

Michigan Regulations and Considerations in Cross-Border Real Estate Transactions

DISCLAIMER: THE INFORMATION PROVIDED HEREIN IS OF A GENERAL NATURE, FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE RELIED UPON OR CONSTRUED AS REAL ESTATE, LEGAL, TAX, ACCOUNTING OR OTHER PROFESSIONAL ADVICE OR OPINION. YOU SHOULD NOT USE ANY INFORMATION CONTAINED HEREIN AS A SUBSTITUTE FOR CONSULTATION WITH LEGAL OR ACCOUNTING PROFESSIONALS OR OTHER PROFESSIONAL ADVISORS.

1. Michigan Association of REALTORS® (“MAR”):

Representing nearly 23,000 members and 42 local real estate associations, the Michigan Association of REALTORS® provides its membership access to its cutting edge real estate forms library, wide-ranging continuing education opportunities, industry publications, and top tier legal and public policy advocacy. The MAR’s mission statement is dedicated to the protection of private property rights and the fostering of sound public policy within the real estate industry.

2. Regulations and Regulatory Bodies in Michigan and the United States

- a) Michigan Department of Licensing and Regulatory Affairs (“DLARA”): DLARA is the regulatory body charged with licensing and enforcement. All REALTORS® are licensees under DLARA. However, all licensees under DLARA are not members of the Michigan Association of REALTORS®. The department currently oversees the practice of approximately 42,419 real estate salespersons, 9,942 associate real estate brokers, 11,348 real estate brokers, and 716 branch offices. DLARA operates pursuant to the Michigan Real Estate Law Book (AKA Red Book), a compilation of the Michigan Occupational Code, Related Statutes, and Administrative Rules governing Real Estate Activity. An online PDF of this compilation can be found at:
http://www.michigan.gov/documents/dleg/redbook_217577_7.pdf
- b) Michigan Department of Civil Rights: The Michigan Department in charge of claims of housing discrimination.
- c) United States Department of Housing and Urban Development: The Federal Department charged with policing violations of the Real Estate Settlement and Procedures Act (RESPA), Fair Housing Act, Americans with Disabilities Act.
- d) REALTOR® Code of Ethics and Pro Standards.

3. Licensing

Brokers & Salespersons

Article 25 of Public Act 299 of 1980, as amended was created, to license and regulate the practice of real estate brokers and salespersons in Michigan. Article 25 defines a **real estate broker** as an individual or an entity, who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

A real estate salesperson

A **real estate salesperson** is defined as an individual who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

Property management

Property management is defined as the leasing or renting, or the offering to lease or rent, of real property of others for a fee, commission, compensation, or other valuable consideration pursuant to a property management employment contract.

4. Brokerage Payments Requirements

All commissions and valuable consideration pursuant to a real estate transaction must go through the salesperson's broker. There is no direct payment to salespersons in Michigan. The broker-salesperson relationship is generally conducted pursuant to an independent contractor agreement.

In regard to payment of commissions to cooperating brokers who are licensed only in Ontario, Canada; MCL 339.2512(h) generally prohibits payment of a commission to a person not licensed in Michigan. However, it does provide as follows:

“However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.”

There is nothing in the Occupational Code defining the word “state. To date, there has been no judicial or administrative determination regarding the scope of the word “state” as used in MCL 339.2512(h).

The National Association of REALTORS® has developed a valuable resource library for international deals. Materials may be accessed at <http://www.realtor.org/field-guides/field-guide-to-international-referrals>

5. Transactions & Listings

MLS: Michigan does not have a state-wide MLS®. Michigan properties represented by a REALTOR® are generally listed in the MLS® of the Listing Broker. These transactions, relating to advertising, representation, and compensation and cooperation are governed by the MLS® Rules and Regulations adopted by the MLS®. There is generally a fair amount of overlap around the state. However, it is worth acquainting yourself with the various regional approaches.

Commercial Property Information Exchange (“CPIX”): CPIX represents a strong information and networking resource aimed at commercial real estate practitioners and investors. Created and governed by commercial brokers and related industry professionals, CPIX has become the most highly used commercial real estate resource in Michigan for site selection by brokerages, city and county government and the MEDC (Michigan Economic Development Corporation).

6. Closing a Transaction

Generally speaking, the closing of a Michigan real estate transaction is handled by a Title Company. For both the buyer and seller, a reputable title company is of paramount importance. The Title Company will conduct the necessary title searches and a thorough examination of the records for the property to determine that a seller has a clear title to convey to the buyer. At the closing, a settlement agent from the Title Company will review all the necessary documentation with the parties, collect closing costs and distribute monies. Finally, the title company will ensure that the new deed, mortgage, and other documents are appropriately filed. The Title Company will also issue a Title Insurance Policy to protect the buyer against any subsequent challenges to the clear title. It is not uncommon for some Title Companies to have affiliated business relationships with Real Estate Brokerages in Michigan. Under Michigan Law & Administrative Rule, the listing Broker or Associate Broker must furnish and sign a complete closing statement, showing each party all receipts and disbursements affecting the respective party.

7. Taxes

Real Estate Transfer Taxes

- i. State Real Estate Transfer Tax
- ii. County Real Estate Transfer Tax

Both the County Real Estate Transfer Tax Act, 1966 PA 134, MCL 207.501 et seq. And the State Real Estate Transfer Tax Act, 1993 PA 330, MCL 207.521 et seq. Impose a tax upon, inter alia:

"Deeds or instruments of conveyance of real property or any interest in property, for consideration." 1996 PA 134, § 2 (county tax), and 1993 PA 330, § 3 (state tax).

Calculations: If the value of the real estate transferred is \$100 or more, payment of State and County transfer tax is required.

1. Rate of County Tax - \$.55 for each \$500 or fraction thereof.
2. Rate of State Tax - \$3.75 for each \$500 or fraction thereof.

Each Tax features several potential exemptions to the tax that an agent may become familiar with to help his or her client in a sale. Each Tax is levied on the Seller of Real Property. However, the duty to pay may be contractually shifted to a buyer. That said, a refund of the State Real Estate Transfer Tax where unnecessarily paid is specific to the Seller of property. That form and an itemized list of the exemptions are found here:

http://www.michigan.gov/documents/2796f7_2601_7.pdf

Principle Residence Exemption:

Buyers seeking to relocate in Michigan as full-time residents can avail themselves of the Principle Residence Exemption on their annual property tax. The criteria for the exemption and a detailed discussion of its utility can be found at the following link:

www.michigan.gov/documents/2856_11014_7.pdf

It is worth noting that Canadian citizens buying a vacation property in Michigan are likely not eligible for the Principle Residence Exemption due to the seasonal occupancy. Therefore, the property taxes will be calculated at a higher rate. A Michigan property tax estimator is updated annually on the Michigan Department of Treasury's

website: http://www.michigan.gov/taxes/0,4676,7-238-43535_43540---,00.html

Other Exemptions:

While the Principle Residence Exemption is the most commonly known Property Tax Exemption for Michigan residents, the state offers a variety of other Property Tax Exemptions for residential and commercial properties. A list and a detailed discussion can be found at the following link:

http://www.michigan.gov/taxes/0,1607,7-238-43535_53197---,00.html

8. Other Potential Expenses

- Appraisal fees
- Survey fee
- Title insurance fee
- Home inspection fee
- Condo fee
- Inspection fee
- Property insurance
- Condo fee
- Home Owner Association Fees
- Closing Costs

9. Renting Purchased Property

Many Michigan REALTORS® operate as Property Managers for both residential and commercial property owners. To engage in property management in Michigan you must generally be licensed as a Broker or Salesperson. Income generated from rental property is subject to taxation as income. Working with a local Certified Public Accountant or someone well acquainted with State and Federal Taxation would be wise. There are many tax considerations that may spur different approaches to ownership.

10. Foreign Ownership

There is no citizenship requirement for ownership of real property in the United States. Whether the foreign buyer is a foreign citizen, a domestic corporation or foreign investment entity are all important considerations for the buyer regarding long-term tax implications. A discussion of direct ownership versus ownership through a foreign or domestic corporation is one that should occur between the buyer and their accountant or tax attorney.

A basic understanding of the withholding requirements under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) is essential when it comes to disposition of real property by a foreign person.

- a. <http://www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding>
- b. <http://www.irs.gov/Individuals/International-Taxpayers/Exceptions-from-FIRPTA-Withholding>

11. Helpful Contacts

Michigan Department of Licensing and Regulatory Affairs
Licensing and Regulatory Affairs
P.O. Box 30004
Lansing, MI 48909
517-373-1820

Michigan Association of REALTORS®
720 North Washington Avenue
Lansing, MI 48906
517-372-8890

State Bar of Michigan
Michael Franck Building
306 Townsend St.
Lansing, MI 48933-2012
517-346-6300
800-968-1442

United States Department of Housing and Urban Development
www.Hud.gov