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The MAGIC KEY to being a TOP PERFORMER

The truth is, the best-performing brokerages have little in common from a business model perspective. What they do share is *culture*.

BY STEVE MURRAY, REAL TRENDS PUBLISHER

When you look at brokerage and sales agent performance data, over time you see important trends. Among the patterns are that the firms and sales agents who sit atop the rankings in terms of sales and sales growth do not have much in common - - on the surface.

These top firms come from a variety of business models, whether high commission concept, graduated commission plan, low-cost, flat-fee or capped-contribution firms. They also come from independent brokerage firms as well as national brands. These top firms come from virtually every region of the country and size of metropolitan area, as well as low and high-priced markets. Having further researched top performing companies through on-site reviews as well as extensive telephone interviewing, we find that the best-performing companies and sales agents have a few things in common:

- They have a strong sense of who they are and what they believe in;
- They have a well-defined objective of what they are trying to achieve, whether it is growth, market share, profitability or productivity;

- They can quickly communicate what the most important beliefs and objectives are. They don't stumble when reaching for answers when asked what makes their firm or their business unique and successful.

When we see performance level off or diminish, and we inquire or are asked to assist, we find that the leaders of such firms (or a sales agent or team) either don't have a strong grasp of what their true objectives are, have lost sight of them or have abandoned them. There are some who have not adapted to changes in their environment.

Yes, it does matter that your culture and objectives can also be affected by the nature of competition in the market. It is not likely possible for a firm to have a profitable, low-split, graduated-commission plan in a market dominated by flat-fee brokerage models and have a high market share. For example, one could do the first two but have no realistic chance at the third. A sales agent or team may want to be the top seller in a market, as well as in the luxury end, but if that particular segment is not very large, it may not be possible.

So, yes, having the right business model and a solid brand can matter.

It is just that without a solid foundation of objectives and an identifiable culture, they matter less. What matters first, according to our data, is a clear idea of what you are trying to achieve and the behaviors in which you believe to get there.

THE VALUE PROPOSITION

There is no term more overused than "the value proposition." It is used almost daily with little explanation as to what it means. Talking with marketing professionals from outside the industry we have heard the following definition (simplified for greater understanding).

A value proposition is composed of three basic parts—trust, convenience and price. A true value proposition expresses one's view of what matters most to the proponent among these three attributes for an organization.

Are you the low-price or the high-price competitor? Are you the high-quality participant or the undifferentiated one? You cannot talk about being a full-service, high-quality firm and also have the lowest prices. One of two things will hap-

pen: you will end up broke, or your audience will wake up and understand that you cannot deliver, thus ending trust and likely your culture with it.

A true value proposition will state, in as few as words as possible, how you want to be viewed and what you believe about yourself that makes you unique, such as “Like a Good Neighbor” (State Farm) or “Everyday Low Prices.” (Walmart) Those are two good examples of value statements reflecting how these firms want to be viewed. When you think about your realty firm or your sales practice, think about how you would like to be viewed.

RELATIONSHIPS ADD TRUST

In one of our past research projects, we identified 16 firms that had ranked in the top 50 brokerage firms in the nation for growth in agents, closed transactions, per-person productivity and profitability on a per unit basis

over a 10-year period. We then interviewed 169 sales agents and staff of these 16 firms to discover why they were with and/or stayed with their firm, how the firm communicated and made decisions and what they thought was most valuable about their firm

We found that relationships and trust were the two most important reasons why agents stayed with their firms. While technology, marketing, education, brand, management support and facilities were all mentioned, the respondents said over and over that these were a given among competing firms in their markets. It was a sense of belonging to a solid organization, with a definable culture, which mattered the most. They knew what to expect and felt like their individual talent and results were recognized.

CULTURE DOES MATTER

It starts with “knowing thyself”

and being able to describe your organization in both tangible (benefits) and intangible (beliefs) ways. With all the chatter about the future and technology, every piece of research on housing consumers indicates that the use of agents in a transaction is here to stay. How consumers choose an agent hasn't fundamentally changed in 30 years. The system of paying for results (commissioned sales) remains the consumers' preference.

While it pays to stay up to date on technology and how it can be used to improve business processes, the most important objective is to build a strong culture focused on what you believe and what you want to achieve—and not on the newest and greatest app. ●



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Having further researched top performing companies through on-site reviews as well as extensive telephone interviewing, we find that the

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TOP LEGAL Q&A

Each year, Michigan Realtors® and McClelland and Anderson, L.L.P., put together the most **frequently asked questions** for quick reference. We hope that members will find this information useful and will continue to utilize the **Legal Hotline**.

Q: I am currently listing property and an in-house buyer made an offer. An agent from another company called and I told them that my seller was reviewing an offer. The agent asked if it was an in-house offer and said that I had an obligation to disclose if it was. Is there a law that requires me to disclose that it is an in-house offer?

A: *NO. There is no legal duty to disclose whether any offers your seller has received are in-house offers. (In certain circumstances, such disclosure may be required pursuant to the Code of Ethics Standard of Practice 1-15.)*

Q: A man from Canada is selling land located in Michigan. Can I represent him or does he need a Canadian agent?

A: *YES, you can represent him in this transaction. Your license authorizes you to sell real estate in the state of Michigan. It does not matter if the client is from another state or country.*

Q: The buyer's lender has requested a copy of the seller's disclosure statement and the lead-based paint disclosure. Am I legally required to give copies of these documents to the bank?

A: *The buyer's lender can certainly require these documents as a condition of making the loan.*

Q: I represent the seller on a short sale. I have worked for six months to put together a short sale and now the seller's lender has conditioned its acceptance on my agreement to reduce my commission by 2%. Can the seller's lender do this?

A: *Unfortunately, yes. The seller's lender is being asked to agree to take less than it is contractually owed. Accordingly, it can refuse to do so, or it can condition its approval on just about anything, including a lower commission payment.*

Q: I am both a licensed appraiser and licensed real estate broker. I have a partner who is a licensed appraiser. I will be on vacation and unavailable for two weeks. May I have my partner show one of my listings during this time?

A: *NO. Your partner is required to have a real estate license (not just an appraiser's license) in order to show property.*

Q: Is a landlord required to provide a seller disclosure statement in connection with a residential lease that is longer than one year?

A: NO. A seller disclosure statement is not required in connection with a residential lease of real estate unless it is a lease with an option to purchase. (On the other hand, an agency disclosure form is required in connection with a residential lease.)

Q: I am representing a seller that is selling their house to their granddaughter. Is the seller exempt from the seller disclosure act?

A: YES. Section 3(f) of the seller disclosure act exempts transfers made to a spouse, parent, grandparent, child, or grandchild.

Q: I am selling the mineral rights on a parcel of land that I own. Am I required to pay transfer tax?

A: NO. A transfer of mineral rights is exempt from both state and county transfer taxes (MCL 207.505(n); MCL 207.523(q)).

Q: I have heard different things about whether or not a brokerage firm can charge administrative fees. Are these fees permissible?

A: YES. At one time, some argued that RESPA prohibited brokers from charging administrative fees in addition to a percentage commission and/or that the legality depended upon how the fee was described in the listing contract. A United States Supreme Court decision made clear that such fees are not prohibited under RESPA (and that it does not matter how the fees are described). Of course, a REALTOR® must have an agreement with a buyer or seller in order to charge such a fee.

Q: Prior to their death, my parents deeded their cabin to my brother and me as "joint tenants with rights of survivorship." Can I deed my interest in the cabin to my daughter?

A: Yes, but your daughter's interest in the cabin will automatically terminate upon your death unless you outlive your brother.

FOR MORE Q&A

Visit the Michigan Realtors® Legal Resources found on Mirealtors.com. The Michigan Realtors® Legal Resources section is your once stop source for all things legal. Resources include, videos, legal lines, legal updates, and white papers and guides.

LEGAL HOTLINE

The Michigan Realtors® Legal Hotline allows members to have direct, toll-free access to a qualified attorney who can provide information on real estate law and other related matters. This service is only available to Michigan Realtors® members. This is not a public service. The service is provided through members' dues.

The Legal Hotline number is 800.522.2820. It is operated 9 a.m.– 3 p.m., Monday – Friday. This makes the Legal Hotline available to members approximately 250 workdays per year. Recognized holidays are excluded. If the Legal Hotline is busy; an answering machine will take calls. Calls are returned within 24 hours, usually during the same day.

2015 LEGAL UPDATE VIDEO SERIES

Michigan Realtors® will release its 7th edition of the Legal Update Video Series in December. This video series features Legal Counsel Greg McClelland & Gail Anderson as they cover the hottest legal issues in the real estate industry. Visit Mirealtors.com to view videos as they are released. ●

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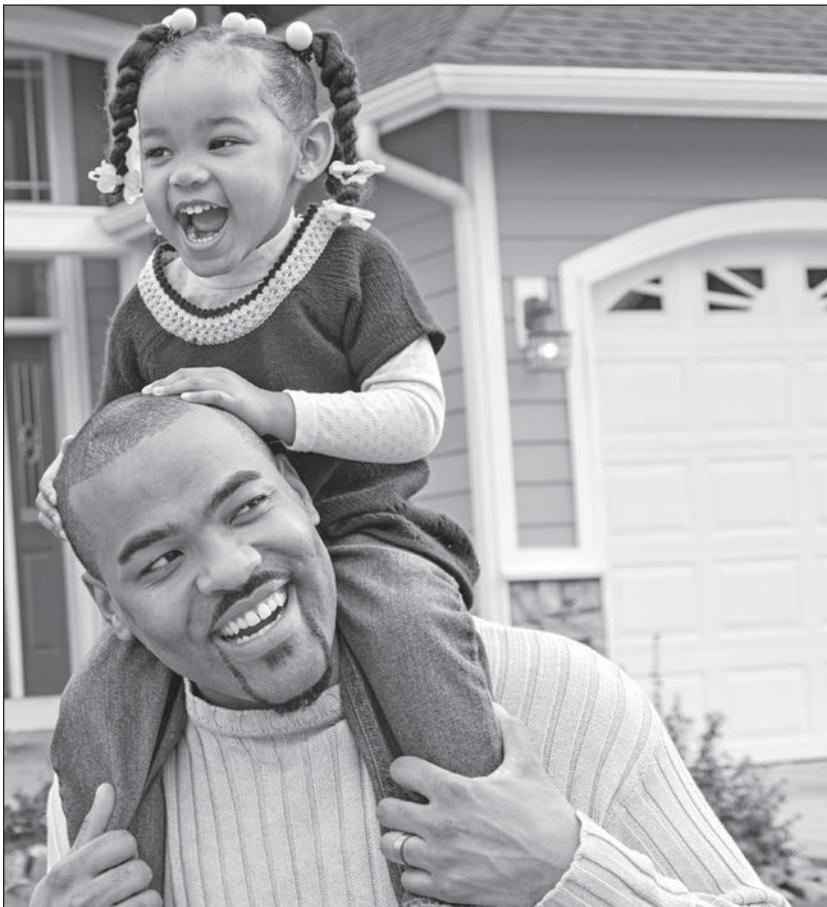
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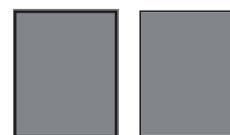


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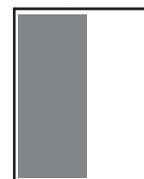
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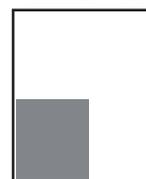
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Realtors® take Commercial Real Estate Issues to State Capital

Success in Michigan's commercial real estate market requires not only dedication to clients and staff, but commitment by practitioners to the long-term viability of the industry statewide. On September 10th, 30 commercial Realtors® took that commitment to heart by attending the 2nd Annual Michigan Realtors® Commercial Public Policy Day at the state Capitol. They were meeting with legislators and peers to promote key commercial specific policy issues confronting Michigan's commercial real estate industry and to gain a better understanding of how state government is working for them.

One of the most urgent problems addressed in the panel discussions with senior members of the Michigan House of Representatives and Michigan State Senate was the deteriorating condition of Michigan's roads and transportation infrastructure. According to the American Society of Civil Engineers' (ASCE) 2013 Report Card for America's Infrastructure, Michigan received a grade of D+ for overall infrastructure, with 38 percent of its 121,650 public road miles "in poor or mediocre condition." Similarly, Michigan's 11,000 bridges are also in need of work, with 12.3 percent considered "structurally deficient" and 15.2 percent "functionally obsolete."

According to Michigan Realtors®

2014 President-Elect Gene Szepeinski, with Signature Associates in Grand Rapids, from a commercial real estate standpoint, the need for road and transportation infrastructure improvements is critical to economic growth. "If you want new business to come to Michigan or to expand in the state, you have to have modes of transportation available, both coming and going." As a case in point, Szepeinski cited a former manufacturing plant in the Greenville area that lost its rail lines when the plant closed. Another company later set up operations there but went out of business during the recession. "Now," he said, "we have two nice buildings available but no transportation infrastructure to serve them." Even as this property sits unused, Szepeinski acknowledged west Michigan is experiencing a shortage of industrial properties because many have been "taken over for mixed-use development."

Despite political challenges to infrastructure funding, however, attendees were impressed with the legislators' across-the-board recognition of the importance of road and infrastructure funding, and their commitment to addressing the many associated but complex realities. For example, Szepeinski said just one of many considerations is that of fewer tax revenues from gasoline because Michigan residents are driving less

overall and fuel-efficient hybrid and electric vehicles use less gas or none at all, contributing fewer or no tax dollars to transportation rehabilitation.

Another key issue during meetings with House and Senate legislative leaders was legislation promoting access to property tax record information. Some local governments are chagrined excessive amounts for the public information based on an 1895 legislative statute, other areas of the state see lower quality of information available for public consumption or barriers to accessibility. Shari Veldman, Executive Director of the Commercial Alliance of REALTORS® (CAR), says she believes that although the topic is still in the early stages of discussion, finding a way to "create some fairness" for all Michigan Realtors® will likely be addressed in committee. Scott Griffith of Griffith Realty in Brighton, and the 2014 President of the Commercial Board of REALTORS® (CBOR) agreed, noting that the legislators "are all in support of equal access and equitable payment terms for tax records and they are willing to address the issue."

Streamlining patent infringement claims related to multiple listing service (MLS) software programs was another line item that requires attention at both the state and the national levels. While some states



already have laws on patent infringement lawsuits, Michigan does not. Moreover, the problem is not unique to real estate and could have a chilling effect on business innovation if left unchecked. Regarding past efforts, Szepeinski said the House passed “suggested fines,” however the Senate, in an attempt to “go bigger,” did not succeed before the summer recess. While the Senate did not commit to further action during the lame duck session, Szepeinski said he anticipates there may be additional “heavy discussions behind closed doors.”

Looking back on the panel discussions with legislators, one thing that struck a common cord among attendees was the genuine desire of the legislators to serve. According to Griffith, “Despite the often ‘adversarial’ nature of their work, 98 percent of the time these legislators are really trying to work together. (The legislators) are not just sound bites,” he added, “they are extremely knowledgeable people and they can express the detailed aspects of these very complex issues.”

Szepeinski also noted, “The one thing that never fails to impress me is the quality of the people (in the legislature) and that they really like each other,



and they admit it.

Together they work hard and mean well and want to do what is right for our state. Proof of this,” Szepeinski said, “is evidenced by the Snyder administration’s task force looking at the modernization, modification and/or elimination of laws, which to date has reviewed about 1,900 laws for possible action.

In addition, Veldman said, “The legislature has done a really good job removing things that are detrimental to business, like the Michigan Business Tax. Since the Granholm administration, when Michigan was not being considered for business because of the high tax rate, I believe we have moved up from about 40th place to being in the top five.”

In addition to legislative issues, the event also offered the opportunity to learn about the rule of law judicial philosophy from Michigan Supreme Court Justice David Viviano. Veldman indicated this was a wonderful chance for everyone to get a better understanding of our state’s highest court. “Chief Justice Viviano gave a wonderful talk about the procedures the Supreme Court follows and enlightened us about how cases get to the Supreme Court, and specifically how the rule of law is applied.”

Attendees also received a guided tour from Capitol Building Historian Matt VanAcker

to learn more about this historical landmark, which opened in 1879. Unique in its structure, history and even the furnishings, about 17 million bricks were used to build the Capitol, the pine woodwork was painted to look like walnut, and the original Speaker’s chair and all of the original desks in both chambers are still in use today.

State Representative Margaret O’Brien (R – Portage), an active Realtor® member serving her second term in the Michigan House, escorted the group onto the Floor of the Michigan House for discussion and a photo, demonstrating the cooperative nature of the relationship between our industry and legislature.

For those who missed this 2nd Annual Commercial Day at the Capitol, Szepeinski said that while he understands that attending takes time away from business concerns, this is one event that should rank high with commercial Realtors®. “This is a once-a-year opportunity to meet with key legislators impacting commercial policy issues, as well as with other members of CAR and CBOR from across the state, face-to-face, and to have an impact on the things that affect our lives.” Griffith concurred adding, “These are not regional concerns and they impact the whole state. It would be good for everyone if we can continue to grow this event.” ●



Appraisers and **Consulting Opportunities**

BY MICHEAL R. LOHMEIER

Appraisers are frequently associated with the appraisal reports they write. The connotations underlying the terms *appraiser* and *appraisal report* are reasonably associated with one another because appraisers are traditionally educated, trained and experienced in a pursuit to write appraisal reports.

Appraisers are somewhat raised on the notion that every client needs an appraisal report in order for them to make a prudent decision. Some examples of when an appraisal report is useful are mortgage lending, disputes involving divorce and property tax appeal. In these situations, an appraisal report often helps a client make a decision. In mortgage lending, clients may need an appraisal report to determine whether and how much to loan. In disputes involving divorce, the husband and wife may need appraisal reports because they can't agree on what the property is worth. In property assessment disputes, the assessor and taxpayer may need appraisal reports because they cannot reach a mutual settlement agreement.

There has been increasing needs for valuation services other than written appraisal reports, and many of those needs may be best provided by appraisers.

The type of consulting services I'm addressing are those provided while serving as an appraiser but outside of the assignments addressed in USPAP's STANDARDS 1 thru 10. In these consulting assignments, the appraiser continues to serve in an *appraisal practice* capacity. As such, appraisers must provide these services ethically and competently. The inherent trust associated with an appraiser's ethics and competence is often the amenity that qualifies appraisers from other professionals.

In this sense, there are certain types of consulting services that appraisers cannot provide. For example, appraisers may not serve as advocates for a taxpayer's issues or have a fee arrangement contingent on the amount of taxes reduced. Appraisers must remain objective and independent and the fees, whether flat or hourly, should be based on the work they perform.

But there are situations when appraisal reports are not needed in order to help a client.

- **Meeting** with an assessor to determine if a client's property records are accurate. This requires the ability for the appraiser to understand any difference between the tangible and taxable

property existing versus the property used for developing the assessment.

- **Reviewing** potential investments in an existing facility, or new facility, to determine any ability to qualify for an abatement. Valuation services is an umbrella term representing any services pertaining to aspects of property value. Appraisal reports must be provided by appraisers, but other *valuation services* may be provided by a variety of professionals and others. However the competence developed by appraisers in collecting and analyzing market information combined with their predisposition of ethics provides opportunities for appraisers to develop and deliver these others services.
- **Performing** functionality analysis, determining a property's remaining useful life, and developing depreciation schedules for accounting purposes.

If you review the valuation process and the analytical skills appraisers use every day, combined with the vast amount of relevant information collected, you'll find countless number of services that may be developed. But, you have to be cognizant that the consulting services you develop actually have value and use, to someone.



Consulting Focuses on Helping Decision-Making

I've talked to some appraisers who have great ideas for services they want to provide. I sometimes question who is going to actually buy their services, or buy them in enough volume to actually earn a living.

When you're developing your portfolio of consulting services, you need to think like your target market. You're going to be providing services that help your client make decisions. You may be providing information they need to fill in necessary informational gaps necessary to make a decision or you may be providing a recommendation of what to do and your reasons why. In either case, you need to focus on *where* and *when* you can help in their decision-making process. When developing consulting services, keep in mind (1) potential competition for your service and (2) the degree of financial reward resulting from your service.

Potential Competition

Every decision an organization makes requires relevant information or sound recommendations based on proper analysis of relevant information. Appraisers provide market-based skills and knowledge to their clients so they in turn can make effective and efficient decisions.

Although much of the information available to appraisers is available to other professionals, the skills in collecting the correct information for a given assignment, and then analyzing and interpreting that information is a highly specialized skill that helps appraisers stand out from many other professionals. Appraisers need to know what they can offer and the amount of, or lack of, competition for providing a similar service.

Degree of Financial Reward

Appraisers need to determine whether the consulting service actually provides tangible financial value

to its target clientele and if so, how much. You can easily develop a large laundry-list of potential consulting assignments, but you have to discriminate between those that people will buy versus those that they may not. I often hear appraisers say that they deserve more money for their hard work in the services they provide. But the real question of value is not from what the appraiser believes, but instead should be looked at from the perspective of the purchaser or client. For example, I enjoy painting and I believe I do a very good job, but I would be naïve to believe I could open my own art exhibit and sell my paintings at a level where I can make living. The true value of the service I provide is from the perspective of what someone is willing to pay.

Develop Competence in Areas of Consulting Opportunities

It takes some creativity to review what you are already doing, and what you could be doing with maybe a small amount of change. It also may take some additional education effort. For example, if you don't know anything about industrial abatements, don't run off to start advertising for state and local tax incentive services. Look for local seminars or classes that will help you better understand that area of expertise. Just like developing competence in appraising properties, you need to develop core competencies in the areas in which you want to specialize for providing consulting services.

Attend functions that put you in the mix with other professionals that have expertise in the area into which you are considering moving. This helps you build professional camaraderie with those with whom you'll be working with, helps you understand the language they use and areas about which you may not otherwise know. It's always helpful to learn from other's mistakes, so get to know people in that area

This story is brought to you by MiCREA

The Michigan Council of Real Estate Appraisers was created in 2004 with one purpose: to serve Michigan's REALTOR®-appraisers through advocacy, benefits, data resources, and educational offerings. The Council, steered by a committee of fifteen appraisers representing more than 2800 members, is Michigan's strongest voice for the rights and needs of appraisers in the state. The services and value MiCREA provides to its members complement in numerous ways the services provided to members by their local associations and appraisal organizations.



so you can learn from what they are currently complaining about.

Go to Court, then you Must Report!!!

This article focused on appraisers providing consulting services. But, an important caveat must be made to appraisers who consider provide consulting services within a litigation environment. I have a saying that "if you go to court, you must report". If there is a situation that may call for you to testify with respects to an opinion of value or the quality of another appraiser's work, then you must make sure you provide a qualified report. So when you and your client believe there is potential for you going to court to testify, you may need to stay ready to convert the consulting service assignment into an appraisal assignment and provide a written report. At the onset of any litigation-based consulting assignment, establish up front with your client when and how you would pull that proverbial "trigger" and write an appraisal report to offer into evidence. ●



Micheal R. Lohmeier, MMAO(4), FASA, MAI, SRA, RES is the City Assessor for the City of Auburn Hills. He has experience in both public and private valuation environment settings. He is available for further comment at 248.370.9436, by email at mlohmeie@auburnhills.org, and may be connected with through LinkedIn.

A Helpful Exemption Gone

As the great recession made the sale of residential real estate more and more difficult for REALTORS® and their clients, REALTORS® began searching for lawful tools and techniques which could help make homes more affordable. One of a few bright spots during this period was the Michigan REALTORS®' successful effort to make an obscure exemption to the real estate transfer tax available to deserving sellers.

The exemption to the state transfer tax at issue is set forth in MCL 207.526(u), which provides as follows:

A written instrument conveying an interest in property for which an exemption is claimed under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, if the state equalized valuation of that property is equal to or lesser than the state equalized valuation on the date of purchase or on the date of acquisition by the seller or transferor for that same interest in property. If after an exemption is claimed under this subsection, the sale or transfer of property is found by the treasurer to be at a value other than the true cash value, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due under this act to the seller or transferor.

("Exemption (u)").

In 2008, the general consensus was that Exemption (u) was ambiguous and it was not generally applied or accepted by county treasurers when claimed by a seller. An opinion was obtained from the Michigan Attorney General which made Exemption (u) understandable and useful to REALTORS® and their clients. On April 3, 2008, the Attorney General offered his opinion that a sale of residential property would be exempt from state transfer tax if the residential property was subject to the principal residence exemption and, at the time the property was sold, the state equalized value ("SEV") was equal to or less than the SEV when the seller purchased the property. However, a seller would not be entitled to the benefit of Exemption (u) if he or she sold the property for an amount greater than the current true cash value ("TCV") of the property. Although this interpretation sounded like gobbledygook to some, it was actually quite simple to apply as a practical matter.

Assume that the Browns bought 123 Elm Street in 2005 at which time the SEV was \$100,000.

Assume further that when the Browns sold the property in 2010, the SEV was \$95,000. So long as the purchase price in 2010 did not exceed \$190,000, the Browns would benefit from Exemption (u). Assuming the Browns sold 123 Elm Street in 2010 for \$180,000, they would have realized a transfer tax savings of \$1,360. Obviously, this savings would make the Browns' house more saleable for them and more affordable for buyers.

Unfortunately, during the great recession, there were hundreds if not thousands of homes which, when sold, had an SEV in the year of sale that was far less than the SEV in the year in which the sellers had purchased the home. In many, many instances, the sellers sold the homes for less than the TCV in the year of sale and, thus, were able to benefit from Exemption (u).

A Court of Appeals' decision issued on September 9, 2014 has effectively eliminated the benefit of Exemption (u). This decision appears to be the result of a combination of sellers pushing the envelope on the applicability of Exemption (u) and the Court of Appeals rendering a very literal interpretation of the language of the statute.

This case involved the possible application of Exemption (u) to three different sales of residential properties by three different couples. In each of the three sales, the SEV on the home was lower in the year sold than in the year in which the home was purchased, but the sale price exceeded the TCV in the year of the sale. Thus, for example, in one of the sales, the sellers had purchased their home in 2004 when the SEV was \$303,370. In the year it was sold, the SEV was \$198,530, but the sale price was \$470,000. Obviously, the sale price in the year sold of \$470,000 exceeded the TCV by \$72,940 (i.e., \$470,000 minus \$397,060).

Each of the sellers had applied for a refund of the state transfer tax under Exemption (u). The sellers claimed that the phrase "true cash value" in Exemption (u) did not mean two times the SEV, but instead meant "the usual selling price" or "the price that could be obtained for the property at private sale." In other words, the sellers claimed that "true cash value" should, in effect, be the price at which they sold their home. This interpretation would, of course, have eliminated any limitation on the sale price for purposes of qualifying for Exemption (u). Again, it must be remembered that, at least since 2008, Exemption (u) had been consistently interpreted as applying only if the sale price was



less than two times SEV in the year of the sale.

The Michigan Department of Treasury denied each of the sellers' claims for a refund of the state transfer tax under Exemption (u). The Michigan Tax Tribunal determined that the sellers were entitled to a refund of the state transfer tax under the sellers' more broad interpretation of Exemption (u). The Department of Treasury appealed to the Michigan Court of Appeals.

On September 9, 2014, the Court of Appeals, in a 2-1 published opinion, reversed the Michigan Tax Tribunal and found that none of the sellers were entitled to the benefit of Exemption (u). This decision alone would not have surprised most REALTORS® as the sellers in this case had each sold their property for greater than the TCV in the year of the sale and, thus, were not entitled to the benefit of Exemption (u) as it had been interpreted since 2008.

Unfortunately, the Court of Appeals went one step further. In reviewing the applicability of Exemption (u), the Court of Appeals reviewed the exact language of Exemption (u) which states that Exemption (u) is not available if "... the sale or transfer of property is found by the treasurer to be at a value **other than the true cash value.**" The Court of Appeals literally applied the term "other than" in Exemption (u) to mean that the benefit of the exemption was not available to any sellers except those who sold their property for an amount exactly equal to its TCV in the year of sale. The Court of Appeals' opinion is very clear and leaves no doubt as to its interpretation of how Exemption (u) is to be applied. The Court of Appeals opinion provides:

By way of explanation, we offer the following examples: (A) if the true cash value of the subject property is \$100,000 and it was sold for \$50,000, the conveyance is not exempt from the transfer tax; (B) if the true cash value of the subject property is \$100,000 and it was sold for \$150,000, the conveyance is not exempt from the transfer tax.

It is easy to understand how the Court of Appeals determined that Exemption (u) was not available when a seller sells property for an amount greater than its TCV in the year of the sale. It is much more difficult to understand how the Court of Appeals concluded that the legislature did not intend Exemption (u) to apply where a seller sells property for far less than its TCV

in the year of the sale, as such a seller has obviously suffered a loss. The Court of Appeals explained its basis for its interpretation as follows:

In the first hypothetical, the seller sold the property for less than its fair market value; a reasonably prudent seller would not typically sell below fair market value and may have structured the sale in such a manner as to avoid paying the transfer tax or may not have consummated the sale through an arm's length transaction.

REALTORS®, sellers and buyers who are involved in attempts to sell property at any price during the great recession may have difficulty understanding the Court of Appeals' explanation in the context of actual sale conditions during that period. The Court of Appeals did acknowledge that its "strict construction" of Exemption (u) may seem "harsh."

In sum, the benefit of Exemption (u) is no longer available to a seller unless the SEV in the year of sale is less than the SEV in the year of purchase and the property is sold for exactly the amount of the TCV in the year of the sale. Hopefully, the market conditions which made Exemption (u) extremely valuable to sellers and buyers in trying to consummate sales have substantially changed and far fewer sellers have an SEV that is less than the SEV in the year they bought their home. In any case, REALTORS® who have been helping their clients through the use of Exemption (u) must keep in mind that this exemption is no longer available unless they can achieve a sale price exactly equal to the TCV in the year of sale. ●

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*Study Source: 2013 Ad Tracking Study. The survey results are based on 1,200 online interviews with a national random sample of adults (ages 18+) who are equal decision makers in real estate transactions and who have bought or sold a home within the past two years or plan to purchase or sell a home within the next two years. Brand awareness. Results are significant at a 90% confidence level, with a margin of error of +/-2.4%. The study was conducted in two waves by Millward Brown, a leading global market research organization during the following time periods: Wave 1: February 4th- February 18th 2013 Wave 2: September 30th- October 14th 2013

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