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MICHIGAN REALTOR®

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PLUS

Capitol Report

President's Report

Occupational Code Compliance

MICHIGAN REALTORS®
THE CONVENTION
Amway Grand Plaza Hotel & DeVos Place, Grand Rapids | Sept. 21-23, 2022

Event Preview Inside!

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08.22

{August | Two Thousand & Twenty Two | Volume Twenty One | Number Three }

BY JAMES IODICE

Time to get together again

August is here and you are reading what we like to call "The Convention Magazine." As we are only weeks away from our annual state conference, let's get a refresher on this year's what, when and why. The Convention is the premier real estate education and trade show event in the state of Michigan. Hosted by Michigan Realtors®, The Convention offers a full lineup of CE Marketplace certified knowledge sessions, networking opportunities and new products and services for our members. We are excited to return to downtown Grand Rapids. Our event will be held in unison with the international art competition known as ArtPrize and we will spend three days together honing our skills in the art of real estate.

MICHIGAN REALTORS®
THE CONVENTION
Amway Grand Plaza Hotel & DeVos Place, Grand Rapids | Sept. 21-23, 2022

Register at *convention.mirealtors.com*

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The Convention is designed to help grow your business, build your network and strengthen your Realtor® brand. Rest assured, we will keep you "on track" throughout the week with our newly offered commercial and legal knowledge tracks. Featuring specific content from local industry practitioners, these knowledge tracks are identified by icons that appear on signage and in the schedule of events.

On Wednesday, we'll catch a special performance from Grand Assembly Keynote, Mark Schulman. Having performed for over a billion people alongside some of the music industry's household names, Mark will unlock a rockstar attitude to help pursue and accomplish your personal and professional goals. Following the performance, we'll make our way over to the Welcome Reception in the Expo for a preview of the latest products and services available to you by our many wonderful sponsors and exhibitors. The Michigan Young Professionals Network (YPN) will host an early evening networking reception to conclude day one.

On Thursday, join us at the main stage for the Rise & ReFocus Morning Keynote with Jessica Lundy. Jessica is an award winning tv host, media trainer, certified life coach and Eastern Michigan University graduate. She will help us develop a winning mindset all while living our best lives. After a full day of attending CE Marketplace certified knowledge sessions, place your final bids at the RPAC Auction in the expo. And, back by popular demand, check out the RPAC LIVE Auction, featuring some very unique items from across Michigan. We will end the day with the Realtor® Royale.

On Friday, the *Within The Law* legal team will debut its always enjoyable and informative annual legal update that will help prepare YOU and your business for our ever-changing real estate market. A highly rated attendee favorite…we like to call it, Legal Friday. Earn your legal CON ED and look for the legal track icons.

We will also honor some of your industry colleagues, including the Michigan Realtor® of The Year, Michigan Realtor® Active in Politics and Michigan Good Neighbor. We will install Natalie Rowe of the Greater Kalamazoo Association of Realtors® as our 2023 President. It's been a pleasure to work alongside Natalie and our Michigan Realtors® leadership team over the years and I look forward to seeing her continued success as a Realtor® volunteer.

I encourage you to attend all of these events, schedule some time in the expo and take a couple of well-deserved art walks. Let's make this event experience a masterpiece for your personal and professional growth. See you in September.

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September 21-23, 2022
The Convention
Amway Grand Plaza Hotel & DeVos Place, Grand Rapids

Register as an attendee or become a sponsor/exhibitor:
https://convention.mirealtors.com

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

Stranger Things

Things are quiet in the Capital City during this month of July. With the August primaries just weeks away, both the House and Senate are on recess while campaign season is running at a fever pitch. Things seem normal for the most part. The legislature and the Governor came to an agreement on the state budget before the July 1st deadline and several House and Senate bills changed chambers at the end of June, in preparation to move this fall.

Top priorities like short-term rental protections and home surveillance clarification are currently subjects of workgroup and committee meetings, respectively. Michigan Realtors® is currently working with the Michigan Senate and the Governor's office on a complimentary bill to HB 4722 (Rep. Sarah Lightner, R- Springport) that would add a regulatory and tax parity component to zoning protections for short-term vacation rentals. The Association also testified in support of HB 4724 (Representative Graham Filler, R- St. Johns) which would clarify the ability of homeowners to use audio and video recording to protect their home. Both bills are expected to move in the Senate this fall.

> With **rising inflation**, Michigan citizens are seeing something on their property tax bills that they have **not experienced since 2007**. . .

Michigan Realtors® is also pursuing new legislative priorities to carry into the 2023-2024 legislative session. Adopting the Uniform Partition of Heirs Property Act will help protect familial land and wealth, while legislation defining seller possession after closing will protect both parties in a real estate transaction when post-closing seller occupancy is involved. In addition, prioritizing fair housing in real estate continuing education will strengthen our industry for years to come.

However, like the Netflix hit *Stranger Things*, there are things going on below the surface. A little bit of the upside-down peering into our world - a jump-scare for Michigan property owners. No, you won't see a Demogorgon, the Mind Flayer or Vecna, but there are… increasing property taxes.

With rising inflation, Michigan citizens are seeing something on their property tax bills that they have not experienced since 2007; an inflationary increase in their property taxes of over 3%. If the trend continues, a full 5% inflationary increase in the 2023 tax year is virtually inevitable. These would be two of the biggest back-to-back increases that homeowners have faced since the passage of Proposal A in 1994.

Under Proposal A, an amendment to Michigan's State Constitution, property tax increases are limited to 5% or the rate of inflation, whichever is less. These increases have always been subject to additions and losses on the individual property, but the rate of inflation is the predominate measuring stick. The inflationary rate is calculated by the Michigan Department of Treasury based on the previous 24 months. For illustration, the inflationary increase for 2021 property taxes was only 1.4%. This year the inflationary rate is 3.3%. On a $5,000 tax bill, that's an increase of $165 for 2022.

The increase in property taxes can also leave new buyers stunned. Because Proposal A caps the annual increase, a transfer or sale of the property results in an uncapping where the taxable value rises to meet the state equalized value of the property. After the past couple years of a red-hot market and higher sales prices, the disparity between taxable and state equalized value can be quite large, depending on how long the previous owner had the property. This is now commonly referred to as the "pop-up tax."

The "pop-up tax" is a favorite target of the legislature, and the Realtor® is often where buyers point the finger when they are shocked by their new tax bill. This blame game was around in the mid 2000's as well when property values were increasing quickly. Just like then, legislation is already being introduced in a misguided attempt to put home sellers and Realtors® on the hook for calculating a prospective buyer's future tax liability. House Bill 6293, sponsored by Representative Jeff Yaroch (R- Richmond) is one such misguided attempt.

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PARTY MOBILE ALERTS,
text "Realtor" to 30644 .

Under HB 6293, a seller would have to make the calculation of a prospective buyer's property tax liability as part of the Seller Disclosure form. This is a task that requires way more skill and research that your average seller is capable of and requires them to include it on a form that exists for an entirely different purpose. The Seller Disclosure is a document that explains in simple terms the condition of the property known to the seller during the time in which they owned it. It doesn't require the seller to be an engineer, builder, or tax assessor to fill in the blanks. (Besides, there is already language on the Seller Disclosure form in all capital letters above the signature line alerting buyers to the fact that their property tax liability will not be the same as the current owner.)

In most instances, when buyers qualify for their mortgage, if they are escrowing their property tax payments, the monthly mortgage amount is based on the most recent property tax bill. The calculation of the "pop-up tax" is not taken into consideration. So, when the tax bill comes in significantly higher, or they receive a letter informing them that their escrow account doesn't have enough money to cover the taxes, buyers are confused. Additionally, the most current and updated tax information isn't at the fingertips of the seller — it's with the local government. Changes in millage rates, special assessments and equalization values all play a role in the amount of property tax owed. If a buyer would like to know their true potential tax liability on a property, calling the local treasurer is the place to start.

As a buyers' agent, you may also want to familiarize yourself and your clients with the Michigan Department of Treasury Property Tax Estimator. It is available through their website at *https://treas-secure.state.mi.us/ptestimator/ptestimator.asp*. While the estimator is only as current as the millage rates from 2 years ago, it allows buyers to drill down through each taxing jurisdiction to determine their property tax liability based on the sales price.

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As the year progresses, encourage your clients to open their summer and winter tax bills. Please share this information with them about the sharper than normal increases in their bills. Tell them to look at their assessment paperwork in February to understand what their tax liability is going to be in 2023, and if it seems off, encourage them to challenge their assessment. Michigan Realtors® Public Policy Committee will continue its work with the legislature on educating the public and looking for ways to soften the impact of the "pop-up tax" for new buyers. Those are not the chimes of Vecna's clock, but bells of opportunity to guide current and former clients through Michigan's property tax structure.

A CONTRACT WITHOUT ALL THE FORMALITIES?

BY GAIL A. ANDERSON, ESQ.

With the passage of the Uniform Electronic Transactions Act ("UETA"), it is theoretically possible to enter into a binding purchase agreement via an informal email exchange. But for such a contract to be enforceable, both parties must have actually intended to create a binding contract via such email. The fact that this is not the way real estate business is generally conducted may cause a court to be skeptical on the question of intent. A federal court in Michigan was recently called upon to look at this exact situation.

In that case, a bank had decided to close its branch in Adrian, MI. A nearby title company that had grown out of its current space contacted the bank to inquire about the bank's building. The Realtor® representing the title company arranged for a tour of the building in early January. On January 31st, the bank and title company orally agreed to the sale of the building for $295,000. Apparently at the request of the bank, later that same day, the title company sent the bank an email with a recap of the terms of the oral agreement, including the price, personal property to be included, down payment, terms of payment and approximate closing date. The bank did not respond.

On February 4th, after a second tour of the building, the title company re-sent that same email to the bank with an additional statement, "Please let me know if you need anything else." The bank sent an email response minutes later, stating "Thank you my friend, I will continue to work on your behalf." (It was this last email that the title company later characterized as the "acceptance email.")

The next day, the bank received a better offer for its building which it accepted. The bank notified the title company that it was going to sell the building to someone else. The title company sued to stop the bank from moving forward with the second offer, arguing that through their February 4th email exchange, the title company and the bank had entered into an enforceable purchase agreement. The court held that while the case involved factual questions as to intent that could not be decided without a full trial, the title company was very unlikely to win because:

1. The statements made in the February 4th email exchange did "not say much of anything at all and could be read any number of ways;"
2. The bank officer's email "signature" on the "acceptance email" was not really a signature because it had not been typed by the bank officer but was part of a signature block automatically generated on each of his emails.
3. Soon after receiving the bank's alleged "acceptance email," the title company's Realtor® had sent a follow up email to the bank asking when they would be receiving a purchase agreement; and
4. Any factfinder "applying common sense" would likely conclude that sophisticated businesspeople do not conduct $295,000 real estate transactions without a purchase agreement.

Realtors® should keep in mind that the court did not throw out the case based on these facts. The court simply held that, because of these facts, it would not issue an order preventing the bank from selling to the second buyer. The court would not stop the sale because it felt that if there was a trial, the title company was not likely to prove that there had been a binding contract. In fact, the court stated that the title company "had not even raised a strong question in that regard."

Whether or not the parties' intent was to create a binding contract electronically is typically a factual question that must be decided after a trial. Legal battles that cannot be decided without a trial are very expensive to resolve. Here, the court was sending a strong message to the title company that while there would need to be a trial, the title company was going to lose. Soon after, the case settled, and the lawsuit was withdrawn.

If a party wants to avoid any claim that their email creates a binding contract, they can simply add a sentence stating that parties will not be bound unless a purchase agreement is signed. An even simpler approach may be to omit the signature block so that there is no "signature" to the "contract."

In the rare instance that parties do intend to create a binding contract via informal email correspondence, they need only say so. In the case discussed above, for example, the title company might have ended its email by asking the bank officer to "please confirm your agreement to the terms below." The bank officer could have replied "by my signature below, I agree to the terms listed below."

For most of us, our real-world experience is similar to that expressed by this court – generally, people do not enter into a real estate transaction without an actual purchase agreement. Most of us would agree that at the time, it is unlikely that either side viewed the February 4th email exchange as a binding contract. It is often the case that a party does not look at an email exchange as an enforceable contract until the other party tries to enter into a contract with someone else. Again, since the question as to enforceability turns on "intent," once the argument is raised, it is expensive to defend regardless of the facts.

A WORD OF CAUTION:

Keep in mind that this case involved an email exchange between the parties themselves, not their real estate agents. There would have been no issue if the email exchange had been between the real estate agents as there can be no contract unless it is "signed" by the parties themselves. Realtors® should never tell their clients that they have a deal based upon an exchange with another Realtor®, whether such exchange is oral or in writing.

A WORD ON LETTERS OF INTENT:

In the commercial context, parties often use letters of intent as a preliminary agreement. Prior to spending significant time and money negotiating a complicated commercial purchase agreement (or commercial lease), parties attempt to reach an agreement on the major business points and reduce those terms to writing in a letter of intent ("LOI"). When questions come up as to whether a particular LOI is binding on the parties, the analysis is the same as it was in the case discussed above. The question turns on whether the parties intended to be bound by the LOI, which is a question of fact to be decided after trial. In order to avoid any dispute, the usual practice is to include language in an LOI along the lines of "neither party is bound until a purchase and sale agreement is executed by the parties." This same language can be used when conducting preliminary negotiations via email. ●

. . .it is theoretically possible to enter into a BINDING PURCHASE AGREEMENT via an INFORMAL EMAIL EXCHANGE.

MICHIGAN REALTORS®

THE CONVENTION

Amway Grand Plaza Hotel & DeVos Place, Grand Rapids | Sept. 21-23, 2022

For Michigan Realtors®, The Convention is the largest gathering of real estate professionals in Michigan. The Convention provides opportunities to attend CE Marketplace certified knowledge sessions, networking events and recognizes industry volunteers and leadership. The Expo showcases many products and services essential to the day-to-day business of real estate. Held during the international art competition known as ArtPrize, enjoy a week of learning, networking and inspiration. It's "The Art of Real Estate".

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REGISTRATION PACKAGES

	Open thru 8/26	8/27 thru 9/14	Onsite
Full Registration - Michigan Realtors® Member	$230.00	$255.00	$280.00
Full Registration - Non-Member	$280.00	$305.00	$330.00
First Time Attendee Member *	$175.00	$200.00	$225.00
Wednesday ONLY Registration	$170.00	$195.00	$220.00
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Local Association AE, Board Staff Full Registration	$190.00	$190.00	$190.00
Guest - not involved in the real estate industry**	$90.00	$90.00	$110.00
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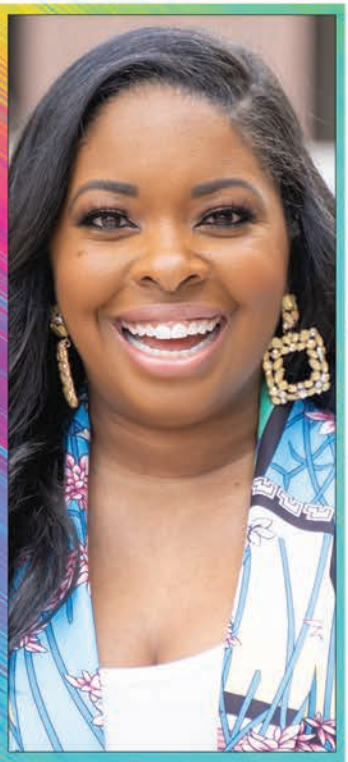
187 Monroe Ave. NW, Grand Rapids, MI

Enjoy skywalk access to various hot spots downtown,
or choose one of the eight restaurants and bars in the hotel.
Reservation cutoff date: August 26th, 2022

SPEAKERS

Speakers, sessions and special events subject to change. Visit **Convention.Mirealtors.com** for current event news and updates.

Mark Schulman
Grand Assembly Keynote



Jessica Lundy
Rise & ReFocus
Morning Keynote

Nancy Allen
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Gail Anderson
McClelland & Anderson, LLP

Steve Bintz
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BY REBECCA GEAN, ESQ.,
DIRECTOR OF LEGAL EDUCATION

Brokers, Are You Complying with the Occupational Code?

Realtors® who have attended Legal Continuing Education courses offered by Michigan Realtors® are likely familiar with the legal team's spiel about the importance of keeping compliant with the Michigan Occupational Code. While a discussion about regulatory compliance may not be the most riveting of topics (ok, we admit that it's not riveting at all), it is incredibly important that Realtors® understand and act in accordance with the Code provisions. This article will explore some of the often-overlooked Occupational Code provisions that apply specifically to real estate brokers.

Broker Supervision

Brokers are well-aware that Occupational Code requires them to "supervise" the work of real estate salespersons. Thankfully for brokers, the Occupational Code takes the guesswork out of determining what "supervision" entails, because the Code prescribes a list of supervisory duties that Michigan brokers are required, at minimum, to perform. Those duties include:

- Direct communication in person or by radio, telephone or electronic communication on a regular basis.
- Review the practice of a salesperson.
- Review a salesperson's reports.
- Analysis and guidance of a salesperson's performance in regulated activities.
- Providing written operating policies and procedures to the salesperson.[1]

These supervisory duties are, of course, an Occupational Code requirement, but they are also important from a liability perspective. At the end of the day, employing brokers bear the ultimate responsibility for the actions of their agents. This means that, Code violations aside, there's great incentive for brokers to know what their agents are up to and to have a compliance plan in place to make sure that their agents are, in fact, acting in accordance with the law and other brokerage policies.

1 MCL 339.2512f(1)

Trust Accounts

The Occupational Code lays out several requirements to which brokers must adhere in maintaining their trust account (and when accounting for client funds that are placed in the trust account). First, a broker cannot comingle their own funds with brokerage trust accounts funds.[2] The exception here is that a broker can deposit up to $2000 of its own money into each trust account (they can maintain more than one) to cover bank service charges and other minimum balance requirements.[3]

Michigan law also specifies that brokers must keep records of any money deposited into the trust account and clearly indicate the date and from whom the money was received.[4] A broker must keep two types of trust account records. The first is a chronological record of all receipts and distributions from the account. The second is a transaction-specific record that catalogues every deposit and withdrawal associated with each real estate transaction.

The Code requires brokers to keep their trust account records for at least three years. Record keeping is necessary to establish compliance with the Code, but it is also important from a liability perspective. If a real estate broker becomes entangled in a lawsuit involving one of their transactions, they'll want to provide well-documented, detailed records pertaining to that transaction. Since the Statute of Limitations for most of these claims is capped at six years, most attorneys recommend that brokers hold on to their trust account records for a minimum of seven years.

Remember that to comply with the Code, Brokers are only obligated to keep trust account records for three years. However, keeping those records (and other documents related to the transaction) for seven years will give brokers the peace of mind that they are not destroying records that they may later be called upon to produce in litigation.

2 MCL 339.2512(k)(iii)

3 MCL 339.2512(k)(iv)

4 MCL 339.2512(k)(vi)

Earnest Money Deposits

If a real estate broker is holding on to a client's earnest money deposit (EMD), then that broker must comply with the Occupational Code rules that govern EMD's and trust accounts. The Code requires a broker to deposit the EMD into their trust account within two banking days of receiving notice that an offer to purchase has been accepted.[5] This means that brokers are not obligated to deposit the EMD as soon as they receive it. They could if they wanted to, of course, but remember that the "two banking day" clock does not begin to toll until an offer has been accepted and there is a binding purchase agreement in place. Salespersons, on the other hand, may not hold on to EMD's until there is a purchase agreement in place. The Code specifically requires a salesperson to remit the EMD to their broker "upon receipt."[6]

If a third-party escrow agent (who does not hold a real estate license) is holding on to the EMD, then that third-party is not bound by the same Occupational Code rules that bind brokers and salespersons. In this case, the broker must hand over the EMD to the third-party escrow agent within two days of receiving notice that the offer has been accepted.[7]

Keep in mind that if there is a dispute over the EMD, Michigan law prohibits a broker from releasing the EMD until either: 1) the parties agree, in writing, as to who will receive the funds, or 2) there is a court order that directs the disposition the funds.[8] The EMD must remain in the broker's trust account until one of those two things happen. This can be very frustrating for both agents and clients, especially when the purchase agreement is very clear as to who is entitled to the EMD. The law, however, is also very clear – if there is a dispute over the EMD, the funds cannot be distributed to either party until one of the above events have taken place. Even if the answer is obvious as to who is entitled to the EMD.

5 MCL 339.2512(k)(v)
6 MCL 339.2512(k)(ii)
7 MCL 339.2512(i)(vi)
8 R 339.22313(9)

Delivering the License of a Departing Licensee

The Occupational Code requires that an employing broker retain "custody and control" of a salesperson's physical certificate of licensure.[9] When a salesperson or associate broker decides to part ways with their employing brokerage (or when their employment has been involuntarily terminated) the Occupational Code regulates what the employing broker must do with that individual's physical license.

When an employing broker receives written notice of a salesperson's departure, they must deliver that salesperson's physical license to the Department of Licensing and Regulatory Affairs (the Department) within five days of receiving the notice.[10] The license can be delivered by hand or mailed by certified mail. A broker who simply drops the license off in the mailbox (and does not use certified mail) is not complying with the Code.

If a salesperson does not give the employing broker written notice that they are departing the brokerage, then the Department must notify the broker in writing when it receives the salesperson's application to transfer their license to another broker. Notice from the Department operates the same as a notice from the salesperson. Once notice is received, the broker has five days to deliver the salesperson's license to the Department.

When the broker delivers the salesperson's license back to the Department, they must also notify the salesperson, in writing, that they have returned that individual's license to the Department.[11] A copy of that communication should accompany the physical license when it either mailed or hand-delivered to the Department.

9 MCL 339.2506(2)
10 MCL 339.2507(1)
11 MCL 339.2507(2)

Compliance Matters

Why is compliance with the Occupational Code so important? There are significant penalties applied Code violations, such as:

- Placement of a limitation on a license
- Suspension of license
- Denial of a license renewal
- Revocation of license
- Fine up to $10,000
- Censure
- Probation
- Restitution.[12]

These are serious repercussions, but even more concerning is the bad public image and loss of reputation that is often associated with businesses who repeatedly violate the Occupational Code. The real estate industry is one in which competitive cooperation plays a crucial role in successfully serving clients and closing transactions. No brokerage wants to be known as the "one who doesn't play by the rules." That behavior does not serve the industry, and it certainly does not serve the client.

12 MCL 339.602


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With more refined, robust and intuitive search tools, enhanced functionality, and compelling video displays, online home hunts have never been more exciting or effective.

Directing customers to *you* — where you can elevate their experience from the everyday — to find their Dream Home.

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