A publication of Michigan Realtors®

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11.17

{ November | Two Thousand & Seventeen | Volume Sixteen | Number Six }

BY JASON COPEMAN, GRI

An excellent year draws to a close

It's been an excellent year to be at the helm of the Michigan Realtors®. Not only have I witnessed the success of several new programs, but I have also seen the exponential growth of our Leadership Academy, RPAC Participation, and the Placemaking program.

One of the many ways we've achieved success this year is through participation in local leadership. It's gratifying to see so many new faces in the 2018 District Director Elections. If you haven't yet, I'd like to urge you one last time to contact your local association and find out how to get involved. Although it may be too late to run for elected office, it's never too late to volunteer within your organization and get involved in small ways. There's always next year to which you can look forward.

Placemaking is always an excellent way to make an impact in your community. The Lighter, Quicker, Cheaper program through Michigan Realtors® has had another successful year, providing grant money to cities all over the state such as Howell, South Haven, Ypsilanti and more. Placemaking projects are small, inexpensive, and relatively easy to implement. Michigan Realtors® is offering even more LQC placemaking grants in 2018. If you have any ideas for your own hometown, please visit *www.mirealtors.com* for more info.

Speaking to our involvement this year, the Michigan Realtors® Leadership Academy accomplished some great things in 2017. In its second year, the academy was able to build upon their goal of developing leaders who have demonstrated leadership potential through job-related and community activities, creating a network of industry experts across the state that are actively involved in improving our association and profession. Congratulations to our 2017 graduates, and I look forward to seeing the growth this program experiences in coming years.

RPAC also experienced growth this year, with the implementation of several initiatives to keep involvement high. RPAC continues to be a focal point of many local associations by coordinating fundraising events statewide. It was an honor hosting Governor Rick Snyder as our RPAC Investor Appreciation Luncheon guest speaker at The Convention. His insights into the future of Michigan and the real estate industry heightened The Convention experience even further. Realtors® play an integral part in the construction of our state's policy. Michigan Realtors® make our voices heard on Capitol Hill through RPAC. For a complete recap of The Convention, read the full story in this issue.

I would also like to extend my well wishes to the incoming 2018 officers, as well as our new President, Sara Lipnitz. Sara has done an outstanding job this year and I can only imagine how she will inspire us to "Go The Distance" in 2018. I hope you all have an excellent holiday season, and thank you for the opportunity to lead you this year.

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February 1-2, 2018
Achieve
Westin Book Cadillac, Detroit

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September 26-28, 2018
The Convention
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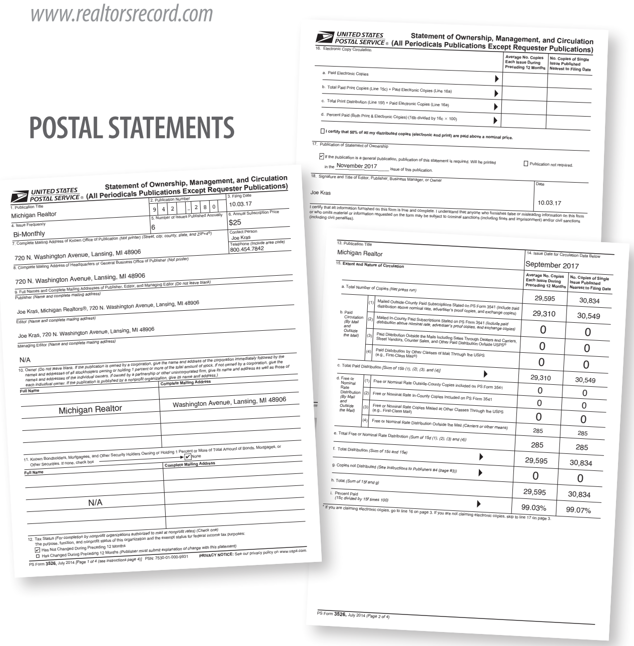

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	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	0	0
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)	0	0
c. Total Paid Distribution [Sum of 15b (1), (2), (3), and (4)]		29,310	30,549
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541	0	0
	(2) Free or Nominal Rate In-County Copies Included on PS Form 3541	0	0
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail)	0	0
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	285	285
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))		285	285
f. Total Distribution (Sum of 15c and 15e)		29,595	30,834
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		0	0
h. Total (Sum of 15f and g)		29,595	30,834
i. Percent Paid (15c divided by 15f times 100)		99.03%	99.07%

* If you are claiming electronic copies, go to line 16 on page 3. If you are not claiming electronic copies, skip to line 17 on page 3.

PS Form 3526, July 2014 (Page 2 of 4)

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c. Total Print Distribution (Line 15f) + Paid Electronic Copies (Line 16a)		
d. Percent Paid (Both Print & Electronic Copies) (16b divided by 16c × 100)		

☐ I certify that 50% of all my distributed copies (electronic and print) are paid above a nominal price.

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I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

EQUAL HOUSING OPPORTUNITY

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

Making Homeownership a Priority

This fall, homeownership is taking center stage in policy discussions at both the state and federal level. In Michigan, bills have been introduced to create a first-time homebuyer savings account program. While in Washington, D.C., Congress has set its sights on tax reform that could limit the tax benefits of homeownership. Both Michigan Realtors® and the National Association of Realtors® are working hard to make sure our voice is heard as elected officials debate these important pieces of public policy.

FIRST-TIME HOME BUYER SAVINGS ACCOUNTS (FHBSA)

Recently, Senate Bills 511 and 512 were introduced by Senators Peter MacGregor (R- Rockford) and Ken Horn (R- Frankenmuth), respectively. These bills provide financial incentives in the form of Michigan income tax relief for the establishment of a savings account to be used for a first-time home purchase in this state. These bills squarely place a priority on financial literacy and saving for the purchase of a home.

These bills are modeled after a similar program for college savings known as the Michigan Education Savings Program, or MESP. Like the MESP, the first-time homebuyer savings account is established for a beneficiary, like a child, grandchild, or even the prospective homebuyer themself. A Michigan income tax deduction is available every year for investments made in the account (up to $5,500 for an individual, $10,000 for married couples); and savings are allowed to grow tax-free without penalty, so long as the funds are used to purchase a first time home here in Michigan. Unlike the MESP program, the FHBSA is self-directed, meaning you can pick the investment account that's right for you.

On top of promoting smart savings, these bills also attempt to head off the "brain drain" of our young college graduates that are leaving the state. Down payment requirements and student loan debt continue to rise. As young people graduate from college it's very difficult to start saving for a home when faced with student loan payments, rent, car, and other bills. If a FHBSA is in place to give that college graduate a leg-up on a home here in Michigan, we may be able to retain some of the great talent that our colleges and universities turn out every year.

One additional unique feature of the Michigan FHBSA legislation is that the definition of a "first-time homebuyer" is someone that has not owned a principal residence within the last three years. The definition expands the use of these accounts beyond what one would normally conceive of as a first-time buyer and make them available to someone that previously lost a home to foreclosure or other hardship. Michigan had a number of homeowners displaced during the economic downturn who are now on their feet and ready to get back into a home. The FHBSA would allow for an extra incentive towards saving for that home.

There are currently only a handful of states that have similar accounts for first-time home purchasers. All of these laws have been passed within the last few years, so there isn't a full picture of the type of success these accounts will have. We do know that there is a tremendous amount of secondary economic activity in each home purchase. It is this type of activity that makes it attractive for the state to forego some of the current tax revenue for a larger payout down the road.

The bills are currently in the Senate Finance Committee awaiting a hearing. Michigan Realtors® is working with NAR to provide financial and statistical analysis that will show the benefit to the state in having a program like this on the books. When this law is passed, Realtors® everywhere will have the opportunity to become ambassadors for the program with their clients, family, and friends. Michigan has always enjoyed one of the higher homeownership rates among the states. These bills carry on that tradition and continue to make our state stronger.

FEDERAL TAX REFORM, THE GOOD AND THE BAD

It has been discussed for a number of years that Congress is placing everything on the table when it comes to providing meaningful tax reform in the United States. Tax reform can provide economic stimulus and relief to taxpayers across the nation, but NAR has made no secret that they will not accept a tax plan that does harm to homeownership.

For nearly a century, homeownership has been incentivized in the tax code through the Mortgage Interest Deduction (MID). When combined with

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additional benefits to owning property, such as the deduction for state and local property taxes, there are a number of advantages to being a homeowner in the United States, instead of a renter. Studies show that investing in real estate is still one of the soundest investments someone can make.

NAR has made protection of the MID it's number one talking point in meeting with members of Congress about tax reform. When Congress and the White House released their most recent tax proposal, the MID was one of only two deductions preserved under the outline of the new tax plan, charitable deductions being the second. At first blush, this may seem like good news, but in order to understand the effects of the new tax plan on the Mortgage Interest Deduction, you need to peel back a couple of layers. NAR is helping Realtors® understand the finer workings of the plan through a recent study prepared by Pricewaterhouse Coopers. (Available at *http://narfocus.com/billdatabase/clientfiles/172/21/2888.pdf*)

Though the MID is preserved, under the Congressional outline the standard deduction doubled, and therein lies the catch. Currently about 30% of taxpayers itemize their deductions, 35.4 million of them claim the MID. If the standard deduction were to double, the number of taxpayers that would find itemization desirable drops dramatically. In effect, doubling the standard deduction makes the mortgage interest deduction only available to the top 5% of earners that would still itemize deductions on their federal income tax. This, combined with the elimination of the deduction for state and local property taxes, would result in increased tax liability for homeowners. Now you can see why NAR is beginning to message its opposition and calling the proposed plan a de facto tax increase on homeownership.

I've said it before, if you have not signed up for the Realtor® Party Mobil Alerts, now is the time to do so by texting the word "REALTOR" to the number 30644. There will undoubtedly be a Call for Action issued on tax reform and your members of Congress need to hear from us. It only takes a few minutes to possibly change so much.

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

"IN MICHIGAN, BILLS HAVE BEEN INTRODUCED TO CREATE A **FIRST-TIME HOMEBUYER SAVINGS ACCOUNT PROGRAM**. WHILE IN WASHINGTON, D.C., CONGRESS HAS SET ITS SIGHTS ON **TAX REFORM THAT COULD LIMIT THE TAX BENEFITS OF HOMEOWNERSHIP**."

bridging the GENERATIONAL TECH GAP

BY DAN SUGG

In many ways, the home buying process today is radically different than it was in the not-too-distant past. The impact of new technologies has reshaped the real estate industry, giving both realtors and their clients new ways to communicate and exchange information, search for and market properties and conduct transactions–from social media platforms, to digital documents, to new tools like drones and virtual tours.

These advancements primarily cater to millennials and other younger homebuyers, an increasingly influential demographic group. In fact, according to a 2017 report by the National Association of Realtors® entitled *Real Estate in a Digital Age*, millennials are the single *largest* demographic of homebuyers, responsible for more than one third of new purchases. They also make up by far the largest group of *first-time* homebuyers, at 66%. In many cases, however, tools that are intuitive and helpful for millennials are less beneficial for baby boomers–who tend to be less comfortable and confident with new technologies. For example, older boomers use a mobile device at roughly half the rate of millennials.

For Realtors®, managing the convergence of these generational expectations and technology usage patterns can be a difficult hurdle to overcome, particularly as they themselves look to integrate more technology into their own day-to-day operations, and continue to look for new ways to add efficiencies and get buyers and sellers to the table quicker.

Understanding how to bridge the generational gap between millennial buyers and boomer sellers–and successfully balancing the differing expectations of millennials and baby boomers to ensure a seamless experience–begins with insights into the generational shifts shaping the housing market, but it also requires a nuanced appreciation for how technology is (and is not) impacting the home buying process.

THE EMERGING MILLENNIAL MARKET

Millennial perspectives on home buying have shifted dramatically in a relatively short amount of time. In the wake of the great recession of the late 2000s, millennials, many of whom had witnessed firsthand the loss of value and the financial and personal challenges faced by parents and other older relatives when the housing market collapsed, did not see the value in home ownership. To some, the very notion of home ownership had changed: what was once a point of pride became perceived as a potential liability.

Today, however, the recessionary crisis has grown increasingly distant in the rearview mirror. Millennials are earning more money, and the job market has improved. As millennials began to reenter the housing market, the shift in perception was both rapid and profound. Almost overnight, a millennial-driven spike in demand created a market dynamic where supply had trouble keeping up. Today, that trend has continued, and the drive to have a place of your own is on the rise among younger buyers. The bad taste of the recession has largely been washed away, and all the traditional benefits of home ownership have reasserted themselves in the national consciousness.

THE DIGITAL DICHOTOMY

Unsurprisingly, tech savvy millennial homebuyers have been enthusiastic adopters of new real estate tools and technologies. They are generally more comfortable using mobile apps, online search tools and social media platforms, and frequently have done extensive independent research on homes and neighborhoods before engaging with a realtor. As a result, the personal connection between buyer and realtor tends to happen much later in the process. This is in stark contrast to older sellers (and buyers) who are far more likely to prioritize personal interaction and be less comfortable with these new digital dynamics.

Consequently, Realtors® need to understand that they must engage millennials digitally at first. Millennial clients are likely to have already sifted through hundreds of homes on apps and websites; they know what they want and are turning to you to help them take the next step. But it is precisely because it is so easy to "hide" behind a digital veil that it is so important to push for personal engagement when it is time to move the process along. Building those Realtor®-client relationships and forging that emotional connection can be trickier when dealing with the digital generation, but it's essential to do so before moving on into offers and negotiations. Ultimately, nothing trumps that face-to-face connection, and if Realtors®, loan officers and buyers can connect early on and build trust and respect, that relationship will become evident to sellers and listing agents and can improve your chances of closing a deal.

So what should Realtors® be doing to make that happen, and to help millennials understand what they need to know about the home buying process? Perhaps the single most important thing any Realtor® can do is to partner with a trusted and experienced loan officer from a committed financial institution in your market. Referring millennial clients to connect early on and build trust and respect, that relationship will become evident to sellers and listing agents and can improve your chances of closing a deal.

So what should Realtors® be doing to make that happen, and to help millennials understand what they need to know about the home buying process? Perhaps the single most important thing any Realtor® can do is to partner with a trusted and experienced loan officer from a committed

financial institution in your market. Referring millennial clients to such a trusted partner early in the process is an important step to make sure your clients know what they should and should not be doing (don't make major purchases, save/organize your pay stubs and bank statements, etc.), to communicate some of the nuances of the home buying process, and ultimately to demonstrate the value of the Realtor®-client relationship.

BRIDGING THE GAP

The more digital integration that has been introduced into home buying and selling process, the wider the gap becomes for someone that is not connected, and the more challenging it becomes for someone that is not digitally "fluent" to get through the process. Even something as simple as an email attachment can create a frustrating snag. The key is to use new technology to add efficiency while still accommodating those clients who are not intuitive adopters.

One of the best ways for Realtors® to get baby boomers and other aging clients more comfortable and engaged in this brave new digital world is to communicate clearly with them up front and to set expectations appropriately. The biggest changes older sellers need to be aware of and prepared for include understanding how their house will be marketed, and, once the offer is accepted, what the process will look like moving forward. Realtors® may even want to take the time to explain the impressive efficiencies and security benefits of new technologies. Realtors® also need to be flexible, not only explaining and introducing new tech tools and processes, but working with older clients who may simply be more comfortable with a working relationship that is more analog than digital.

Ultimately, however, technology is just a tool: *all successful transactions end with personal relationships*. People helping people remains at the heart of our industry. When dealing with the largest purchase of most people's lives, you have to make it real for them. No matter how easy it gets to conduct online searches or send digital documents, you can't neglect the personal relationships and the personal connections. Millennials may be tech savvy, but they still need that sense of connection and security that comes from knowing they have a trusted and knowledgeable partner by their side. Boomers may be unfamiliar with emerging technology, but they still can appreciate the benefits of new efficiencies. The best Realtors® today understand and embrace technology, but it is their willingness to educate consumers through every step in the process that enables them to gain the trust and respect of all classes of borrowers. ●

*

Dan Sugg *serves as chief mortgage lending officer at Michigan First Credit Union, a Michigan-based financial institution offering expanded financial services for every life stage to its more than 130,000 members at 17 branches throughout Michigan. Dan can be reached at DSugg@michiganfirst.com.*

Advertising RULES

As many Realtors® have heard by now, effective January 1, 2018, in any advertising that includes the name of an associate broker, salesperson or team, the individual licensee's name (or team name) cannot be in larger type size than the name of the firm. This change has caused many brokers to reexamine both existing law and their current advertising.

Under the advertising rules that have been in place for decades, all real estate advertising must include the licensed name of the broker.[1] This requires that a broker use the name on file with the Department of Licensing and Regulatory Affairs ("DLARA"). The broker's logo or franchise name is not sufficient. If the broker has an assumed name on file with DLARA, the broker can advertise in that name.[2] In addition to the broker's name, the advertising must include either the broker's telephone number or street address.

On January 1, 2018, in any real estate advertising, the type size used for the firm's name must be at least as large as the type size used for the individual licensee's or team name.[3] The names do not need to be in the same font or color, and it is not the case, for example, that if the salesperson's name is in bold type then the broker's name must also be in bold type. It is still the case that the advertisement must include the broker's name as licensed or an assumed name on file with DLARA. The advertisement must still include the broker's phone number or address; however, the rules do not regulate the size of the type for the phone number/address.[4]

On September 18, 2017, the Department issued its interpretation of "type size" in real estate advertising in a communication to all licensees. According to the Department, when comparing the type size of the name of the associate broker, salesperson or team (what we will refer to as the "Licensee") with the type size of the name of the employing broker (what we will refer to as the "Firm"), either of the following tests may be used:

Test No. 1. The height of the block containing the name of the Licensee may not exceed the height of the block containing the name of the Firm; or

Test No. 2. The point size of the majority of letters in the name of the Licensee may not exceed the point size of the tallest word in the name of the Firm.

An advertisement that satisfies **EITHER** of these tests is in compliance.

The following visual illustrations provide examples of compliant advertising within the above tests.

[1] Rule 329; now MCL 339.2512e(1).
[2] Rule 301; now MCL 339.2512e(5).
[3] MCL 339.2512e(3)(b).
[4] MCL 339.2512e(3)(a).

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HEIGHT OF THE BLOCK

1. The first advertising illustration satisfies test number 1; that is, the block height of the name of the salesperson, “Simone Licensee” is 4.5 inches, and the block height of the name of the Firm, “Acme Brokerage Capital City Firm” is also 4.5 inches. The advertising also includes the office phone number for the Firm, so it is otherwise compliant with the Code requirements. Note, however, that if the legal name of the Firm in this illustration was only “Acme Brokerage”, the advertisement would not be compliant with test number 1 because the block height of “Acme Brokerage” alone is smaller than the block height of “Simone Licensee.”

2. The second advertising illustration also satisfies the first test because the block height of “Simone Licensee” is smaller than the block height of the name of the Firm – Again, the legal name of the Firm on file with DLARA in this illustration is “Acme Brokerage Capital City Firm.”

3. The third advertising illustration also satisfies the first test because the block height of the name of the Licensee – in this case, “Simone Team” – is equal to the block height of the name of the Firm. Remember that the block height of the name of the Firm must be greater than or equal to the block height of the name of the Licensee. Phone numbers and addresses are not included in the calculation.

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POINT SIZE OF THE MAJORITY

4. In the fourth advertising illustration, the point size of the majority of letters in the name of the Licensee is compared to the point size of the tallest word in the name of the Firm. Here, while the point size of the first and last name of the Licensee is not the same, the point size of the last name is used for comparison purposes because that word has the most letters. Similarly, while all of the words in the Firm name are not the same point size, the point size of "Acme Brokerage" is used because those letters are taller than the letters in "Capital City Firm". Since the point size of "Licensee" is equal to the point size of "Acme Brokerage" – both at 240 points – this advertising illustration is in compliance with the second test.

5. The fifth advertising illustration includes both the name of an individual Licensee, "Simone Licensee", and the name of a team, "Simone Team". Under the advertising rules, <u>both</u> the name of the <u>individual</u> Licensee and the name of the <u>team</u> is compared to the name of the Firm. Since the point size of <u>both</u> the name of the individual and the team are equal to the point size of the Firm name, the advertisement is in compliance with the second test. Note again that for purposes of comparison, we look at the tallest word in the Firm name. In this case, "Acme Brokerage" at 180 points.

6. In the last advertising illustration, the agent uses large stylized lettering for the first letter of both her first and last names. Under the second test, the focus is on the size of the <u>majority</u> of letters in the Licensee's name – so, the relevant point size here is 210 points, not 420 points. Since the letters in the name of the Firm are also 210 points, this advertising illustration is in compliance with the second test.

In summary, the requirement is that the size of the name of the Firm must be <u>greater than or equal to</u> the size of the name of the Licensee. This requirement can be met by comparing either block height or point size. An advertisement that satisfies <u>either</u> test is compliant. It is not necessary to satisfy both tests. The purpose behind having two separate tests is to preserve the goal of the advertising rule – that is, to make sure that the advertising makes clear what company is doing the advertising – while at the same time, providing licensees with creative flexibility. Remember that these are minimum requirements. A Firm can always adopt more stringent requirements than the law dictates.

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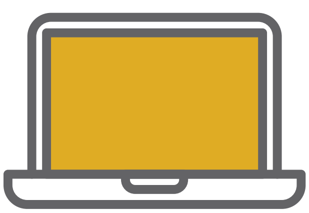
*Among traditional real estate brokers. Experian Hitwise 1/2016. **Average based Google Analytics, 7/2016.

SMART 911

SAFETY: the unspoken requirement in purchasing a home – even more important when you have moved in!

Homeownership is often an exciting milestone for first time and experienced buyers, and there are countless motivations for putting an offer in on one home verses another. Location is often a top buying consideration, whether the interest is in a particular school district or to simply be closer to work. The National Association of Realtors® annual *Home Buyer and Seller Generational Trends Report*, which details similarities and differences across generations of home buyers and home sellers, found one common theme across generations regardless of buying motivation: the desire to be a part of a safe community. Whether first-time buyers or retirees looking to downsize, home buyers hoped to move into a neighborhood that was considered a **safe community.** But what exactly determines whether or not a neighborhood is safe? Homes.com urges buyers to do their research before purchasing a new home and recommends the following five actions to determine if their potential new neighborhood is safe:



ONLINE CRIME TOOLS

First and foremost, take advantage of crime mapping services such as CrimeReports and SpotCrime. Both of these tools allow you to compare crime in prospective neighborhoods. Second, check the National Sex Offender Public Website (NSOPW). This site is maintained by the U.S. Department of Justice and allows you to search the database by geographic location.

NEIGHBORHOOD RESEARCH

Next, make sure to do some research on the sale history in the area. A large number of homes for sale could indicate issues of safety in the neighborhood. Consider going for a walk around the block- residents who care about safety often take pride in their community and care for their surroundings. A cursory search of the local Department of Public Safety community website is also an excellent way to learn more about emergency contact information and community notification services available in the area. Finally, talk to potential neighbors: who understands the neighborhood better than its current residents?

HOMEBUYER SAFETY SERVICES

Most buyers are diligent with basic preemptive safety: changing the locks on the doors, installing new alarm systems, and testing the property's smoke detectors for example. The problem is, home safety precautions typically end with completing the preemptive safety checklist.

Fortunately, there are safety tools available to homeowners that allow them to be proactive in providing information to emergency services should they ever need to call 9-1-1. The Office of the Lieutenant Governor, with the help of key state legislators, received funding to deploy an innovative technology across the state of Michigan called ***Smart911***.

Smart911 assists emergency services by giving residents the tools to provide potentially life-saving information about themselves, their family, and their place of residence before an emergency strikes. The solution is simple – direct your contacts to *www.Smart911.com* where they can fill out a secure safety profile for themselves and those they care about. The registration process is easy and takes no more than five minutes to complete. Upon creating a Safety Profile, the user account is verified by phone or via a code delivered by text to the homebuyer. The amount of

information included in the profile and made available to emergency services is completely up to the user. A name and phone number is the only required information during registration. It is important to note that no financial data, social security numbers, or other sensitive information is requested, and the profile database is kept 100% secure and only made available to 9-1-1 call takers and first responders should you proactively call 9-1-1.

During the announcement of Smart911 to the state, Lt. Governor of Michigan Brian Calley stated:

> *"In emergency situations, every minute counts and enhancing 9-1-1 services across our state is essential to protecting the lives of Michiganders. Services like Smart911 help us advance the tools that our dispatchers can use to help save lives on a daily basis. State funding will help communities across our state take advantage of this program and have extra resources to help save lives in emergencies."*

THE IMPACT

Dozens of Michigan residents have already felt the impact of Smart911. Traverse City resident Dan Hoffman explained, "I wouldn't be here today, be able to hug my girls without Smart911. It saved 11 minutes off the response time to my call for help and allowed the heroic responders to extract me from my burning home."

Even though Dan was unable to communicate after dialing 9-1-1, dispatchers were able to determine his home address from his Safety Profile and send fire and medical personnel his way. The use of Smart911 in helping responders save Dan's life was a story featured on Good morning America *https://www.youtube.com/watch?v=-pgpJzK4d9U*

54% of the state is already offering Smart911 free to residents while other parts of Michigan are working to deploy the service to their communities. You can check to see if Smart911 is currently available in your area by entering your zip code at *www.Smart911.com* under the "How It Works" tab. Even if your zip code does not yet have coverage, it is still worthwhile to register for a safety profile as Smart911 is a national service. Should you call 9-1-1 from anywhere in Michigan or from any other Smart911-supported region across 40 states, your safety profile will display to the 9-1-1 call taker and first responders.

Michigan is at the forefront of public safety and technological innovation in regards to protecting its residents and you should be proud to educate your homebuyers about this statewide service. Registration takes less than five minutes and can potentially save your life or the life of someone you love.

No one thinks they will ever have to call 9-1-1, but when they do, it brings peace of mind knowing emergency responders have the information they need to send help as quickly as possible. ●

Whether first-time buyers or retirees looking to downsize, home buyers hoped to move into a neighborhood that was considered a SAFE COMMUNITY

REALTORS® TAKE THE PRIZE IN GRAND RAPIDS DURING THE CONVENTION

The Convention, held at the Amway Grand Plaza Hotel & DeVos Place in Grand Rapids on September 27th through the 29th, drew over 1,200 real estate professionals and affiliates. The grand affair was in conjunction with the internationally recognized ArtPrize. Here are some of the many highlights.

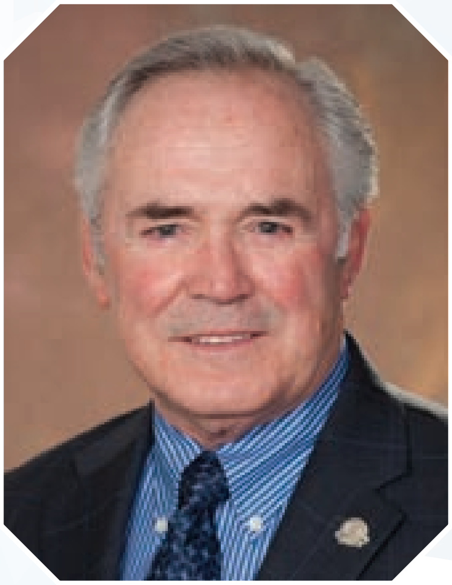
The Convention not only offered attendees the perfect forum to engage with and learn from their peers, but also provided them with the opportunity to attend CE Marketplace certified knowledge sessions conducted by some of the best and brightest experts in the real estate industry and their respective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

MICHIGAN REALTORS®

THE CONVENTION

Governor Rick Snyder addresses RPAC investors

Revving up The Convention was Grand Assembly Keynote Speaker Ken Schmidt. As the former director of communications for Harley-Davidson Motor Company, Ken played an active role in one of the most celebrated turnarounds in corporate history – and got paid to ride motorcycles. He is widely known as one of the business world's most outspoken and provocative thought leaders and has partnered with many of the world's most successful brands. Other important highlights of the Grand Assembly included the



Gordon McCann
2017 Michigan Realtor® Active in Politics
GMAR

Sara Lipnitz
2018 Michigan Realtors® President
GMAR

Tom Kotzian
2017 Michigan Realtor® of The Year
NOCBOR

graduation ceremony of the Michigan Realtors® Leadership Academy Class of 2017 and Sara Lipnitz (Greater Metropolitan Association of Realtors®) being sworn in as 2018 President of the Michigan Realtors®.

Thursday during the Rise & Shine Keynote, Meagan Johnson of the Johnson Training Group, help attendees Zap the Gap! Members learned how to work with and among the many generations in today's workplace & marketplace. As an added perk to membership, both the Grand Assembly and Rise & Shine Keynotes were streamed live online.

On Thursday, the 2nd annual Broker Idea Exchange invited brokers from across the state to participate in a group think tank on issues impacting the industry. Marcie Roggow of Creative Learning Concepts was the featured speaker. This was an invitation-only event as the Michigan Realtors® continues to provide programs valuable to brokers.

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

> "The Convention provides a platform for the recognition of individuals who have demonstrated **OUTSTANDING PERFORMANCE IN THE REAL ESTATE INDUSTRY**"

The 2017 State Realtor® of the Year Award went to Tom Kotzian of the North Oakland County Board of Realtors®. The ROTY Award is the highest honor bestowed upon a Michigan Realtor®. It stands for integrity, leadership and service to the general public. Gordon McCann of the Greater Metropolitan Association of Realtors® was awarded the 2017 Realtor® Active in Politics Award. The RAP Award recognizes a Realtor® who serves their profession, association and community through political involvement. Congratulations to both Tom and Gordon!

As is normally the case, the Trade/ Expo was once again sold out. Over 90 exhibitors attended, ranging from insurance companies, financial institutions and utilities to marketing and collateral services, technology and state agencies.

New this year, the RPAC Investor Appreciation Luncheon featured a special guest appearance by Governor Rick Snyder. This was an invitation-only luncheon to RPAC investors of $200 or more.

Once again, The Convention attendees promoted the real estate community by supporting RPAC during both the live and silent auctions. Bidders had their choice of a number of different items at all price points, including a hammock, Yeti cooler craft beer package and a live performance from Westrin & Ward. In total, a record of over $31,000 was made with both the RPAC Live and Silent Auction combined!

The Michigan Realtors® want to thank all of the exhibitors, sponsors and attendees for their support. Now mark your calendars for next year in Traverse City for The Convention taking place September 26-28, 2018.

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

Implied agency: it is avoidable

Sometimes it becomes legally advantageous for a seller or buyer to claim after a transaction that a Realtor® was acting as his or her agent in the transaction through an implied agency. In other words, the claim is made that while there is no written agreement by which the Realtor® agreed to act as a seller or buyer's agent, the actions of a Realtor® and the relationship between the parties establishes an implied agency relationship. This claim of agency permits the seller or buyer to assert various claims against the Realtor® based upon the duties owed by an agent to his or her principal. A recent decision of the Michigan Court of Appeals demonstrates how a claim of implied agency can be defeated so long as the Realtor® takes certain basic steps to prevent such a claim.

Nicholas Lavdas ("Lavdas") owned two adjoining parcels of vacant land in Clinton Township. Lavdas had previously worked with John Kello ("Kello"), a real estate broker affiliated with Landmark Commercial Real Estate Services, Inc. ("Landmark"). Kello approached Lavdas to explore the possibility of developing the two vacant parcels as a Family Dollar store ("FDS"). Such a transaction would result in Lavdas leasing the property to FDS. Lavdas and Landmark entered into an agreement (the "Agency Agreement") in which it was represented that Landmark "represents and has procured [FDS] as a prospective tenant" for the vacant land and, in the event FDS signed a lease for the property, Lavdas agreed to pay Landmark a leasing/brokerage commission.

The prototype plans for a typical FDS store were provided to Lavdas by Kello. Unfortunately, Lavdas' architect, Michael Gordon ("Gordon"), determined that a prototypical FDS store would not fit on Lavdas' vacant land. Instead, Gordon determined that an additional parcel of land was necessary to develop the FDS store. When advised of the situation, Lavdas (not Kello) attempted to buy an adjacent parcel of land but was unable to do so for an economically feasible price. Unable to proceed forward, Kello introduced Lavdas to a third party, Clintharp, LLC, for the potential purchase of Lavdas' vacant land.

Lavdas and Clintharp, LLC ("Clintharp") entered into a purchase agreement for Lavdas' two vacant parcels (the "Purchase Agreement"). The Purchase Agreement specifically provided that it was Clintharp's intent to use Lavdas' land and other land which Clintharp may acquire to develop a building for operation of a Family Dollar Store. The Purchase Agreement further provided that "[Lavdas] shall be responsible for paying a broker commission of six percent (6%) of the gross sales price at Closing to Landmark who represents only [Clintharp] in this transaction." Ultimately, Clintharp obtained a variance from Clinton Township which permitted it to build the FDS store using only Lavdas' two parcels of land. Clintharp then purchased the two parcels of land from Lavdas and proceeded with the development for FDS.

Lavdas was obviously unhappy that he lost the opportunity to develop his two vacant parcels for FDS and that Clintharp was doing it without the need for any other property. So, Lavdas sued Landmark and Kello for breach of fiduciary duty and several alleged misrepresentations. Lavdas claimed, among other things, that Kello lied to him when he represented that Lavdas' land was not large enough for an FDS store, that Lavdas had to acquire contiguous property in order to develop a FDS store and that Clintharp intended to acquire a third parcel of land in order to develop the FDS store. Landmark and Kello requested and the trial court granted a summary disposition of all of Lavdas' claims against them. Lavdas then headed to the Court of Appeals.

In reviewing Lavdas appeal, the Court of Appeals reviewed basic agency law. The Court of Appeals held that an agency relationship is "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions." The Court of Appeals went on to hold that whether agency has in fact been created is to be determined by the relations between the parties as they exist under their agreements or acts. The primary question is whether there is intent to create an agency relationship. The Court of Appeals determined the ultimate test of whether an agency relationship has been created is whether the principal has a right to control the actions of the agent.

The Court of Appeals determined that Lavdas failed to present evidence sufficient to even create a question as to whether Kello and Landmark were ever acting as his agents. The Agency Agreement between Lavdas and Landmark specifically says that Landmark and Kello represented FDS. Further, the Purchase Agreement

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

between Lavdas and Clintharp specifically says that Landmark represented only Clintharp. Lavdas essentially argued that the language in the agreements was overridden by the fact that Lavdas was paying a commission to Landmark and that he had a prior relationship with Kello. The Court of Appeals rejected this argument, finding that Lavdas presented no evidence that Kello ever held himself out as Lavdas' agent but instead, held himself out as the agent for FDS and Clintharp.

In addition, the Court of Appeals found that Lavdas could provide no evidence establishing that it was ever his intent to have Kello act as his agent. Instead, the evidence submitted at the trial court established a contrary intention. When Lavdas attempted to buy the land adjacent to his two parcels, he did not ask Kello to negotiate the purchase of its adjacent parcel of land. Instead, he did it himself. Lavdas also alleged that Kello acted on Lavdas' behalf by acting as an intermediary between Lavdas and FDS and by obtaining information for Lavdas about the adjoining property owner. The Court of Appeals found these actions were totally consistent with Kello acting as FDS' agent.

It should be noted that Lavdas did not contend that the written agreements indicated that Kello was the "exclusive" agent of FDS or Clintharp. Lavdas alleged that Kello may well have been acting as a dual agent. The Court of Appeals determined that while Kello was not prohibited by law from acting as a dual agent, he could do so only with the informed consent of all parties. The Court of Appeals, however, rejected the dual agency claim indicating there was nothing in the written agreements to indicate that the parties were to share Kello or Landmark services.

Finally, the Court of Appeals found that Lavdas offered no evidence demonstrating that it exerted any control over Kello or that Kello had the authority to bind Lavdas in any way as his agent. Instead, the Court of Appeals determined that the actual evidence demonstrated that Kello sought Lavdas' consent to move forward at all times and had no authority to bind or otherwise act or speak on behalf of Lavdas.

As a side note, Lavdas also asserted that Kello lied to him by telling him that additional land was required to develop his land for FDS and that without additional land, he could not enter into a lease with FDS. The Court of Appeals, like the trial court, simply found that these allegations would not wash. Instead, the Court of Appeals found that Kello left the store layout and the possibility of building a FDS store on the two parcels up to Lavdas and Gordon. It was Gordon, Lavdas' architect, who determined that a FDS store could not be built on Lavdas' two parcels. Kello simply acted on the information provided by Gordon throughout the transaction.

While the trial court and the Court of Appeals relied on numerous facts in concluding that there was no implied agency between Lavdas, Kello and Landmark; it would appear that the key to defeating the claim was the express language in both the Agency Agreement and Purchase Agreement stating that Landmark and Kello represented only FDS (in the case of the lease) and Clintharp (in the case of the sale). While it is certainly possible for a Realtor® to establish an agency relationship with a seller or buyer through implied agency, these claims can be avoided with proper documentation. ●

"A RECENT DECISION OF THE MICHIGAN COURT OF APPEALS DEMONSTRATES HOW A CLAIM OF **IMPLIED AGENCY CAN BE DEFEATED** SO LONG AS THE REALTOR® TAKES CERTAIN BASIC STEPS. . ."

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