A publication of Michigan Realtors®

MICHIGAN REALTOR®

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MARCH 2018

GAINING A NEW PERSPECTIVE

real estate vs hospitality

PLUS

Transfer Tax Reform Top Producer Shift?

Building Restriction Warning **Brokers & Agents**

Motivating Associates

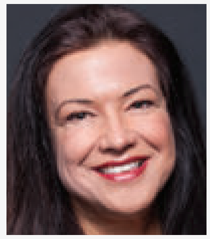
Volume 17 | Number 2

Congratulations!

GMAR MEMBERS RAISED THE BAR IN 2017!

2017 INDUCTEES


Teri Spiro
Invested $50,000 in RPAC


Sara Lipnitz
MR 2018 President

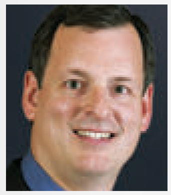

Ted Edginton
First Affiliate in Michigan Inducted into HOF


Yoshiko Fujimori

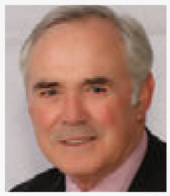
RPAC HALL OF FAME - *$25,000+ INVESTMENT*


Chris Courtney


Dan Elsea


Stuart Elsea


John McArdle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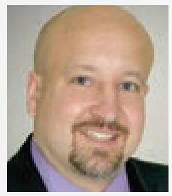
Gary J. Reggish


Teri Spiro


Furhad Waquad

SPECIAL THANKS

Special Thanks to John North, of Coldwell Banker Weir Manuel, on becoming the first Realtor® in Michigan to become a Platinum R Major Investor—that's a $10,000 investment in 2017!


John North

Greater Metropolitan Association of REALTORS®

MICHIGANREALTOR®

Features

Departments

03.18

{ March | Two Thousand & Eighteen | Volume Seventeen | Number Two }

BY SARA LIPNITZ, SFR, PMN

It looks to be a great year ahead

Here we are in the month of March already and I could not be more excited about the progress that Michigan Realtors® has made so far this year. Yes indeed, we have started this year on the right foot with a solid path in front of us as we *Go the Distance in 2018!*

We started off the year with the wildly successful RPAC Fundraising Forum & AE Meeting in Lansing. Over one hundred members attended! Incredible guests graced the program, including RPAC Trustee Chair, Gordon McCann as moderator and State Representative Jason Sheppard as guest speaker. This event always proves to be a key opportunity for AEs and members to learn and acquire the tools to make themselves heard where needed.

February saw us coming together at *Achieve*, held this year at the gorgeous Westin Book Cadillac in downtown Detroit. As you know, this is our premier event for members to network with some of the biggest influencers both in our state and industry while learning about real estate industry trends, legislative developments and leadership. For me, it was especially gratifying and humbling as I witnessed my leadership team sworn in by Justice Kurtis T. Wilder. What a talented and enthusiastic team we've assembled ready to effect change of their own!

Of course, our guest speakers deserve a round of applause and congratulations. (Anyone still chuckling from Jody Urquhart's presentation?) After all, it's the expertise of these professionals - and their willingness to share it - that helps all of us *grow* a little more, personally and professionally, and *give* a little more to exceed the expectations of our clients, our team, our families and our communities.

Let's look ahead. The next step in moving closer to achieving your goals for 2018 is to attend the **Broker Summit**. Why bother, you ask? Because this is huge. The Michigan Realtors® Broker Summit brings together elite brokers and Realtors® from around the state to discuss current real estate and market trends that impact your bottom line. You can expect engaging panel discussions and an important economic update from our special guest, Dr. Lawrence Yun. This all comes together to bring you the most powerful insight into our industry and help you devise and implement successful business strategies that will separate you from your competition and *Go the Distance*, now and into the future.

2018 BROKER SUMMIT

Wednesday, April 25

The Inn at St. John's, Plymouth

Visit *www.mirealtors.com* to register for all events.

This year is shaping up nicely and promises to be full of success on many levels. This is the perfect time for me to remind you to consider volunteering. Even at the lowest level, volunteering grows your network, brings you personal satisfaction and strengthens our industry. Enjoy the upcoming spring.

MICHIGAN **REALTORS®**

Michigan REALTOR® (ISSN 1053-4598, USPS 942-280) is published six times per year (January, March, May, August, September, November) by the Michigan Realtors®, 720 N. Washington Ave., Lansing, MI 48906.

Address letters, address changes and inquiries to: Michigan REALTOR®, 720 N. Washington Ave., Lansing, MI 48906: 800.454.7842: Fax 517.334.5568. www.mirealtors.com: e-mail contact@mirealtors.com. Subscription rates: $8 per year (included in dues) for members, $25/year nonmembers. Periodicals postage-paid in Lansing, Michigan 48924 and additional mailing offices. POSTMASTER: Send address changes to the Michigan REALTOR®, 720 N. Washington Ave., Lansing, MI 48906

COMING EVENTS

April 25, 2018
Broker Summit
The Inn at St. John's, Plymouth
Register on *Mirealtors.com*

June 7, 2018
NAR Tech Edge
The Cadillac Room, Lansing

September 26-28, 2018
The Convention
Grand Traverse Resort & Spa, Traverse City

Graduate Realtors® Institute (GRI)
GRI-I, GRI-II and GRI-III
Find courses near you:
www.mirealtors.com/Education-Events
2018: 50th Anniversary of the Fair Housing Act

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EQUAL HOUSING OPPORTUNITY

BY BRAD WARD, VICE PRESIDENT OF PUBLIC POLICY AND LEGAL AFFAIRS

Reacquainting You with (U)

Taxes seem to be a theme nowadays. Whether it's the looming April 15th income tax deadline, significant reform at the federal level or providing expanded personal exemption relief on our state income taxes — everyone is talking. Michigan Realtors® is also firing up a conversation on the Real Estate Transfer Tax (RETT) to create fairness for all homeowners when selling a principal residence that has declined in value.

You read that correctly, there is an exemption to Michigan's RETT for the sale of a principal residence that has lost value. The exemption can be found in subsection (u) of the act, and should be as familiar to you as it was subject of similar legislation just a few short years short years ago. If rising home values and a stronger market have caused you to forget our old friend (u), please allow me to reacquaint you with this important exemption that can save your clients money and, in some cases, earn them a refund of a transfer tax already paid.

The "Declining Value Exemption" has been around since the RETT was signed into law as part of the implementation of Proposal A of 1994. The state RETT is .75% of the sales price of property in Michigan, and while it would be nice not to have ANY transfer taxes in Michigan, it is a significant funding mechanism of the School Aid Fund, and therefore not easy to eliminate. Originally subsection (t), changes to the RETT have relocated it to subsection (u). However, it wasn't until the market started to hit the skids in 2007 that the exemption was fully understood.

The declining value exemption has been subject of a 2008 Attorney General's opinion, litigation all the way up to Michigan's Supreme Court and codification in Michigan law in 2015. In essence the exemption, as it stands today, provides the following:

> *On the sale of your principal residence, if the State Equalized Value on the day you sell it, is at or below the State Equalized Value on the day you bought it, and the transaction was "at arm's length," you are exempt from the State Real Estate Transfer Tax.*

When Public Act 217 of 2015 was signed into law, it included a provision making it retroactive to sales of a principal residence on or after the date of the Supreme Court case, June 24, 2011. Meaning that those sales after June 24, 2011 that met the declining SEV threshold were entitled to a refund as long as they filed the form 4 years and 15 days from the date of closing. Realtors® across the state were able to contact past clients and get them thousands of dollars in transfer tax refunds by simply filling out the state form along with copies of the HUD-1 and the recorded deed.

By clarifying exemption (u) past and current sales could take advantage of the declining value exemption as it was intended. However, there were a number of homeowners that were not able to take advantage of the exemption…those that purchased new construction.

Many times, when a homebuyer purchases new construction the initial SEV is based on dirt… the unimproved land. So, when the owner applied the purchase SEV to the formula for transfer tax exemption (u), their base line was dirt. While prices fell significantly, it was rare that they fell below unimproved land. In the ideal situation, the baseline for calculating the SEV at the time of purchase should be the SEV when the property is fully improved. The Michigan Department of Treasury took a strict stance on the reading of the law and denied many of the new construction claims.

In 2017, Representative David Maturen (R -Vicksburg) introduced House Bill 4643 to clarify that the declining value exemption should also apply to new construction, setting the purchase SEV at the later of the issuance of the certificate of occupancy, or the transfer of ownership. This new bill will further refine exemption (u) to make it available to homeowners that were not able to take advantage of the 2015 law. Indeed, HB 4643 is also retroactive back to June 24, 2011. Meaning that if the bill is signed into law, sales of principal residence that have occurred within 4 years and 15 days from the time the law takes effect would be entitled to a transfer tax refund.

The bill is still early in the process, and at the time of this writing has received its first hearing the Michigan House Tax Policy Committee. The bill enjoys wide bipartisan support in the House of Representative, as well as the Michigan Chamber of Commerce and the Michigan Department of Treasury. With the Department of Treasury on board, it is a good indication that this bill will hopefully become law sometime this year.

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*. ●

To get **REALTOR® PARTY MOBILE ALERTS**, text "Realtor" to 30644 .

"MICHIGAN REALTORS® IS ALSO FIRING UP A CONVERSATION ON THE REAL ESTATE TRANSFER TAX (RETT) **TO CREATE FAIRNESS FOR ALL HOMEOWNERS WHEN SELLING A PRINCIPAL RESIDENCE THAT HAS DECLINED IN VALUE**."

Are Top Producing Teams Shifting from Traditional Brokerages?

What does the Glassdoor employer site tell us about real estate?

BY STEVE MURRAY

Little known to the real estate industry, Glassdoor, a giant employer review/job search and compensation site, has made huge inroads into corporate America and throughout the world. According to the company, over 600,000 employers are reviewed on Glassdoor, and hundreds of thousands of jobs can be located at the site. Employees use it to check their salaries compared to others in similar jobs. Millions of employer reviews have been posted.

What does this have to do with real estate brokerage?

It's clear; we are amid yet another periodic shift of commission dollars from brokerage to agents. It's not just Compass that's moving this, but also brokerage firms across the landscape of the industry. Realogy's NRT unit has, for some time, selectively recruited top producers with signing bonuses, but they are not the only ones. Further, some 15 years ago we saw the emergence of firms such as Realty One Group and HomeSmart, among others, which offered low, flat-rate plans of fixed dollar monthly and transaction fees. EXP Realty is also following a low-cost structure where top producers keep most of what they generate. Add to this the consolidation of market share among fewer, high-producing agents, and it would appear to be a perfect storm for brokerage firms.

But the data we collect from the industry about high-producing teams and individual agents suggests that no huge shift is taking place among these high producers. The great majority are affiliated with well-known local and national brand companies. From our research with the California Association of Realtors® last spring, we know that teams highly value the strength of local and national brand names.

So, we can say that *for now,* there is no big shift in top-producing agents and teams away from traditional realty firms towards the low-cost models that are now in their own growth mode.

We note that if all agents cared about was the cost of the brokerage, then every national brand and leading traditional realty firm would be out of business.

One idea would be for real estate brokerage firms to invite Glassdoor into their world. Perhaps having your agents and employees feel free to comment on the virtues of your firm would be worthwhile for both recruiting and retaining your agents. Yes, you get some bad with the good, but imagine the power of great reviews and the ability to address shortcomings in what you are offering. Leaders can gauge what they need to focus on in terms of improving their services, culture and relationships.

We don't know all the costs, restrictions and reporting that Glassdoor offers employers, but it seems to us that if we allow the battlefield for agents and teams to be solely about cost, many will lose. But, if we dig deep into how our agents and employees view our companies, perhaps traditional realty firms can build stronger and deeper relationships with their staff and agents to the extent that the cost of doing business for agents will be viewed in a more balanced way.

One last little note. Among the founders of Glassdoor is Rich Barton, co-founder of Zillow. Once again, he has built a tool that creates transparency where there was little before

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> It's clear; we are amid yet another periodic **SHIFT OF COMMISSION DOLLARS FROM BROKERAGE TO AGENTS.**

how REAL ESTATE & *hospitality* are similar

Real estate is a unique industry, but it does not exist in a bubble. The changes the industry is going through right now —I've seen them before.

BY SCOTT GOWDISH,
EXECUTIVE VICE PRESIDENT OF DEVELOPMENT,
LONE WOLF TECHNOLOGIES

I'd like to share some similarities between real estate and the hospitality industry. To me, these disparate industries are more like parallel universes. In this article, I'll draw a few comparisons between the two and demonstrate why their similarities are cause for optimism, not concern.

First, a little background on me. Before coming to Lone Wolf Technologies, I spent most of my career (20 years or so) developing enterprise software for the travel and hospitality sectors. My focus was—and still is at Lone Wolf—to make the transaction simpler and improve the lives of the buyer and seller. This entailed changes to almost everything, from automation to user experience, commercial booking engines to e-Commerce platforms. Let me tell you, making these changes was no simple task. The travel and hospitality sector lagged five to seven years behind standard IT, and the industry's sloth-like speed of adoption made bringing new product(s) to market a more significant challenge than it should've been. We find this lack of speed of adoption to be similar in both the hospitality and real estate verticals.

SIMILARITY #1: *Old processes and technologies at the center of it all*

When it comes to IT, the real estate and hospitality verticals tend to lag behind the rest of the market due to antiquated systems of inventory that monopolize consumers' access to their data—data that they need to make quality decisions.

In hospitality, this antiquated system is known as the Global Distribution System, or GDS. Its near monopoly on the industry is very similar to what brokerages and agents see in their relationship with the MLS. Challenges plaguing both spaces are legacy systems, unnecessary bureaucracy and proprietary connectivity options. However, hospitality has been able to move beyond these challenges with the banding together of inventory vendors and providers. Will real estate be able to do the same?

Hospitality also has some of the most demanding customers and revenue models in existence. I quickly became aware of the industry's need to provide flexible solutions to better suit the partners for whom we provided services and solutions. Most of these companies made their brand (and the processes within these brands) the cornerstone of their connection to patrons. I see the same construct here in the real estate space. Brokerages need flexibility in their software to express their unique brand. For technology to be flexible, it needs to be modern. So, before the industry can move forward, the technology needs to catch up.

SIMILARITY #2: *Consumers are forcing our partners to justify their value*

In the travel agent space, the elimination of commissions by the inventory providers (hotels, airlines, cars) forced the agency and corporate travel providers to adapt to a changing revenue model. As a result, agencies were forced to justify a service fee and provide higher service levels to stay in business. In this case, the consumer benefitted the most.

In real estate, the proliferation of real-time pricing data and changes to the rules governing the sale of property is going to result in a new competitive landscape that will benefit consumers in much the same way. Brokerages will need to optimize the transaction and remove the number of hands it goes through before being settled. This will allow for the reduction of costs to the consumer, and also provide a better margin to the broker. History, as always, repeats itself.

SIMILARITY #3:
Lack of Transparency Leads to Disruption

In our space, disruption is coming from online brokerages and technology providers (i.e., Zillow Group, Lone Wolf Technologies, et al). Travel saw this same disruption when Expedia, Orbitz and Travelocity gave consumers the power to book for themselves, while also lowering fees and providing the consumer a better, more transparent experience. Real estate is seeing the same types of pressures, as online and paperless transactions are becoming commonplace while fixed-fee brokerages are looking for more optimizations around the transaction as their margins get squeezed. Again, the consumer is the beneficiary of this disruption.

These are just three of the many similarities between the Real Estate and Hospitality verticals. You'll notice that the two industries are alike in how they view their customer, sell their brands and define their value proposition to their agents and associates.

Overcoming the challenges facing the hospitality industry wasn't easy, but we got it done. And, real estate issues will be reconciled also. The opportunity to turn these challenges into a better user experience, which in turn means a more profitable industry, is a thrilling proposition. ●

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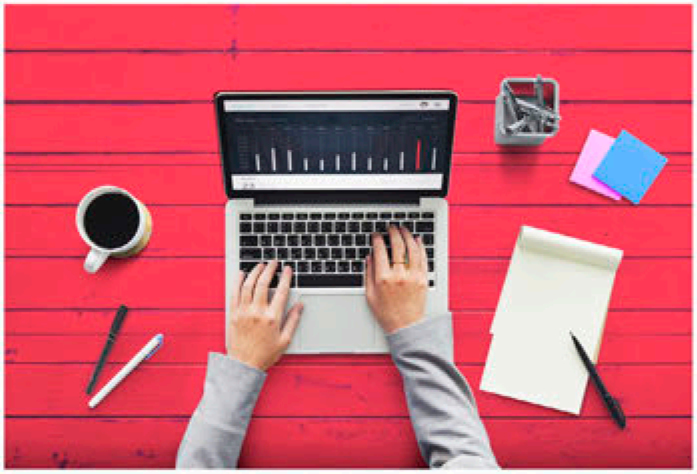
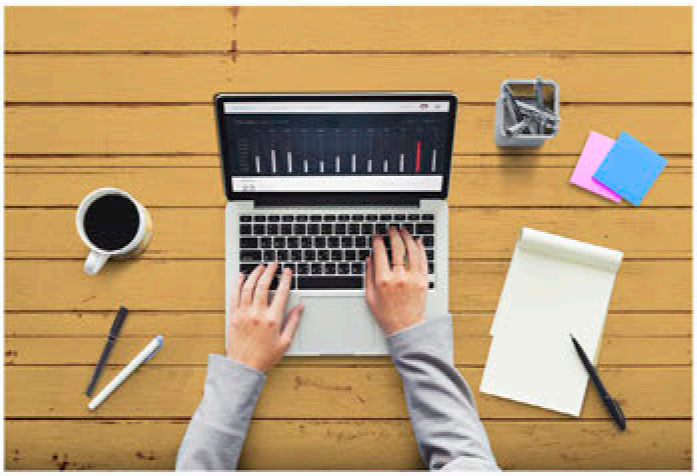
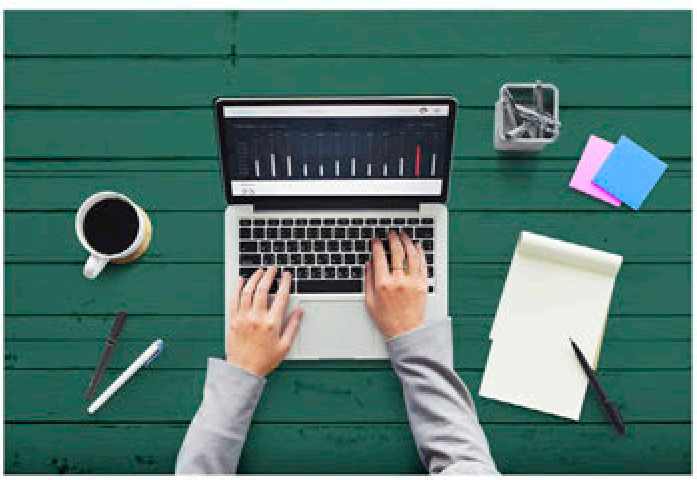
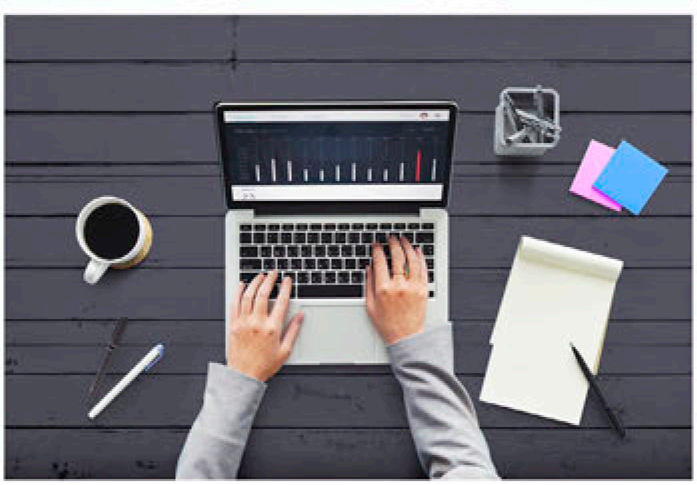





Office/Agent Productivity

BY SCOTT WRIGHT

Real estate brokerage is a fluid and dynamic business. It must be if brokers want to survive this ever-changing industry. Various structural changes have forced adaptation, and this is readily apparent when you look at the numbers. The recent update of our Benchmark Report quantifies some of the changes we are seeing.

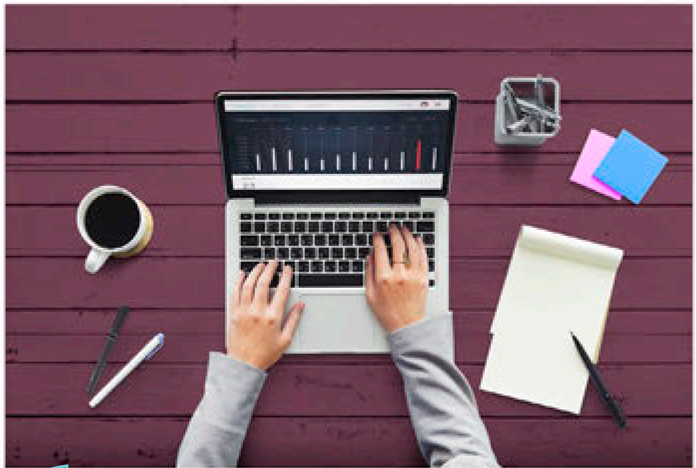
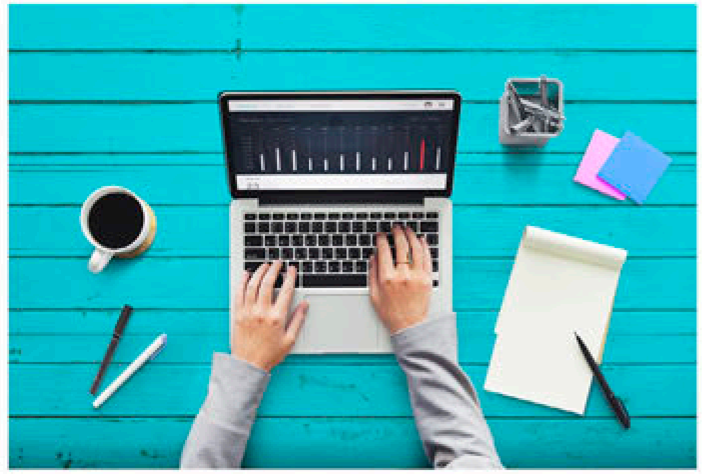
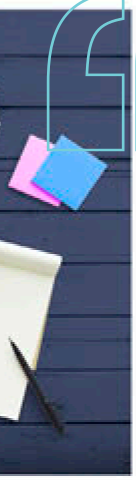
Last month, we looked at the industry's *Retained Company Dollar*. Not surprising, our recent Benchmark Update showed a continued decline in what brokers are retaining. Thankfully, most brokers are resilient and still find ways to turn a profit. This month, we're going to look at what the numbers are showing when it comes to the agent and office-level productivity, an important area that all brokers carefully consider.

Feeding the Benchmark Report is data from brokers all over the nation, of all shapes and sizes. To standardize and make things equally comparable, we break everything down to the office level. A couple of the data points we look at relating to agent productivity are the agents per office and the transaction sides per office. As detailed in our recent update, the three-year running average shows the average office houses 90 agents, with these 90 agents closing an average of 717 sides ($217m in volume). This equates to just under eight transactions per agent.

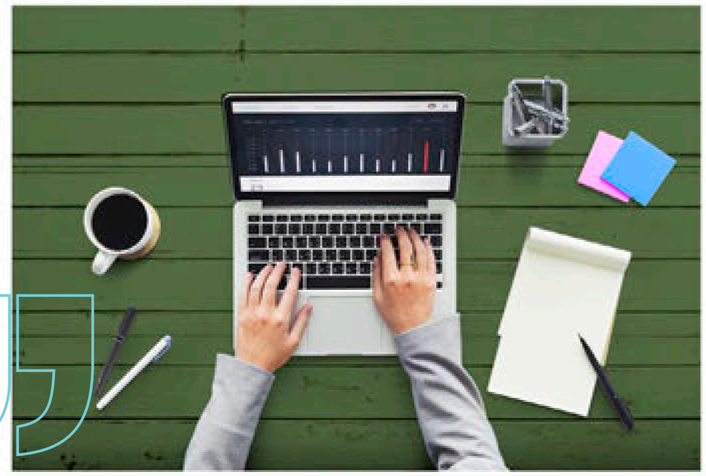
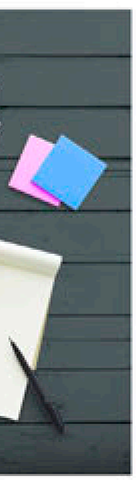
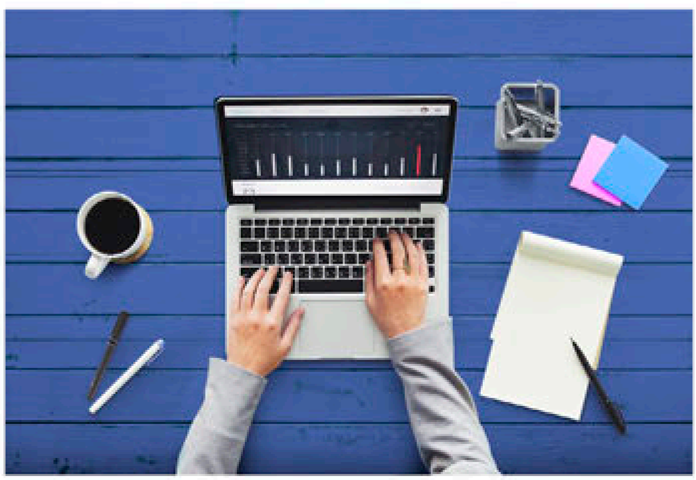
Given the technology-enabled mobility of agents, it's no surprise that office space has diminished in importance. Regardless, it's still fascinating to see this trend play out in such rapid fashion. As recently as 2012, the average office contained just over 50 agents, and 2017 will see average offices containing 100 agents—double in only five years.

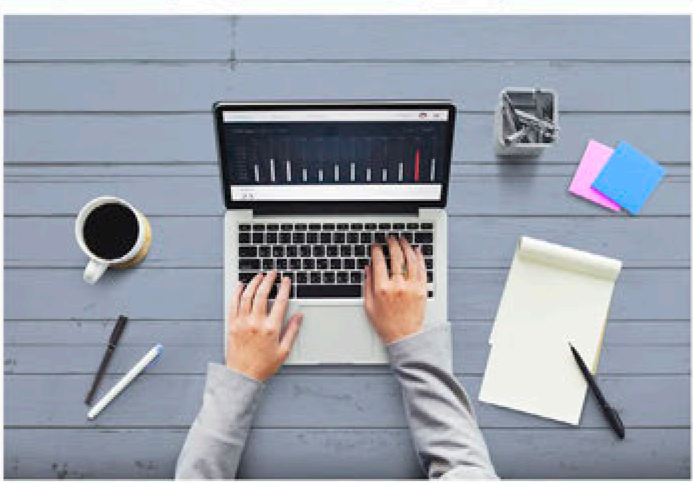
While these national numbers are interesting, they aren't as useful for a broker who wonders how they compare to their regional peers. The fact is, a brokerage firm located in Las Vegas operates a lot differently from one in Worcester, Mass. Since we use this benchmark data to help our valuation clients, it's much more useful to parse it out regionally. As you can see, a regional breakdown indeed shows some staggering differences in how brokers operate depending on where they're located.

Those intimately familiar with the residential real estate industry won't be too surprised by these disparities. But for those who aren't, these regional differences sure are head-scratchers. If you take these numbers at face value, Southern

". . .a regional breakdown indeed shows some **STAGGERING DIFFERENCES IN HOW BROKERS OPERATE** depending on where they're located."



offices appear to cram their agents in like sardines, while Northeastern offices appear to be less profitable.

If you zoom out, there are other factors that play into the greater picture. For example, while analyzing this office/agent production data, it's useful to couple it with such performance metrics as retained company dollar. While offices in the Northeast appear to be less profitable based on volume, we need to consider that retained company dollar in this region is well over 30 percent higher than in the South. Home prices are also nearly 20 percent higher on average in the Northeast.

As a percentage of gross margin, occupancy costs aren't all that different between the Northeast and the South. What is different is Northeastern agents, and customers for that matter, expect a presence in every town. The southern offices tend to be larger by square footage, and brokers don't feel it necessary to have a physical presence in every little town.

Northeastern agents also expect more support from their brokers, which is why salary and marketing expenses tend to be higher as a percentage of gross margin than they are in the South. To afford this, we circle back around to retained company dollar. Northeastern agents accept lower splits, which allows their brokers to pay for these additional expenses.

This benchmark data is incredibly valuable for understanding industry trends. It's even more valuable for brokers looking at how they're doing compared to their regional peers. Overall, it'll be interesting to see how brokers continue to adapt to the strategic changes that this industry continues to present to them.

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How Do You Keep Your Associates Motivated?

Strategies for keeping sales associates on a success track throughout the year.

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

It's a new year. Goals are set. Business plans are written. Enthusiasm is high. Now what? Will your associates execute their business plans and achieve their goals? Or will they be like the health club member who loses focus and commitment after January? How do you help them stay on track? Here are three simple steps.

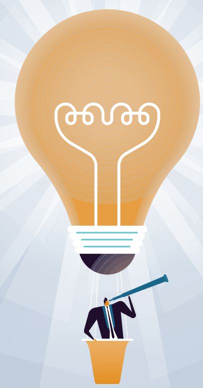
1. Know their why. What are their reasons for living? Perhaps it is to provide for their family, pay for their kids' college education, fulfill a dream to live on water, or be financially independent. The why is what gets them up in the morning. It is the rocket fuel that motivates them. Their why needs to be funded and real estate is a great way to do it. There is no upper limit on their income. You need to know their why.

2. Focus on activities. Associates are great at setting goals. Unfortunately, most of them are not disciplined at doing the activities that will achieve the goals. They need your help. First, show them the productive activities that generate business—personal notes, live interviews, real estate reviews, open houses, value added mailings, etc. Focus on the right activities and production takes care of itself. Help them 'gamify' these activities (like a Fitbit) by setting activity goals and tracking them.

When an associate falls off track and is not doing their activities (resulting in a sales slump), don't scold them like their mother who is upset because they didn't make their bed. Simply, help them reconnect with their why. Ask them, "have you given up your dream to provide for your kids' college education?" They are more motivated by their why than by your scolding.

3. Rewards and Recognition. In a study of 65 potential incentives in the workplace, conducted by Dr. Gerald Graham of Wichita State University, the most motivating incentive was simply a manager who "personally congratulates an associate for doing a good job." However, 58 percent of the respondents said their manager rarely – if ever – offered such simple praise. Graham concluded, "It appears that the techniques that have the greatest motivational impact are practiced the least, even though they are easier and less expensive to use."

> "Will your associates **EXECUTE** their business plans and **ACHIEVE** their goals?"



Rewards usually involve giving something tangible—cash, gift certificates, trophies, etc. Recognition, on the other hand, usually involves intangibles such as words of praise. As commissioned sales associates, their primary rewards come through their production. Recognition is where you come in. There are three types of recognition and you need to practice all three.

Recognizing Achievements. Frederick Herzberg's ground-breaking research on motivation in the 1960s led him to discover two powerful motivators which, when combined, have the potential for explosive results. These motivators were the desire to achieve and recognition and appreciation for that achievement. At the end of every week your associates will have achieved any number of things—some big, most small. Whatever their achievement was, you want them to feel that it was valuable.

Recognizing Behaviors. As a manager, you are in the business of managing behavior. Encourage your associates to perform the productive activities and their production will follow. When you see them doing the productive activities, reinforce their behavior through reward and recognition.

Recognizing Attributes. While recognizing your associates for what they do is essential, you also want to appreciate and value them for who they are. Recognize them for their loyalty, creativity, work ethic, humor, teamwork or something else. By highlighting their personal qualities and characteristics, you place value on them as people.

Follow the three steps above and read the excellent book, *Nine Minutes on Monday, The Quick and Easy Way to Go from Manager to Leader* by James Robbins. You will keep your associates motivated and productive throughout the entire year. They will achieve their goals and so will you.

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BY GREGORY L. MCCLELLAND, ESQ.,
LEGAL COUNSEL, MCCLELLAND & ANDERSON, LLP

Restrictions: Caveat Emptor

Any home in a condominium project and most homes in a subdivision will be subject to some type of restrictions. Restrictions can be found in deeds, separately filed subdivision restrictions or in the case of a condominium project, the condominium master deed and bylaws. A recent Court of Appeals decision makes clear that when purchasing property that is subject to restrictions, buyers need to make certain that they fully understand how those restrictions limit the use of the property. This is particularly true when purchasing a vacant lot or site condominium unit for the construction of a new home.

"A recent Court of Appeals decision makes clear that **WHEN PURCHASING PROPERTY THAT IS SUBJECT TO RESTRICTIONS**, buyers need to make certain that they fully **UNDERSTAND HOW THOSE RESTRICTIONS LIMIT THE USE OF THE PROPERTY**."

In the recent case, the Goyings had purchased a lot in the Timber Ridge Bay Subdivision. The Goyings had worked with Heritage Custom Builders to design their home using computer assisted design ("CAD"). According to the design developed by the Goyings and Heritage Custom Builders, while the majority of the home was to be stick-built on the lot, a portion of the home consisted of modules constructed offsite at the Ritz-Craft Facility in Jonesville, Michigan. The modules were delivered to the Goyings' lot on a trailer. Prior to delivery, a foundation was constructed on the lot. Upon delivery, a crane was used to place the modules on the foundation. Upon placement of the modules, additional work was necessary to add in the "electrical, duct work, plumbing, roof and the various components that make a house a habitable home."

The Goyings were sued by the Thiels who also owned a home in the Timber Ridge Bay Subdivision. The Thiels sued the Goyings claiming that the construction of the Goyings' home violated the Covenants, Restrictions and Conditions for the subdivision and requested that the trial court issue an injunction requiring the Goyings to tear down their newly constructed home. The Covenants, Restrictions and Conditions at issue were as follows:

> **COVENANTS, RESTRICTIONS AND CONDITIONS**
>
> ***Section 1. Establishment of Restrictions.*** *In order to provide for congenial occupancy of the Premises, and for the protection of the value of the Parcels therein, the Parcels shall be subject to the limitations set forth below:*
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> ***
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> **B. Building and Use Restrictions**
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> ***
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> ***3. Relocated Residences*** *No residences, including modular, manufactured,* ***mobile*** *or* ***prefabricated*** *homes, may be moved from a location outside the Premises and placed or located within a Parcel within the Premises.*
>
> ***4. Manufactured Housing*** *Units No manufactured homes whether classified as a* ***mobile*** *home,* ***modular*** *home, or otherwise, and no prefabricated homes shall be permitted on any Parcel in the Premises; regardless of which building codes are applicable to said homes.*
>
> **C. Residential Dwelling Restrictions**
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> ***
>
> *4. The height of any building will not be more than four (4) stories. If any portion of a level or floor within a residence is below grade all of the level or floor shall be considered a basement level.* ***All residences shall be stick built on site*** *and no geodesic dome; berm house, pre-fabricated or modular home, mobile home, shack or barn will be erected on any of the Parcels unless provided for herein.*

("Covenants").

At summary disposition motions heard prior to trial, the Thiels argued that the Goyings' home was a modular or pre-fabricated and thus violated the Covenants. The Goyings argued that their home was a "mix" or a "hybrid" with the majority of the home being stick-built onsite and only a minor portion of the home being built offsite at the Ritz-Craft Facility. The trial judge refused to grant summary disposition to either party, but, instead, held a three-day trial to determine whether the Goyings' home violated the Covenants.

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At trial, the Goyings successfully argued that the meaning of the words "modular" and "pre-fabricated" as used in the Covenants was ambiguous. The trial court found that all homes within the subdivision had some pre-fabricated parts, e.g., trusses or cabinets. The Covenants did not specify how much of a home could be constructed offsite before it would be deemed "modular" or "pre-fabricated."

The trial court focused on the intent of the developer at the time the Covenants were placed on the property. The trial judge determined that the Goyings' home did not violate the "congeniality standards" as established by the Covenants and did not endanger the value of other parcels of property within the subdivision. The trial court specifically found that in reviewing the pictures of Goyings' home provided by the Thiels, it was apparent that the home was not an eyesore and that it was unlikely that anyone would ever know that any portion of the Goyings home had been built anywhere but onsite. The trial court determined that the Goyings' home met all the standards and specifications of a stick-built home. The trial judge specifically found that:

> *While an entirely modular, premanufactured or prefabricated home cannot be moved onto the properties located within Timber Ridge Bay, the home designed by [the Goyings] is sufficiently constructed, valued and congenial as to the allow it to remain. A systems-built home of similar value, construction and congeniality shall be allowed on the Timber Ridge Bay properties.*

The Thiels appealed the decision of the trial court to the Michigan Court of Appeals. Before the Court of Appeals, the Thiels argued that the Covenants were not ambiguous – and that they clearly prohibited pre-manufactured or modular homes. The Court of Appeals agreed. The Court of Appeals held that if restrictive covenants are unambiguous then they must be enforced as written. The language within a restrictive covenant "is to be taken in its ordinary and generally understood or popular sense, and is not to be subjected to technical refinement, nor the words torn from their association and their separate meanings sought in a lexicon." The Court of Appeals specifically referenced a prior decision by the Michigan Supreme Court cautioning courts against overstepping their authority when interpreting restrictive covenants.

Obviously, the trial court was trying to find an equitable solution to a difficult situation. In the eyes of the trial judge, having the Goyings tear down a new, perfectly habitable home was not the most equitable solution or the best use of the parties' resources. The Court of Appeals acknowledged that these kinds of cases are difficult. However, the Court of Appeals found that the Goyings' home was in clear violation of an unambiguous restrictive covenant and therefore the only solution was to order that the Goyings' home be torn down.

In reaching this decision, the Court of Appeals rejected the Goyings' argument that their home, albeit being modular or pre-fabricated, was just as good as a stick-built home. The Court of Appeals found that the construction and the value of the home were not at issue. Instead, the Court of Appeals found that:

> *. . . [the Goyings'] tactic in presenting numerous witnesses who testified that [the Goyings'] home was high-quality and that any assumption to the contrary was unfounded supports the basis for the restrictive covenant. Justified or not, it is the perception that modular homes are of lesser quality and will bring down the value of the neighborhood. The restrictive covenant was drafted for that precise reason. The trial court was not at liberty to decide whether it agreed with the covenant; it was required to enforce the restrictions as written.*

It is not clear from the Court of Appeals decision whether the Goyings had initially appreciated the risks involved in having a portion of their home delivered in three modules. The Court of Appeals' decision does not lend any insight on how much of a home must be constructed onsite in order for it to be deemed to be a stick-built home. It does appear clear that if any portion of the home is delivered in modules, it will be considered "modular." The big picture lesson from this case is that when purchasing property subject to restrictions, buyers should take the time to fully understand those restrictions prior to purchase to make certain that they can use the property for its intended purposes. Otherwise buyers may find themselves in a catastrophic situation like the Goyings where their newly constructed home must be torn down. A complete tear down of a new home is an extraordinary remedy, but this recent decision demonstrates that a court may order removal of a finished home if it finds that the home was built in violation of applicable restrictions.

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