenders that you use, with regard to C5 and C6 properties.**
- **Sellers should be informed that they will either have to make repairs or wait for the right buyer, such as an all-cash investor who will accept the property as-is.**
- **Buyers should be informed that properties purchased in as-is condition will require their own funds be expended for repairs or alterations.**
- **Recognize that the need to "match" certain properties with certain buyers takes on a greater importance with C5 and C6 dwellings.**

UAD SPECIFICATION GUIDE AND OTHER UAD RESOURCES

The *UAD Specification: Appendix D* is published by the GSEs and serves as a guide for appraisers who wish to comply with the UAD. It also serves as a "go-to" guide for REALTORS ® who want to understand reports written in the UAD "language" and is helpful in understanding the new condition and quality ratings. The URL for Appendix D is: *https://www.fanniemae.com/content/technology_requirements/uad-specification-appendix-d.pdf*

At the end of Appendix D is an Exhibit Section containing condition and quality definitions as well as a list of the UAD abbreviations. Appraisers sometimes refer to this list as the "decoder ring" for the UAD. We encourage you to have this list handy when you are reading an appraisal report that's been prepared in compliance with the UAD. **MAR**

> "You may have noticed that APPRAISAL REPORTS FOR LENDING PURPOSES ARE A LITTLE MORE DIFFICULT TO UNDERSTAND THESE DAYS. The responses that appraisers use to fill in the forms are more cryptic than ever, and many of the abbreviations used may not make sense to you or your clients."

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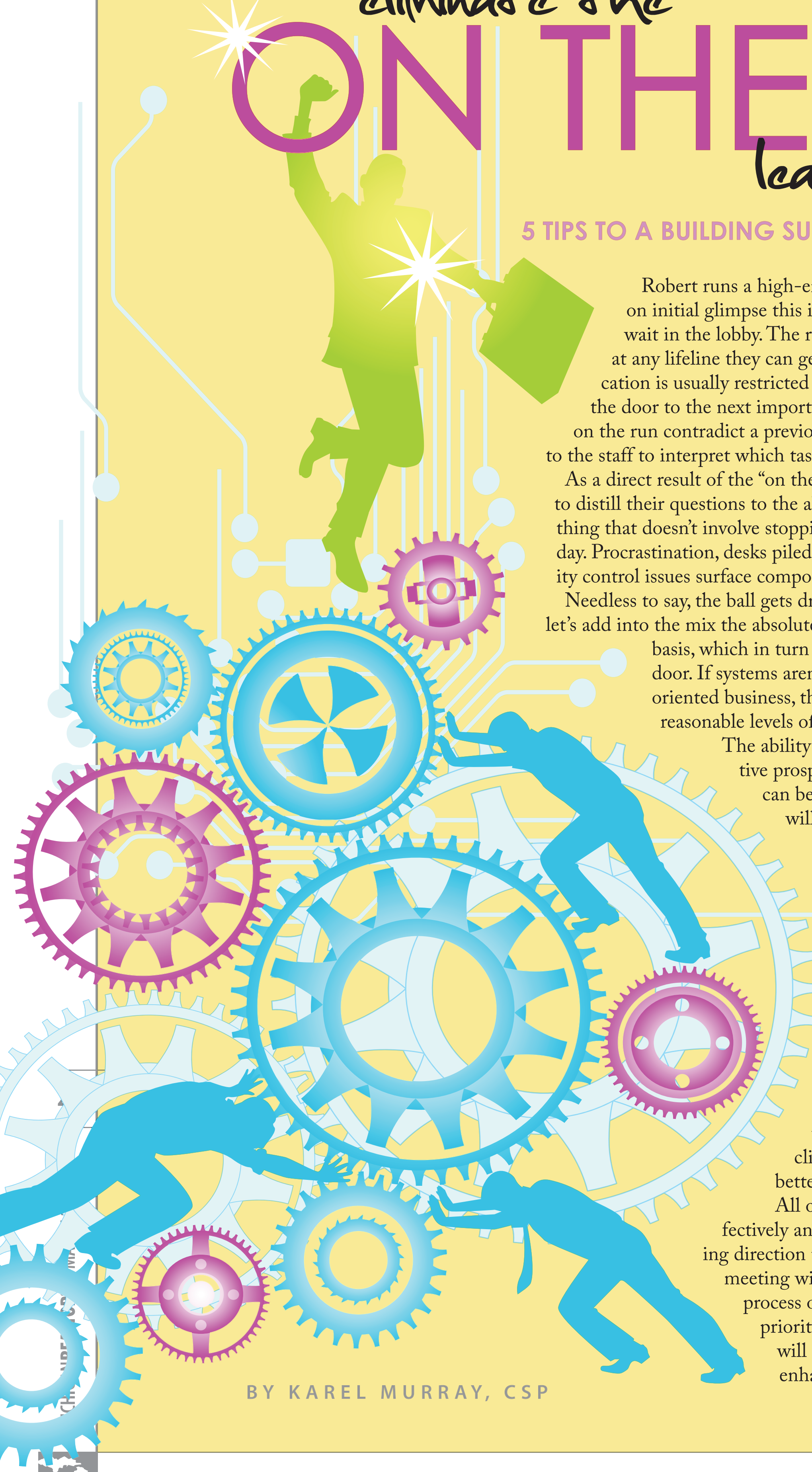
***Richard Heyn**, SRA and **Dawn Molitor-Gennrich**, SRA are co-owners of Heyn, Molitor-Gennrich, LLC, which specializes in the development and presentation of real property education for appraisers and REALTORS®. Dawn and Rich each hold the SRA designation from the Appraisal Institute and are AQB Certified USPAP instructors as well as Certified Distance Education Instructors. They are co-authors of a number of seminars, including two regarding the UAD. Dawn and Rich are available for speaking engagements on a number of topics of interest to REALTORS ® and appraisers. In addition to classroom education, they offer webinars through Northern Michigan University. They can be contacted at webinars@att.net and information on their webinars can be found at www.nmu.edu/appraisers*

eliminate the ON THE RUN leadership style:

5 TIPS TO A BUILDING SUPERIOR TEAMWORK & SERVICE



Robert runs a high-energy business with a dedicated team. At least on initial glimpse this is the impression someone might get as they wait in the lobby. The reality is the team is floundering at grasping at any lifeline they can get just so the business stays afloat. Communication is usually restricted to brief directions given as Robert runs out the door to the next important meeting. Often, the orders shouted out on the run contradict a previous task already identified as critical. It is up to the staff to interpret which task really is the priority and act accordingly.

As a direct result of the "on the run" leadership style, the staff has learned to distill their questions to the absolute priority level and push aside anything that doesn't involve stopping the boss during an obviously busy day. Procrastination, desks piled high with things to address and quality control issues surface compounding an already hectic environment.

Needless to say, the ball gets dropped and the client ultimately suffers. Now let's add into the mix the absolute need for the team to prospect on a consistent basis, which in turn will ensure business continues to come in the door. If systems aren't in place to manage the lifeblood of a service-oriented business, the resulting disorganization can result in unreasonable levels of stress and an "always catching up" mentality.

The ability to balance current business with effective prospecting is an art, but it is an art form that can be learned as long as the parties involved are willing to dedicate attention to the details.

My suggestion to high-performing teams is to learn to "slow down up front in order to speed up at the end." That means business owners should take the time to tear apart the way things are done, analyze the effectiveness of current systems, design job descriptions and install contact management software that make sense after having in-depth conversations with the staff who run the operation on a day to day basis. It means asking the right questions of the clients who have hired the team and waiting for the answers before formulating a plan for that client. The more information that is gathered, the better decisions can be made for continued growth.

All of this requires a desire to communicate effectively and to be fully present in the moment when giving direction to staff. The power of a daily 30-minute team meeting will become fully evident after the first week. The process of synchronizing the client activities and team priorities becomes easier over time, which in turn will allow time each morning to concentrate on enhancement of existing technology and services.

BY KAREL MURRAY, CSP

With the “fully present” approach to leadership and client handling, relationships will become more productive with staff, peers and the client base. It is truly astounding how much time is wasted fluttering around in confusion. With a sharp focus and task directed team, stress is reduced and the systems begin to run in an effective and logical manner. Suggestions as to how to do this include:

1. **Make it a habit to create “to do” lists that are time/date sensitive as well as include those items that will have a significant impact on the bottom line. For example, anything to do with client satisfaction should always rise to the top of the list (return calls, handle and fix a complaint) and on-going prospecting efforts which include press releases, mailing, newsletters, etc.**
2. **Create a client contact process that becomes an embedded part of the team culture.**
   a. *Design a client survey that can be delivered by mail or by email with a reward to the client for completing the survey. Ask questions of the client that have a direct relationship to the service delivery process as well as perceived benefit of the company. The more your brand of service is appreciated by the client, the better chance you have of creating advocates and long term profitable relationships.*
   b. *The business owner makes a telephone call to the client ten days after the service delivery asking “hot point” service level questions unique to the team. The power of the “big guy” connecting with a client of the team is immeasurable in terms of lasting impression that the owner actually cares about the service they received.*
   c. *If complaints are received about the service, establish the “what next” routine – gift, discount, money back or apology. A client who feels you have admitted to a mistake or own up to a problem and then seeks to resolve the issue will usually become a loyal supporter of your service.*
3. **Establish your prospecting process into categories of client, then identify how you will plan on keeping in touch with them in an effective way.**
   a. *Advocates - those past clients or contacts who can’t wait to rave to everyone about how good you are. They are unofficial advertising and won’t hesitate to recommend you to others. Plan on sending them something once every six weeks that has value and meaning and set up at least 3 opportunities a year to “drop by” their home or business to deliver a gift they will actually like. And by gift, I mean not something that is advertising piece, but a true gift… like a potted flowering plant. Your advocate list should be no more than 25-30 names.*
   b. *Past Clients – all individuals who have done business with you. Set up a contact drip campaign where something is sent to them at least once every eight weeks. Send material that educates or provides a value to them.*
   c. *Geographical or people farm – targeted area of contacts with whom you wish to do more business. Establish a drip campaign for something to be sent to them via email or regular mail once every 8 weeks.*
   d. *Create an annual event to thank everyone who has done business with you and invite them to the party. Renting out a movie theater or water park are popular alternatives or doing block parties and bringing all the food and entertainment.*
4. **Create a plan for routine contact with staff on personal levels (breakfast one on one) and as a team. Learn about the issues that are important to the people who work for you. Keep your phone out of sight and concentrate on the individuals for the duration of time you are with them. Bill Clinton is a master at making the people he’s talking to feel like they are the only person in the room. If you can master your need to multi-task at all times, you will find your team culture will become very positive.**
5. **Support the causes your team members support, within reason. By sharing the passions outside of the day to day routine of your staff, you not only show you are interested in them as people, but that you also appreciate their community involvement. For example, if they support the Children’s Miracle Network, find out how you can assist personally at silent auctions or financially.**

If you are already running a successful team that feels in control most of the business week, congratulations. Continue to fine tune your efforts on a daily basis and make that effort to mentor those who work for you.

Loyalty is something that is earned not given. Continue to be fair and conscientious and you will find the path to exceptional service and a positive culture are easily within your reach. **MAR**

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***Karel Murray**, author, humorist and business trainer speaks nationally and internationally. She is the author of “Hitting Our Stride: Women, Work and What Matters”, “Straight Talk – Getting Off the Curb”, co-author of “Extreme Excellence” and publishes a monthly online newsletter, “Think Forward® which has thousands of subscribers, The Profitability Blueprint Series: Career Building Concepts for the Real Estate Licensee and numerous articles in local, regional, and national publications. You can listen to exciting interviews at http://www.JustForAMomentPodcast.com. You can contact her at karel@karel.com or call 866-817-2986 or access her web site at http://www.karel.com*

A Commission After Termination: A Different Take

For many years, REALTORS® have had to deal with the situation in which a seller unilaterally terminates a listing prior to the end of its term and before the REALTOR® has procured a ready, willing and able buyer. In the past, if the REALTOR® challenged the termination and claimed a breach of contract, sellers have had success claiming that there has been no breach of contract because the REALTOR® had not yet provided a ready, willing and able buyer. A recent decision by the Court of Appeals may give future sellers and their counsel pause before taking that position.

The facts of the case are fairly straightforward. The buyer and the seller entered into an exclusive listing agreement on July 13, 2010. Under the terms of the exclusive listing agreement, the broker agreed to use commercially reasonable efforts to sell the seller's motel, to present the property to other real estate companies and to engage in marketing efforts to expose the property. The term of the listing agreement was for one year. The exclusive listing agreement also provided that in the event anyone with whom the broker had contact during the term of the listing agreement purchased the property during the following six months, the broker was to receive a five percent commission.

A couple of months into the listing agreement, the seller sent a letter to the broker advising the broker that it no longer wished to sell the motel. In response, the broker provided its own letter, indicating that it would end its marketing efforts during the remainder of the one-year term of the exclusive listing agreement and in order to protect itself during the six-month protection period, listed the eight people with whom the broker had contact. The letter provided:

> **While I do not terminate Exclusive Listing Agreements, I will cease our efforts toward marketing and selling the Howard Johnson- Traverse City, MI, through the remainder of the initial term of the Agreement, ending July 13, 2011. The secondary term of the Exclusive Listing Agreement expires six (6) months thereafter.**

In April 2011, eleven months after the initial date of the exclusive listing agreement, the seller sold the property to a third party with whom the broker had no contact. The broker sued the seller to recover the commission specified in the exclusive listing agreement.

As usual, the seller contended that the listing agreement had been terminated and that the termination was not a breach of the exclusive listing agreement because the broker had failed to provide any consideration, *i.e.*, the broker had failed to procure a ready, willing and able buyer and had no role in finding the eventual buyer of the property. The trial court found that the seller had sold the property within the initial twelve-month term of the listing agreement. The trial court found further that the seller's and broker's exchange of letters did not modify the listing agreement and that thus the broker was entitled to a commission.

On appeal, the seller again contended that the broker was not entitled to any commission, as the broker had not provided any consideration as of the time the seller attempted to terminate the listing agreement two months into its twelve-month term. In addition, the seller argued that regardless of the broker's intent with respect to the letters, the seller had the right to unilaterally revoke the agreement.

The Court of Appeals first noted that an exclusive listing agreement that has been supported by consideration may not be revoked by the listing party, *i.e.*, the seller. This, of course, has long been the law of Michigan. The difficulty for brokers has been in establishing exactly what is required in order for there to be deemed to have been sufficient "consideration." The Court of Appeals listed the three requirements which must be in place in order to make a listing agreement irrevocable: (1) a provision for exclusive sales rights (*i.e.*, it is expressly an exclusive listing agreement); (2) the term (length) of the agreement is reasonable; and (3) the broker has substantially performed its duties as promised "although the broker is not required to furnish an actual purchaser." The Court of Appeals then applied the three requirements to the present case. The broker's exclusive sales rights were set forth in the agreement. The one-year term of the agreement was not challenged by the seller as being unreasonable. Finally, the Court of Appeals determined that the broker had substantially performed the duties it owed to the seller. In finding the broker had provided sufficient "consideration," the Court held:

> **In the agreement, the [broker] promised to use commercially reasonable efforts to sell the property, to present the property to other licensed real estate companies upon request, and to engage in marketing efforts to expose the property. [Broker] did in fact make reasonable efforts to sell the property until [seller] informed it that [seller] no longer wished to sell. As such, [seller] could not have terminated the agreement through revocation, because the agreement was irrevocable.**

This case has at least two very important find-

by Gregory L. McClelland, Esq. MAR Legal Counsel, McClelland & Anderson, LLP

ings that should be noted by REALTORS® and their lawyers. First, the Court of Appeals expressly held that a broker with an exclusive listing agreement need not furnish an actual purchaser in order to recover a commission. Second, the Court held that the reasonable marketing efforts promised in an exclusive listing agreement are sufficient to provide consideration so as to make the listing agreement irrevocable.

As a side note, the seller in this case had also contended that the broker had to prove his costs in marketing the property in order to recover damages. The Court of Appeals rejected that claim in one sentence stating that an unambiguous contract provision stating a commission rate is sufficient to entitle a broker to damages.

This case is an unpublished decision of the Court of Appeals. Thus, it is not binding on a circuit court. However, it does provide a powerfully persuasive argument inasmuch as the Court of Appeals sets forth the rules in this situation in very straightforward and simple terms.

ONE FOR THE APPRAISERS

A relatively recent Court of Appeals decision involved a professional malpractice claim by Capital Bancorp against an appraiser. The defendant appraiser had appraised a 20-unit motel and a residence located on one parcel for Capital Bancorp in 2002. Capital Bancorp requested the appraisal in anticipation of a loan to the Lankas, who were going to develop the motel and the residence as separate units. Capital Bancorp intended to finance the motel and the residence separately with a separate mortgage on each. Thus, Capital Bancorp specifically requested that the appraiser not value the property as a single parcel, but rather appraise it as separate units. There was testimony that both the bank and the appraiser knew that appraising the property as separate units would increase the value. The appraiser completed the report valuing the motel and the residence separately with a total value of $801,000. Capital Bancorp loaned the Lankas $600,750. The loan was to mature on March 11, 2005.

The Lankas did not pay off the loan on March 11, 2005. Instead, Capital Bancorp issued a new note with a maturity date of May 11, 2005, and then another note with a maturity date of May 11, 2006. Capital Bancorp's policy was to obtain a new appraisal upon any refinance. In this case, it did not obtain a new appraisal until September 4, 2007. A different appraiser in 2007 valued the motel and the residence as a single parcel and reached a total value of $350,000. A third appraiser reviewed both the 2002 and 2007 appraisals in October 2007. The third appraiser provided a report stating that in 2002, the property should have been appraised as a single parcel and not separate units, and noting that the defendant appraiser was not licensed to appraise anything larger than four units.

Capital Bancorp sued the defendant appraiser on April 23, 2008, claiming professional malpractice. The defendant appraiser responded that Capital Bancorp's claim was barred by the two-year statute of limitations on professional malpractice claims against appraisers.

It was undisputed by the parties that the two-year statute of limitations had run. However, Capital Bancorp claimed that it was entitled to relief from the two-year statute of limitations based upon an exception in the statute of limitations which permits someone to sue after two years but "within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later," (*i.e.*, two years or six months after the claims should have been discovered). Capital Bancorp claimed that it filed suit within six months after discovering the alleged professional malpractice by the defendant appraiser.

The Court of Appeals held that the burden was on Capital Bancorp to prove it filed suit within six months after the time it should have discovered the alleged malpractice and that Capital Bancorp could not sustain its burden. The Court of Appeals noted that the Lankas loan was refinanced several times after it first matured on March 11, 2005, and that Capital Bancorp did not have the property reappraised until 2007. Even after having the property appraised in 2007, Capital Bancorp waited seven months after the 2007 appraisal before filing suit. The Court of Appeals found that Capital Bancorp should have known prior to being told by the 2007 appraiser that the property appraised as separate units would have a higher value than the property appraised as a single unit. Further, Capital Bancorp could not explain how or why it did not know that the defendant appraiser lacked the requisite qualifications to appraise the property when defendant's appraisal report to Capital Bancorp had explicitly stated that the appraiser was licensed and not certified. The Court found that Capital Bancorp's own inaction prevented it from discovering any claim against the defendant appraiser, and thus that it has been appropriate for the trial court to dismiss the claim.

This case may prove useful to appraisers who face claims based on appraisal reports they provided more than two years ago. Assuming that the claim is based upon some alleged glaring error by the appraiser, the entity making the claim should not be able to avoid the two-year statute of limitations based upon the so-called "discovery exception." **MAR**

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