A publication of Michigan Realtors®

Legal Hotline FAQ

Real Estate professionals guide to legal questions.

May 2021
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Legal Hotline

Michigan Realtors®:

Welcome to the 2021 publication of the Michigan Realtors® Legal Hotline Companion. For several years, your Legal Hotline attorneys have been compiling the most common questions posed by Realtor® Members. From the best practices associated with Earnest Money Deposits to the rules governing Offer & Acceptance, and many more in between, the Legal Hotline continues to be an extremely helpful resource in staying attuned to the issues that matter to you. This Legal Hotline Companion is intended to provide answers to many of the questions that you face out in the real estate marketplace. Building off the success of the inaugural publication, this 2021 Legal Hotline Companion features some organizational and substantive enhancements. For instance, as you review each section, you'll notice that the relevant occupational code section or statutory provision is now included for reference purposes. These additions should make this portable reference even easier to read and understand.

On behalf of your Michigan Realtors® Legal Team, we sincerely hope you view this as a significant addition to the various legal resources that Michigan Realtors® develops and distributes. We continue to seek out ways to multiply and diversify the various methods in which we develop and distribute legal research and analysis to our membership. Based on your feedback, we will continue to build upon legal education as a key value proposition for all Michigan Realtors®. We wish you much success in 2021 and beyond!

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Additional Legal Resources

COVID-19 Questions and Guidance

For up to the minute guidance on COVID-19 related issues, please visit Michigan Realtors® Industry Resources page.
https://mirealtors.com/Industry-Resources

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 Michigan Realtors® 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.

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Letter of the Law

Michigan Realtors® presents the "Letter of the Law" video series, a legal analysis generated by input from you, the viewer. Please send your ideas for future installments to bwestrin@mirealtors.com. We look forward to hearing from you.
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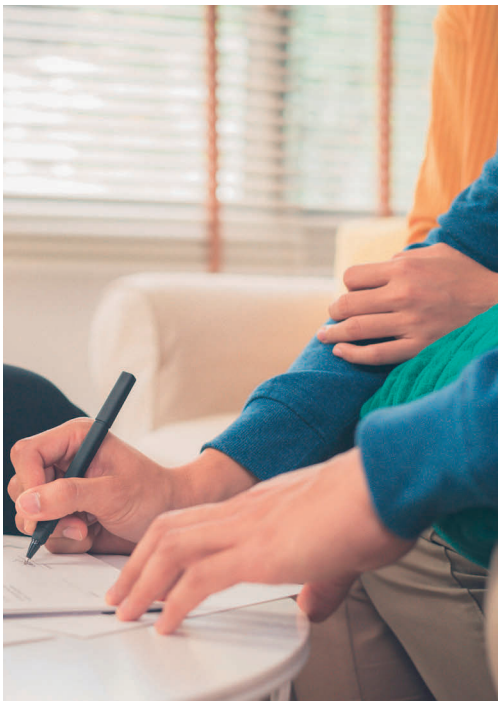

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Advertising Q/A

[A] real estate salesperson or an associate broker shall only advertise to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity under the supervision of, and in the business name of, his or her employing broker. Any advertising displayed or published on or after January 1, 2018, that includes the name of an associate broker, a salesperson, or a cooperating group of associate brokers or salespersons employed by the same real estate broker, shall include all of the following:

(a) The telephone number or street address of the employing broker.

(b) The business name of the employing broker, in equal or greater type size than the name of the associate broker, salesperson, or cooperating group. MCL 339.2512e(3).

I have a real estate sales team that advertises under the name, "Smith Team." I have heard that the type size of the team name cannot be larger than the type size of my broker's name. Is this correct?

YES. The Occupational Code requires, in all advertisements, that the type size of the business name of the employing broker must be in equal or larger size type than the name of the associate broker, salesperson, or team.

My broker told me that the type font used for the broker's address must be as large as the type font used for the agent's name. Is this true?

NO. The Occupational Code requires that advertising include the broker's address or phone number but does not regulate the type size for the address or phone number. (Of course, brokers may impose advertising requirements on their agents that are more stringent than those required by the Occupational Code.)

I am a commercial broker. Are the Occupational Code's advertising requirements applicable to the sale of commercial property?

YES. The law is applicable to any advertisement to buy, sell, exchange, rent, lease or mortgage real property or a business opportunity by a real estate broker. There is no exception for commercial property or commercial brokers.

Advertising Q/A

A real estate broker shall not conduct business or advertise under a name other than that in which the broker's license is issued or under an assumed name that is authorized by law. A real estate broker shall notify the department of its adoption of an assumed name with its license application, or within 30 days after it adopts an assumed name, whichever is earlier. MCL 339.2512e(5).

My brokerage firm has acquired a small brokerage firm in a nearby city. We would like to continue to use the name of the company we acquired. Can we do that?

YES. However, you will need to register that company's name as an assumed name with the Corporations Division and then notify the Licensing Division of the assumed name filing.

I am a licensed salesperson commonly known by the nickname "Stevie M" and I use that name in all of my advertising. Is it a violation of licensing law to use a nickname in my advertising?

NO. The Occupational Code does not prohibit salespersons from using nicknames in their advertising. A real estate salesperson can use name variations in his/her real estate advertising so long as the use of such name is not done with an intent to defraud.

Agency Q/A

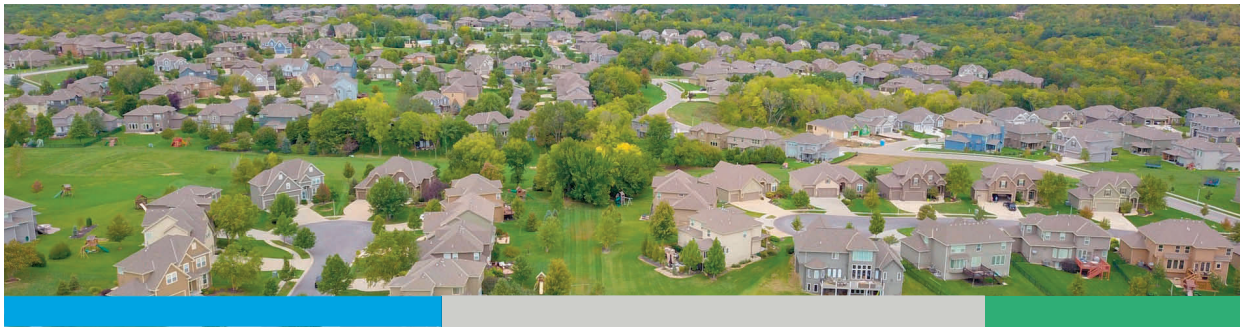
I represent a buyer who has made an offer of $150,000 on a house listed at $180,000. The listing agent called and told me that the sellers were rejecting the offer and that the sellers would take no less than $170,000. My buyer then submitted an offer for $170,000, which the sellers promptly accepted. Although everyone in this transaction is happy, my broker believes that the listing agent breached a fiduciary duty owed to the sellers by telling me the bottom-line price the sellers were willing to accept. Is my broker correct?

POTENTIALLY, YES. Michigan case law has held that a broker representing a seller may not suggest to a purchaser that the seller will accept less than the stated price. Harvey v Lindsay, 264 Mich 118 (1933). Under your circumstances, unless the sellers gave their agent permission to disclose the minimum price that they were willing to accept, the listing agent may have breached a fiduciary duty owed to her sellers.

> A licensee shall disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the licensee's duties that each agency relationship creates before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller. MCL 339.2517(1).

I am representing a buyer in the purchase of a house. The listing agent said that by law I am required to provide him with a copy of the agency disclosure statement I furnished to my buyer-client. Is this true?

POTENTIALLY, YES. The law does not require you to provide the listing agent with a copy of the agency disclosure statement you furnished to your buyer-client. But you should submit a new agency disclosure form to the seller – through the listing agent –notifying the seller that you are acting as a buyer's agent.



Agency Q/A

As used in [the Agency Disclosure Act]:
(b) "Buyer" means a purchaser, tenant, or lessee of any legal or equitable interest in real estate.
* * *
(g) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate where the interest in real estate consists of not less than 1 or not more than 4 residential dwelling units or consists of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104. MCL 339.2517(11)(b) and (g).

Is it true that an agency disclosure form is not required for commercial property?

YES. The law requires an agency disclosure form only if the property in question includes one to four residential dwelling units or a residential building site. Note that some commercial property includes residential dwelling units. Disclosure would be required for those types of properties.

I represent someone who is interested in leasing a house. Am I required to provide an agency disclosure form?

YES. The agency disclosure law defines a real estate transaction as one involving the sale OR LEASE of real estate consisting of not less than one or not more than four residential dwelling units or a building site for a residential unit.

A broker and a client may enter into a designated agency agreement. In the absence of a written designated agency agreement, a client is considered to have an agency relationship with the broker and all affiliated licensees. MCL 339.2517(6).

Agency Q/A

I am working in a designated agency office. Is it true that so long as I check "buyer agency" on the agency disclosure form, a buyer agency agreement is not necessary?

NO. Under the law, unless a buyer signs a buyer agency agreement acknowledging his/her agent's designated agency status, the buyer will have an agency relationship with every other agent in the office.

I own a brokerage which practices traditional agency. Would it be possible to have one of my agents represent the seller and another of my agents represent the buyer in the same transaction without establishing dual agency?

NO. In the above circumstance, all of the agents in the firm would be dual agents. In order to have your agents represent the buyer and seller exclusively, your firm would have to practice designated agency.

I am an agent in an office that practices designated agency. I am currently a designated agent for seller. I also represent someone as a designated buyer agent. My buyer is interested in making an offer on my listing. Is it possible to be a dual agent in a designated agency office?

YES. It is possible to be a dual agent in a designated agency office, but you must get both the buyer and the seller to consent in writing. Without informed consent you have unconsensual dual agency and will forfeit your right to a commission.

I am a listing agent for a real estate firm that practices designated agency. My husband works at the same firm and he is the designated agent of a buyer who wants to make an offer on one of my listings. Can we do this or are we required to enter into a dual agency arrangement?

While the law does not expressly prohibit a husband and wife from acting as designated agents on opposite sides of a transaction, we would strongly advise against it. If a problem later arises in connection with the transaction or the property, it may be difficult to convince the parties (or a court) that the parties received the full range of fiduciary duties from their respective designated agents.

Agency Q/A

Our office represents the firm's clients as designated agents. Can compensation be offered to sub-agents through the MLS? We were told that no one can be the agent for the seller, unless the seller signs a piece of paper specifically naming them as a designated agent.

Your firm can act as designated agents and offer sub-agency through the MLS to cooperating firms. This is not an attempt to create an agency relationship between the cooperating firm and the seller. Instead, it is an offer of subagency offered by your firm, i.e., broker to broker.

> "Transaction coordinator" means a licensee who is not acting as the agent of either the buyer or the seller. MCL 339.2517(11)(k).

I am representing clients with the sale of their home. I received a call from someone who is interested in making an offer on my client's home. May I represent that potential buyer as a transaction coordinator?

NO. A transaction coordinator does not represent either party, but is a neutral party. You cannot both be a transaction coordinator and listing agent in the same transaction. In this circumstance, you could work with the buyer as a customer, rather than a client.

I am a real estate salesperson purchasing a home for myself. Can I act as a transaction coordinator in this purchase?

NO. According to agency law, a transaction coordinator is an agent that represents neither the buyer nor the seller. Under these circumstances, you are the buyer of this property and clearly cannot hold yourself out as a "neutral" transaction coordinator.

Q/A

My buyer just entered into a purchase agreement to buy a home. The listing agent is continuing to market the seller's property. Can he do this?

YES. Sellers (and their agents) may continue to market a property even after they have entered into a binding purchase agreement unless the purchase agreement expressly prohibits them from doing so. (The agent must comply with MLS policies requiring status.)

I represented the buyer in a purchase of a house that closed this past summer. The buyer discovered some issues with water in the basement that the seller did not disclose. My buyer wants to take the seller to arbitration, but both parties left the section in the purchase agreement on arbitration blank. Can the buyer require the seller to arbitrate this dispute?

Many Michigan purchase agreement forms require the parties to indicate that they agree to arbitrate by initialing the arbitration provision. Assuming that this is the case and the parties did not both initial the arbitration provision, there would be no contractual agreement to arbitrate. If the parties did not arrange to arbitrate in the purchase agreement form, the buyer will have to take the seller to court (unless the seller now agrees to arbitrate).

The purchase agreement provides that the seller shall surrender possession of the home on August 1st at 12:00 a.m. Is the seller entitled to possession for the entire day on August 1st?

While the weight of authority seems to be that 12:00 a.m. (or midnight) marks the start of the new day, this understanding is by no means uniform. For this reason, to avoid confusion, Realtors® are encouraged to avoid using this deadline in contracts and instead use 11:59 p.m. or 12:01 a.m.

I am representing a buyer in connection with the purchase of a home. The agreed upon closing date is "on or before" January 4th. My client is ready to close and wants to schedule the closing date earlier than January 4. Is the seller obligated to close at an earlier date?

NO. This language is typically interpreted to mean that while the parties can agree to close prior to the stated date, neither party can be required to do so.

The listing ticket included an item and the buyers assumed that it was therefore included in the transaction and didn't expressly reference that item in the purchase agreement. Now the sellers say that they are taking it with them because the buyers didn't contract to buy the item. Are they right?

The status of an item that is not specifically contracted for depends on the item. If the item is a fixture, then it becomes a part of the real estate and transfers to the buyer even if not specifically included in the purchase agreement. The general definition of a fixture is something that cannot be removed without damaging itself or its surroundings or that becomes useless when removed. When an item is not a fixture, but personal property, the answer is less clear. Where an item was specifically mentioned in the listing ticket, but was not mentioned in the purchase agreement, a seller's attorney could argue that since the listing ticket is not an offer, it cannot be accepted and the item is not included in the sale. A buyer's attorney, on the other hand, could argue that a listing ticket is in fact an advertisement and that a buyer should be entitled to rely on the fact that the home, if purchased, will include all advertised items. There is simply no all-purpose correct answer to this question. In order to avoid disputes, buyers' agents are encouraged to include all items in the purchase agreement, either by specifically mentioning them, or by simply expressly incorporating all items listed in the listing ticket.

Our seller/client has entered into a purchase agreement, but now does not want to sell. My client has asked us to figure out a way to get him out of the deal.

While you may know from your experience some way to get your client out of the deal without liability, resist the urge to provide this type of legal advice. The appropriate answer to this question is to tell your client to speak to an attorney.

I have a listing on a home owned by a married couple. Currently, the wife is out of town on business but they want to accept an offer. Can the husband sign the contract on the wife's behalf and make this a binding contract?

NO. In order for there to be a binding contract, both the husband and the wife would have to sign the purchase agreement. The husband would be able to sign on his wife's behalf only if she had given him her power of attorney before she left town. Of course, often a contract expressly states that the parties may sign and deliver an acceptance electronically.

I represent the sellers as a listing broker. An offer came in from another office but my seller is currently out of town and cannot be reached. The seller authorized me via telephone to accept the offer on my seller's behalf. Is this an enforceable contract?

NO. A broker can sign a binding purchase agreement on behalf of the buyer or seller only if he has explicit written authority to do so. Verbal authority over the telephone would NOT be sufficient. A listing agreement by itself does not give the broker authority to bind his/her principal to a contract for the sale of land.

My sellers have a purchase agreement signed with Buyer A. Buyer B has now made an offer on the same property that the sellers consider to be a better offer. Buyer A has proposed an amendment to his purchase agreement asking to purchase some of the sellers' outdoor lawn furniture and pool equipment. The sellers believe that the purchaser's proposed amendment reopens the terms of the contract. The sellers want to rescind the purchase agreement with Buyer A and enter into a purchase agreement with Buyer B. Does Buyer A's proposal of an amendment to the existing purchase agreement reopen the contract such that my sellers may terminate it?

NO. Some Realtors® have the misconception that if an amendment to an existing contract is proposed and rejected, the purchase agreement is terminated. Ordinarily this is not the case. If a proposed amendment to a contract is rejected, the purchase agreement remains in full force and effect. Note that the rules may be different when the proposed amendment relates to the removal of a contingency, depending on the wording of the contingency.

I am a Realtor® representing sellers on the sale of their house. They entered into a purchase agreement with a buyer yesterday. Today the buyer's agent called me and said that the buyer wishes to exercise his 3-day right of rescission. Does such a right exist?

NO. There is no 3-day right of rescission on a contract for the sale of real estate.

I am representing a buyer who has made an offer on a home. The seller countered our offer with a clause stating that the buyer waives his right to inspect the property. Is this permissible?

YES. The seller is free to propose such a clause in a purchase contract and it is up to the buyer to either agree or reject such a provision.

Q/A

I submitted an offer on a home on behalf of my buyer-client. The listing agent told me state law requires that a pre-approval letter was necessary in order for an offer to be valid. Is this true?

NO. While sellers may require a pre-approval with any offers they consider, there is no state law that requires a pre-approval in order for an offer to be valid.

I presented an offer from my buyer; however, the listing agent told me that the offer was not valid since the buyer's signature was not witnessed. Does an offer to purchase real estate require a witnessed signature?

NO. There are no legal requirements for witnessed signatures in a contract for the sale of real estate.

I am a Realtor® that just moved to Michigan from another state. The state I'm coming from requires a listing broker to make sure that an earnest money deposit is provided for each transaction. Is this required in Michigan?

NO. While an earnest money deposit is typically provided as a matter of custom (and is a good idea), it is not required in order for there to be a valid binding contract. The parties' mutual promises in a purchase agreement constitute sufficient "consideration" to create a binding contract.

Commissions/Administrative Fees Q/A

I represented the buyer in a transaction that did not close because the seller defaulted. I clearly produced a ready, willing and able buyer. Can I collect a commission from the seller?

NO. You did not have a contract with the seller. Your contract was with the listing broker through the MLS. Under MLS rules (and the Code of Ethics and Arbitration Manual), a cooperating broker has no right to a commission from the listing broker if the transaction does not close for whatever reason.

I have a listing agreement with my sellers for the sale of their home. Sellers entered into a purchase agreement with Buyer A. We were all set to close but then the sellers stopped returning my calls. I recently learned that the sellers were planning to close on the property "secretly" and without my involvement in an apparent effort to avoid paying the commission. I intend to file a lien on the sellers' property to secure my commission. Is this acceptable?

NO. Ordinarily, a Realtor® has no right to file a lien on residential property in order to protect his or her claim to a commission. In order to file a lien, a person must have a contractual or statutory right to file a lien. Because the penalties for wrongfully filing a lien on real property are severe, a Realtor® should never file a lien on real property without the assistance of a lawyer.

I am representing a seller in the sale of his residence. My seller now has seller's remorse. I have heard that brokers can file liens on real estate in order to collect commissions. Is this true?

NO. The Commercial Real Estate Broker's Lien Act allows brokers to file liens for a commission owed in connection with the sale or lease of commercial property. MCL 570.583. Since you have a residential listing, filing a lien could result in a lawsuit for slander of title.

I received an offer through a buyer's agent, who is a participant in my MLS but never showed the property to his buyers. It turns out that his clients contacted the sellers directly and arranged a showing without a licensee present. The buyers then contacted the buyer's agent and asked him to write up an offer. Do I have to pay the buyer's agent commission if he did not show the house?

YES. An offer of compensation through an MLS does not require that the agent bringing the buyer show the buyer the house. An agent may qualify as procuring cause even if he or she did not show the house to the buyers.

Commissions/Administrative Fees Q/A

I am a buyer's broker. My client is putting in an offer on a house where the listing broker is offering cooperating compensation in the amount of 2 ½%. My deal with my buyer has always been that I will get 3%. Can we include this requirement in the buy/sell agreement?

If your buyer's broker contract explicitly states that the buyer must make up the difference if the commission offered is less than 3%, then your buyer may include a provision in the buy/sell agreement which states the seller would agree to assume the buyer's obligation to pay you an additional ½%. Keep in mind though that this negotiation would not affect the listing broker's contractual rights under the listing contract. If the listing contact called for 6%, the cooperating split offered by the listing broker through the MLS was 2 ½%, and the buyers passed on their ½% obligation to the seller, then the seller would be contractually obligated to pay a total commission of 6 ½% -- i.e., 6% to the listing broker and ½% to you. You would collect ½% from the seller and 2 ½% from the listing broker.

I am the listing broker. My seller-client just received an offer from a buyer that states that the listing broker must pay the buyer's broker, who is not an MLS participant, a $2,500 referral fee. I thought that an agent's commission cannot be negotiated in the buy/sell agreement.

You are correct that a buyer's broker cannot negotiate his/her commission in the buy/sell agreement. The listing broker is not a party to the buy/sell agreement. So, if a buyer's broker's right to a commission is, as is typical, from the listing broker through the MLS, that commission amount cannot be changed through the buy/sell agreement. But if the buyer's broker contract obligates the buyer to pay his buyer's broker a specific amount, such as a $2,500 referral fee, then the buyer can pass on that obligation to the seller in the buy/sell agreement. It would be the same as the buyer requiring the seller to pay for buyer's title insurance. In this situation, the buyer's broker would not be negotiating his compensation with the listing broker. It is the buyer that would be using the buy/sell agreement to try and get the seller to take over the buyer's payment obligation.

An application for a real estate salesperson's license shall be signed by the real estate broker that will employ the applicant. The department shall only issue a real estate salesperson's license to an individual. MCL 339.2505(4).

Commissions/Administrative Fees

Q/A

I am a salesperson and I formed a corporation for tax purposes. I have told my broker that I want all future commission checks payable in the name of my company. Is this possible?

NO. Since salespersons' licenses can only be issued to individuals and brokers can only pay commissions to real estate licensees, a salesperson cannot receive commission checks from his broker in the name of a corporation or other entity.

> An individual shall not hold more than 1 associate real estate broker's license as a nonprincipal, but an individual may hold 1 or more associate real estate broker's licenses as a principal. MCL 339.2509(2).

I am an associate broker who formed a corporation for tax purposes. I have told my broker that I want all future commission checks made payable to my company. Is this possible?

YES. If your new corporation has a broker's license. An associate broker with one real estate company can set up a separate corporation, obtain a broker's license for that corporation and ask the real estate company for which he works to issue his commission checks in the name of his corporation. This option is not available to licensed salespersons.

> If an individual earned commissions or other income while employed by a real estate broker, it is not grounds for disciplinary action . . . for that broker to pay those commissions or income to that individual, regardless of whether that individual is now employed by another real estate broker or is no longer licensed. MCL 339.2510(2).

Commissions/Administrative Fees

Q/A

I am a broker who had a salesperson recently leave my company on good terms. She is now with another broker but had a number of pending transactions that are now scheduled to close. I would prefer to pay her directly instead of going through her new broker. Can I pay my former salesperson directly for these sales?

YES. You can make these payments directly to your former salesperson.

Does it qualify as a "commission" if my personal assistant is paid a flat fee per closing, or does a "commission" necessarily involve a percentage of the sale price?

While a "commission" payment is typically calculated based on a percentage of the sales price, legally, any per transaction payment qualifies as a "commission." Conversely, if the amount owed to your personal assistant is determined based upon hours worked, it is not a "commission" even if your personal assistant is paid out of closing proceeds.

Condominiums Q/A

My agent is representing a seller in the resale of a residential condominium unit. The agent representing the buyer has faxed me a note stating that the buyer wants to terminate the purchase agreement pursuant to their 9-day right of rescission. Can the buyer rescind?

NO. The 9-day right of rescission under the Condominium Act is only applicable to the initial sale of a residential condominium unit from the developer to the first buyer, i.e., the sale of a brand new unit. MCL 559.121. The Condominium Act provides that in connection with an initial sale, a purchase agreement shall not become binding until 9 business days after the purchaser is provided copies of all of the condominium documents. Thus, while in the case of the initial sale, the approval of the condominium documents is automatically a contingency, for resales, a buyer needs to explicitly include this contingency in the purchase contract.

I currently represent buyer who is looking to buy a condominium unit as an investment/rental property. The condominium documents provide that the units must be owner-occupied. Can a condominium association prohibit an owner from renting his units?

YES. A condominium restriction prohibiting the rental of units is enforceable.

I represent a buyer in connection with the purchase of a site condominium. The unit he is buying does not have a fence. He wants to build a fence on this property. How can we find out if this is this allowed?

The project's condominium documents, typically the bylaws, should state which type of improvements are allowed to a unit. Your buyer should review the condominium documents to see if there are any prohibitions on fences in the condominium project. Condominium bylaws are recorded along with the master deed. If the documents are unclear about building a fence, your buyer should consult a lawyer.

I have a client whose condominium association has foreclosed a lien for nonpayment of dues. How long is the redemption period?

The redemption period for a foreclosure by the association of co-owners is 6 months from the date of sale unless the property is abandoned which will reduce the redemption period to 1 month.

The seller disclosure requirements ... apply to the transfer of any interest in real estate consisting of not less than 1 or more than 4 residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a residential cooperative. MCL 565.952.

I am a Realtor® representing a seller in the sale of a vacant parcel of land that is zoned residential. An agent representing a buyer has requested a Seller's Disclosure Statement. The buyer's agent claims that a Seller's Disclosure Statement is required for the sale of all properties that are zoned residential. Is this true?

NO. The Seller Disclosure Act applies only to the transfer of not less than 1 or more than 4 residential dwelling units.

I am listing vacant land. Should I have my seller complete a vacant land disclosure form?

Sellers of vacant land are not legally required to provide a disclosure form. Sellers who do provide vacant land disclosure forms should be cautioned against making any representations where they are unsure. Unlike with the statutorily required residential seller's disclosure form, a seller could be held liable for an innocent misrepresentation made in a vacant land disclosure form.

Is a landlord required to provide a Seller's Disclosure Statement in connection with a residential lease that is longer than 1 year?

NO. A Seller's Disclosure Statement is not required in connection with a residential lease of real estate unless it is a lease with an option to purchase.

I represent a seller who is selling a dilapidated home "as is with all faults." The buyer intends to demolish the house immediately after closing. Does my seller have to fill out the Seller's Disclosure Statement?

YES. This transaction is not exempt from the Seller Disclosure Act. If your seller-client does not provide a form, the buyer will be free to cancel the transaction at any time prior to closing.

The seller disclosure requirements . . . do not apply to any of the following:

(a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default.

(c) Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(d) Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from 1 co-tenant to 1 or more other co-tenants.

(f) Transfers made to a spouse, parent, grandparent, child, or grandchild.

(g) Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment.

(h) Transfers or exchanges to or from any governmental entity.

(i) Transfers made by a person licensed under article 24 of Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, of newly constructed residential property that has not been inhabited.

MCL 565.953.

Disclosure Q/A

I have a seller-client who is the trustee of a property owned by her parents' trust and in which she currently resides. Is she exempt from the Seller Disclosure Act?

NO. The Seller Disclosure Act exempts transfers by a nonoccupant fiduciary in the course of the administration of a trust. Since in your situation the trustee lives in the property, she is not exempt from the Act.

The owner of the home I am listing inherited the home from her father. She does not live in the home but legal title is in her name. Does there need to be a seller's disclosure statement?

YES. While property owned by an estate is exempt under the Seller Disclosure Act (so long as the personal representative does not live in the home), once the property has been distributed from the estate to the heir, it is no longer exempt.

My client is selling a home that she owned with her mother who recently passed away. My client and her mother owned the home as joint tenants with full rights of survivorship. My client has never lived in the home. Is she still required to fill out a seller's disclosure statement?

YES. Under this scenario, your client would not be exempt under the Seller Disclosure Act.

My clients are selling an 8-unit apartment building. Are they required to provide a Seller's Disclosure Statement and/or a Lead-Based Paint Disclosure form?

The sellers of the apartment building are only required to provide a Lead-Based Paint Disclosure form. The Seller Disclosure Act does not apply to apartment buildings with more than four units; however, the Lead-Based Paint Disclosure Act does apply to all apartment buildings.

I am listing an REO property. The bank is exempt from providing a Seller's Disclosure Statement, but I am being told by the agent representing the buyer that my client must provide a signed Seller's Disclosure Statement that has the word "exempt" on it. Is this true?

NO. There is no provision in the Seller Disclosure Act that requires an "exempt" party to provide a form.

Disclosure Q/A

I represent a seller who is selling a home that he owns through a limited liability company. Do we still need to fill out a Seller's Disclosure Statement?

YES. The fact that the property is owned by an entity rather than a person does not make the transaction exempt from the Seller's Disclosure Act.

I am a Realtor® that is listing a residential property that is owned by a nonprofit organization. It is my understanding that non-profits are exempt from the Seller Disclosure Act. Am I correct?

NO. Non-profit organizations do NOT fall within any of the Seller Disclosure Act exemptions. Your seller will need to provide a Seller's Disclosure Statement.

I am a Realtor® representing a bank that is selling a property that it has repossessed through the foreclosure process. The bank tells me that it is exempt from both the Michigan Seller Disclosure Act well as the Federal Lead-Based Paint Disclosure requirements. Is this correct?

This is partially correct. The bank is exempt from the Michigan Seller Disclosure Act but it is not exempt from the Federal Lead-Based Paint Disclosure requirements. Under the Michigan Seller Disclosure Act, both the foreclosure sale itself, and the subsequent resale by the lender to a third party, are exempt from the disclosure requirements. As to the Federal Lead-Based Paint Disclosure Law, while the original foreclosure sale is exempt, a subsequent resale from the lender is not.

My seller bought a house at sheriff's sale. Now that the redemption period has expired, he has decided to list it for sale. Is he exempt from the Seller Disclosure Act?

NO. The foreclosure exemption from the Seller Disclosure Act applies only if the lender acquires the property through foreclosure and not to other purchasers at a foreclosure sale.

I am representing a seller in connection with a short sale transaction. It is my understanding that short sale transactions are exempt from the Seller Disclosure Act. Am I correct?

NO. Short sale transactions are not exempt from the Seller Disclosure Act.

A local township is selling a residential property. Is it required to fill out a seller's disclosure statement?

NO. Governmental entities are exempt from the Seller Disclosure Act.

My sellers are not going to provide a Seller's Disclosure Statement because they have never lived in the residence, but have only used it as a rental. Is this proper?

NO. Sellers are not exempt from Seller Disclosure Act requirements just because they have never lived in the property. Sellers who have owned and leased a residence must nonetheless fill out the Seller's Disclosure Statement to the best of their knowledge.

My client is selling his house to one of his nephews. He believes that he is exempt from the Seller Disclosure Act because he is selling his home to a relative. Is he correct?

NO. The Seller Disclosure Act contains an exception for transfers made to a spouse, parent, grandparent, child or grandchild. No such exception exists for transfers to other relatives.

I am a Realtor® representing a licensed builder who is selling a house that he has built. The builder currently resides in this property. Is he exempt from the Seller Disclosure Act?

NO. The builder would have been exempt from the Seller Disclosure Act had he not resided in the property. Section 565.953(i) exempts a transfer from a licensed builder ONLY if it is a newly constructed residential property that has not been previously inhabited.

> The (seller) or his or her agent is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this act if the error, inaccuracy, or omission was not within the personal knowledge of the (seller), . . . and ordinary care was exercised in transmitting the information. It is not a violation of this act if the (seller) fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be discovered only by a person with expertise in a science or trade beyond the knowledge of the (seller). MCL 565.955(1).

My seller indicated on the Seller's Disclosure Statement that there were no known underground storage tanks on his property (i.e., he checked "no" rather than "unknown" when answering this question). The buyer has discovered that there is in fact an underground storage tank and is demanding that the seller pay for the removal. Is my seller responsible?

NO. The Seller Disclosure Act expressly provides that a seller is not responsible for innocent mistakes made when filling out the Seller's Disclosure Statement form.

I represent a seller who is selling his house that is adjacent to a hospital with a helipad. Does he have to disclose this information in the Seller's Disclosure Statement?

ARGUABLY, YES. The Seller's Disclosure Statement asks about the property's "proximity to a landfill, airport, shooting range, etc." While the use of "etc." in this context is not particularly helpful, arguably the noise made by helicopters landing on an adjacent helipad could have a material effect on the value of the property. When in doubt, a seller should disclose.

My seller says that her basement leaked 10 years ago, but that she had some grading work done, and it has not leaked since. Can she answer "no" to the question about basement leaks on the Seller's Disclosure Statement?

NO. The Michigan Court of Appeals has said that given the wording of this specific question (i.e., "Has there been evidence of water"), there is no time limitation. (In that specific case, the sellers were required to disclose the fact that the house had flooded 26 years ago.)

Disclosure Q/A

I am listing a 10-acre residential property that is traversed by a utility easement. The easement will service a housing development in the near future. Is my seller required to disclose this easement?

YES. The Seller Disclosure Act requires that a seller of residential property disclose any easements affecting that property.

I am representing a seller of a house and some land. The state has approved construction of a wind farm adjacent to my seller's property. Construction will begin this coming spring. Must this be disclosed?

MORE THAN LIKELY YES. The Seller Disclosure Act has a section that specifically asks whether there is "farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc." While there is no definitive answer to this question, it is certainly a reasonable interpretation that a future wind farm would fall within this description.

Remember also that the ultimate decision as to whether something should be disclosed should always be left to the seller-client. A listing agent who advises her seller-client that something need not be disclosed has arguably assumed responsibility for any later problem that arises.

Do sellers have to disclose if a home is modular?

There is no law which requires a seller to volunteer the fact that his home is a modular home.

On the Seller's Disclosure Statement, my sellers indicated that the microwave was in working order. The purchase agreement said nothing about the microwave. Is the buyer entitled to the microwave?

NO. The Seller's Disclosure form specifically states that "the items below are included in the sale of the property only if the purchase agreement so provides." This language was added to the form some years ago to specifically address this question.

Disclosure Q/A

I am currently listing a residential property for a client that has relocated to another state through the company for whom he works. I told him that I would fill out the Seller's Disclosure Statement on his behalf since he is out of town. Is this permissible?

Agents should never fill out the Seller's Disclosure Statement on behalf of their seller-client. If an error is later discovered, the agent may find herself in a position in which both the buyer and seller are pointing fingers at her.

> An action shall not be brought against a real estate broker, an associate broker, or a real estate salesperson under the following circumstances:
> * * *
> (b) For failure to disclose to a purchaser or lessee of real property that the real property was or was suspected to have been the site of a homicide, suicide, or other occurrence prohibited by law which had no material effect on the condition of the real property or improvements located on the real property. MCL 339.2518.

The house that I have listed was the scene of a terrible crime. Is this fact something that I have to disclose to prospective buyers?

NO. An agent is not required to disclose this type of occurrence unless the prospective buyer was to specifically inquire. Realtors® should be aware that if a buyer were to ask if anything of this nature has occurred, the Realtor® must respond honestly to such question.

Do Not Call/Telephone Solicitations Q/A

I have heard that it is illegal for a real estate agent to call someone who is selling their house "for sale by owner" if they are on the national "Do Not Call" registry. Am I correct?

An agent may call a FSBO seller on behalf of a buyer who is interested in the FSBO property. The agent may only discuss client's interest in the property and may not attempt to obtain the listing.

I run a real estate office and I would like to call past clients to see if they are interested in buying new properties or selling their current one. Can I call these clients if they are on the national "Do Not Call" registry?

Since you have a past business relationship with your clients, you may call them for up to 18 months after the end of the relationship unless and until they ask you to not to call again.

I often keep track of the expiration of other companies' listings so that I can call the seller immediately and hopefully persuade the seller to list with me. Is this permissible?

YES. However, before calling such a seller, you need to make certain that the seller is not listed on the national "Do Not Call" registry.

I am a Realtor® who has hired an unlicensed assistant. I am having my assistant make cold calls to prospective sellers. I have made sure that my assistant has verified that these prospective sellers are not on the national "Do Not Call" registry. Can my assistant make these calls?

NO. Under Michigan license law, an individual must be a real estate licensee in order to make cold calls to prospective sellers.

I am calling leads to see if they are interested in purchasing real estate. When I make these calls, do I have to provide my broker's name and their address or phone number?

The Occupational Code requires the disclosure of this information in an "advertisement." While the Occupational Code does not define "advertisement," such term is not generally used in the context of a telephone solicitation. Moreover, the nature of its advertising requirements makes it clear that the statute is referring to print advertisements.

Earnest Money Deposits/Trust Accounts

Q/A

A real estate salesperson shall pay or deliver to the real estate broker, on receipt, a deposit or other money paid in connection with a transaction in which the real estate salesperson is engaged on behalf of the real estate broker. MCL 339.2512(k)(ii).

I am a real estate broker and I have heard that some other brokers in my area are allowing their salespersons to hold the earnest money checks until there is a binding purchase agreement signed by all parties. It is my understanding that salespersons are required to turn over these checks to their brokers upon receipt. Am I correct?

YES. Note, however, that the Occupational Code does not contain any definitive time deadline for turning over a check to a broker. It only requires a salesperson to turn over the check "on receipt." While we don't think it is necessary for a broker to require a salesperson to drive over to the broker's house at midnight to deliver a check the salesperson just received, on the other hand a broker should not have a policy that permits a salesperson to hold a check until the purchase agreement is accepted. The broker, however, is not required to deposit the check in its trust account until the purchase agreement is accepted.

A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money that belongs to others and is made payable to the real estate broker into a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received. MCL 339.2512(k)(v).

I am a broker who represents a buyer. My buyer made an offer on a property that was accepted by the seller. Both the buyer and the seller have agreed in the contract that I am to hold the earnest money check in my office and not deposit it in my trust account until the inspection period has passed. Would this be allowable under Michigan law?

NO. An agreement by the buyer and the seller does not relieve the broker from its duty to deposit money in its possession within the 2 days prescribed by the Occupational Code. If the buyer and seller want to make such an agreement, then they should also agree to have someone other than a real estate licensee hold the funds.

Earnest Money Deposits/Trust Accounts Q/A

My seller just received an offer that states that the buyer will submit the earnest money deposit within 1 week after there is a binding purchase contract in place. Is this legal? I thought that the earnest money deposit had to be made within 2 banking days.

A buyer and seller can make any agreement they want to as to the timing of the delivery of the earnest money deposit from the buyer. The Occupational Code's 2 banking day rule applies only to money already in the hands of the broker. If the broker is holding the earnest money deposit check, the broker must deposit that check within 2 banking days after the broker receives notice that there is a binding purchase contract in place.

I am the listing broker. I always ask the cooperating broker for proof of the earnest money deposit. Is the cooperating broker obligated to provide proof in the form of a copy of the check?

NO. There is no law requiring the cooperating broker to provide proof of the earnest money deposit. You could, however, make this requirement part of the purchase agreement.

> If a purchase agreement signed by a seller and purchaser provides that an escrowee other than a real estate broker shall hold a deposit, a licensee in possession of that deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties. MCL 339.2512(k)(vii).

I am representing a buyer to a purchase agreement in which the buyer and seller have agreed that the earnest money is to be held by a title company. Is it legal for me to deliver the check to the title company?

YES. Realtors® and their clients should understand that title companies are not subject to the trust account requirements in the Occupational Code and may have their own rules as to how funds will be held and under what terms they will be released. Often a title company will only hold an earnest money deposit if the parties execute the title company's form of escrow agreement.

Earnest Money Deposits/Trust Accounts

Q/A

What are a Realtor's® responsibilities when a title company or other entity is to act as escrow agent and hold the earnest money deposit?

If a purchase agreement signed by a seller and purchaser provides that an escrowee other than a real estate broker shall hold a deposit, a licensee in possession of that deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee receives notice that an offer to purchase is accepted by all parties.

I am a Realtor® representing a buyer who is making an offer on a property that a bank has taken back through the foreclosure process. The bank, through its listing agent, has countered my buyer's offer stating that the earnest money deposit will be held by the listing office. I told the listing agent that this is illegal. Am I correct?

NO. There is no prohibition against a listing office holding the earnest money deposit in its trust account. The amount of the deposit and where it is held is negotiable between the buyer and the seller.

I am acting as a transaction coordinator in a real estate transaction. I was told that I am not allowed to hold an earnest money deposit in such a transaction. Is this true?

NO. There is no prohibition against transaction coordinators holding earnest money deposits.

I have a small, two-person brokerage firm. My office policy is that my company does not hold earnest money deposits. Our purchase contract form provides that the earnest money deposit will be held either by a local title company or the listing broker. Is my firm required to have a trust account?

NO. If your firm does not ever hold earnest money deposits (or any other funds belonging to others), you are not required to set up a trust account.

I am a broker who only sells commercial property. Does the rule requiring 2 days to deposit earnest money in a trust account apply to deposits made in connection with the sale of commercial property?

YES. The law applies to any real estate transaction and does not differentiate between residential and commercial transactions.

Earnest Money Deposits/Trust Accounts

Q/A

What if an earnest money deposit check bounces?

A Realtor's® role as an escrow agent is a neutral role and, therefore, the Realtor® should notify both parties if the buyers' earnest money check bounces.

> A real estate broker may maintain more than 1 trust account. A real estate broker may deposit not more than $2,000.00 of its own money in each trust account to cover bank service charges and bank minimum balance requirements or to avoid the closing of the account because there is no money in the account. The real estate broker shall account for any of its own money in a trust account . . . . MCL 339.2512(k)(iv).

Should the commission check that a broker receives at closing be deposited in the broker's trust account pending disbursement of the salesperson's portion of the commission?

It is not necessary that a commission check be deposited in the broker's trust account and, in fact, it is at least arguable that a broker is prohibited from doing so by the provision that prohibits a broker from commingling his own business funds with trust funds.

What kind of records does a broker need to keep for its trust account?

Trust account requirements include:

(1) A trust account must be a non-interest-bearing account;
(2) Checks from a trust account must be signed by broker or associate broker;
(3) Broker must maintain a chronological journal for the account showing all deposits/disbursements and showing a running balance after each entry;
(4) Broker must also maintain separate accounting ledgers showing receipts/disbursements for each transaction; and
(5) Broker may deposit its own funds – not to exceed $2,000 – so as to avoid bank charges. Broker must maintain a ledger for its own funds.

Earnest Money Deposits/Trust Accounts

Q/A

How long should my office hold records?

The Rules require that escrow account records be maintained for at least 3 years. It is possible, based on statutes of limitations for various causes of action, that litigation could be initiated up to 6 years after a transaction has closed. There are also "tolling" provisions in the law that could extend the statute of limitations. Thus, while there are no absolutes, it is advisable to hold all records for a minimum of 7 years.

> ... disbursement of an earnest money deposit must be made at consummation or termination of the agreement in pursuant to the agreement signed by the parties. However, any deposit in the trust account of the broker for which the buyer and seller have made claim shall remain in the broker's trust account until a civil action has determined to whom the deposit must be paid, or until the buyer and seller have agreed, in writing, to the disposition of the deposit. The broker may also commence a civil action to interplead the deposit with the proper court. Rule 313(9).

My seller entered into a purchase agreement that contains a clause that says that the earnest money deposit will become non-refundable if the closing does not occur by the date specified in the purchase contract. The closing date has passed, but the buyer is disputing the release of the money. Since the contract says the deposit is non-refundable, can the money be released to the seller?

NO. If there is a dispute between the buyer and the seller over the deposit, the law requires that the money stay in a broker's trust account until there is either an agreement between the parties or a court order. The fact that one of the parties' claims to the deposit is clearly wrong does not make a difference.

I represent a buyer who has entered into a purchase agreement. My buyer was not satisfied with the home inspection and has decided not to buy the house. The purchase agreement clearly states that if the buyer is dissatisfied with the inspection report he can terminate the contract and receive a full refund of his earnest money deposit. The sellers disagreed with the buyer and have stated that they want the earnest money deposit. I'm of the opinion that I can release the money to the buyer based upon the clear language of the purchase agreement. Am I correct?

NO. Since the sellers are making a claim to the earnest money, you cannot release the money to the buyer. The fact that it seems quite likely that the buyer would prevail in any litigation over the earnest money deposit does not mean that you can release the earnest money to the buyer over the objection of the sellers.

Earnest Money Deposits/Trust Accounts Q/A

Once a transaction falls through, does a broker need to get a written release from both parties before releasing the earnest money deposit?

The law only requires that a written release be signed if there is a dispute. Once a broker is aware that both sides claim a deposit, the law requires that the broker not disburse the funds until he has a written agreement signed by both parties or a court order. (Some purchase agreements require a release in all instances.)

Eight months ago, both the buyer and the seller claimed the earnest money in connection with a failed transaction. I did not hear anything on this until the buyer called recently and requested the money. Can I release the earnest money to the buyer without contacting the seller?

Once a dispute has occurred, the Rules require a Realtor® to keep the earnest money deposit until the parties reach an agreement or until there is a court order directing the release of the funds. After a dispute arises, there is no provision that allows a Realtor® to release the deposit after a stated time period has elapsed.

Six months ago, the buyers refused to go forward with the purchase of my sellers' home. The deal is dead, but the earnest money in still in dispute. Are my sellers prohibited from selling their home to someone else as long as the earnest money is in dispute?

NO. The status of disputed earnest money has no effect on your sellers' right to sell their home. The earnest money dispute does not create a lien upon the property, nor does it entitle the buyers to prevent a subsequent sale. The sellers should, however, contact an attorney if there is any chance that the buyers are still claiming a right to purchase the home.

I represented a buyer in a transaction that ultimately did not close. The seller agreed to release the earnest money back to the buyer. Can I mail the money back to the buyer or must I deliver it in person?

There is no requirement that you deliver the earnest money in person.

Earnest Money Deposits/Trust Accounts

Q/A

I am representing the sellers in the sale of their house. There have been some delays and the buyer is asking for yet another extension. My sellers will only give the buyer an extension if the buyer agrees to a $2,000 non-refundable deposit. I have heard that non-refundable deposits are illegal. Is this true?

NO. A buyer and seller can certainly agree that a deposit will be nonrefundable. You will want to make certain that this is explicitly stated in the contract so that there can be no argument about the parties' intent.

I am representing a seller of a home who is entering into a purchase agreement that would allow the buyer to move in before the closing. The seller has requested that the buyer make a $10,000 non-refundable earnest money deposit directly payable to the seller, which the buyer is willing to pay. Can this be done?

While legally this can be done, this arrangement does present a number of potential issues. For example, what happens if the seller is unwilling or unable to go through with the sale of the home? How will insurance/casualty risks be handled? For these reasons, both parties should be encouraged to seek the advice of a lawyer before proceeding forward.

My buyers are having second thoughts about going ahead with the purchase of a home. Can they just walk away from the transaction and forfeit their earnest money or are there other potential risks?

Some purchase contracts provide that in the event of a default by the buyers, the sellers' only remedy is to keep the buyers' earnest money deposit as "liquidated damages." However, many, perhaps most, purchase agreements provide that in the event the buyers default, the sellers can keep the earnest money deposit and sue the buyers for damages.

I am representing a buyer who terminated a purchase agreement after the inspection of the property. The seller and buyer signed a mutual release that called for the earnest money deposit to be refunded to the buyer. Buyer is now looking for a different home and told me to leave the deposit in my trust account to be used on his next purchase. Is it legal for me to keep the deposit in my trust account without a purchase agreement in place?

YES. The law does not require that there be a signed purchase agreement in place in order for the broker to be able to keep money in its trust account.

Earnest Money Deposits/Trust Accounts

Q/A

I have money in my trust account from a failed transaction several years ago. I cannot locate either party to the transaction. What should I do with this money?

Unclaimed earnest money deposits become the property of the State of Michigan after 3 years (i.e., it "escheats" to the State). There is a process that must be followed for surrendering the funds. Details can be found at: https://unclaimedproperty.michigan.gov/

Q/A

> A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person or a person residing with that person . . . . MCL 37.2502.

I am a broker and some of my agents put Christian crosses on their signs. Are there any consequences to me for permitting this practice? Can I make these agents stop this practice?

Placing crosses or any other religious symbols on real estate signs may be interpreted as an attempt to discourage buyers of other faiths. For this reason, brokers should not permit their agents to do this.

I have a prospective buyer who is Hispanic. He told me that he wants to live in a "Hispanic neighborhood." What can I do about this?

The client needs to be told that it is illegal for you to direct him/her to particular neighborhoods based upon ethnicity or nationality of the residents in that neighborhood. If, on the other hand, the client identifies a particular geographic area in which he wishes to live, the Realtor® can honor the client's request to limit the search to that neighborhood. The Realtor® would be well advised to have a written record as to the client's specific request.

I have a buyer who wanted me to find out the local area school test scores. When I went to the website with the scores, I noticed that they were broken down by many different demographics including race. Can I provide my buyers with this list?

Realtors® should not distribute demographic information broken down by race. Instead, Realtors® should provide buyers with a list of the various websites from which they can obtain school test score information.

Fair Housing Q/A

I plan on stating on the MLS and other advertising that my seller's house is in a "family neighborhood." Can I use this type of description?

Real estate advertising should not include statements that suggest either that families with children are NOT welcome or that they are the ONLY people welcome. A reference to a "family neighborhood" may be interpreted as an attempt to discourage buyers who are not families with children.

I have a prospective buyer that wants to see a home in a neighborhood that I consider to be very dangerous. However, this neighborhood is primarily made up of a number of ethnic minorities. What can I do?

Realtors® should never refuse to show (or even discourage a buyer from seeing) a particular house that a buyerclient has asked to see based upon the Realtor's® assumption that the buyer would not like the neighborhood. Historically, a large number of Fair Housing Act cases have involved agents who have allegedly steered clients to particular neighborhoods where the agent thought the client would be "most comfortable." If a client makes a specific inquiry about crime statistics, the Realtor® should not offer her own perceptions as to an area, but should refer the client to places where official statistics may be available.

We had a buyer come to our office who has plainly stated that he does not want a woman representing him. What should I tell him?

The Fair Housing Act prohibits a broker from matching clients with agents on the basis of gender (or on the basis of any other protected class).

I have clients who are selling their house. In a recent showing, the sellers' neighbors accosted the agent showing the house as well as the prospective buyer because the buyer was an ethnic minority. They hurled racial epithets and the agent and buyer were forced to leave the area. What can be done to remedy this situation?

The neighbors should be advised that this behavior is both illegal and actionable. The buyers and their agent should be advised that the sellers do not condone their neighbors' offensive conduct and be invited back to view the house.

Q/A

I plan to start an advertising campaign marketing my services exclusively to single women. I also plan to incorporate a donation to women's charities into this advertising campaign. Is this allowable?

While it is permissible to set up a program which donates money to one or more specific "women's charities," an advertising campaign should not be directed at women (as opposed to men) or single persons (as opposed to married persons). Michigan law prohibits discrimination based upon marital status.

I have a rental house that I have recently rented to someone who has physical disabilities. The tenant wants me to install rails in a number of areas within the house at my expense. Must I do this?

If a person has a disability, a landlord must allow him or her to make reasonable modifications to the rental unit; however, the landlord can require the disabled tenant to pay for the modifications and for the restoration of the property to its original condition at the termination of the lease.

Foreclosures and Short Sales Q/A

I represent the seller on a short sale. I have worked for 6 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?

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.

I represent a buyer who has submitted an offer that will result in a short sale situation. The offer was accepted by the seller subject to the seller's lender's approval. Several months have gone by without any response from the seller's lender. Can my buyer terminate the contract?

There is no law that gives a party the right to terminate a contract after a particular period of time. For this reason, a purchase contract with a contingency for the seller's lender's approval – as with any other contingency – should have a stated deadline for obtaining such approval, after which the buyer can terminate the contract. While the absence of such a clause does not mean that the buyer is bound indefinitely, it certainly creates uncertainty. A buyer who wishes to terminate such a contract should be advised to seek the advice of a lawyer.

I represent a seller whose mortgage is in default and who has a foreclosure sale coming up. We have received numerous offers on the property but we need the lender's approval on what will certainly be a short sale. I was told to have the seller accept all of the offers and present them all to the seller's bank for its consideration. Is this permissible?

A purchase agreement, which is contingent upon the sellers' bank's approval, is in many ways the same as a purchase agreement that is contingent upon the purchasers' bank's approval. In both situations, there is an implied obligation on the part of the sellers or buyers to do all they can to obtain their bank's approval. There is a strong argument that each purchase agreement accepted by the sellers would constitute a binding purchase agreement subject to satisfaction of any contingencies. In order to avoid problems, a seller who wants to sign more than one offer may wish to include a statement along the lines of: "This agreement shall not be binding on the seller unless approved by sellers' mortgagee. Sellers shall have the right to present more than one contract for their mortgagee's consideration." Keep in mind, however, that if the contract is not binding on the sellers, it is probably not binding upon the buyers either.

Foreclosures and Short Sales Q/A

I just entered into a listing agreement with sellers that is likely to end up being a short sale. I plan to make this fact known when I enter the listing into the MLS. Should I get my sellers' permission to do this?

YES. Entering information that the sale of the home will be a short sale may affect the sellers' ability to sell the home, therefore, you should get their permission before entering that information into the MLS. (Note that some MLS rules require the disclosure of a potential short sale when "reasonably known.")

I represent a seller whose house is in foreclosure. The property was purchased by the bank at the sheriff's sale. The seller entered into a purchase agreement but due to some unforeseen delays the closing will not be able to take place until the redemption period expires. Must the bank allow the sale to go through since the purchase agreement was in place before the redemption period expired?

NO. Once the redemption period expires the seller has no legal title or rights to the property. The bank has no contractual duty to sell the property to the buyer.

I am a Realtor® that bought a property at a sheriff's sale. The owner of the property no longer occupies the property. As the buyer, am I allowed to declare the property abandoned and shorten the redemption period to 30 days?

NO. Only a mortgagee can file an affidavit of abandonment to shorten the redemption period after a sheriff's sale. A successful third-party bidder at a foreclosure sale cannot use the abandonment process.

I have clients who have defaulted on their home equity loan, and the bank has foreclosed on their property. Can a second lienholder take my clients' property through the foreclosure process?

YES. The second lienholder can foreclose on the property and sell it at a sheriff's sale. If your clients fail to redeem the property during the redemption period, the purchaser at the sheriff's sale will become the new owner of the property subject to the first mortgage.

Foreclosures and Short Sales Q/A

I am listing a property for a seller whose house sold at sheriff's sale. The seller owes the bank $150,000. The bank had a winning bid of $100,000, resulting in a deficiency of $50,000. If we are unable to sell the property during the redemption period, will the seller be liable for the $50,000 difference?

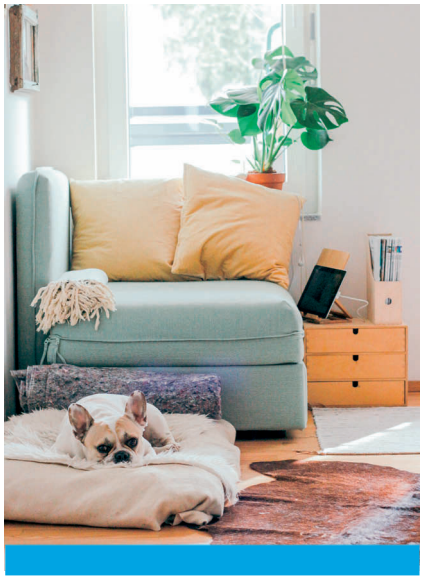
YES. Ordinarily the seller will be liable for the $50,000 deficiency whether or not the property is redeemed. If the seller has other loans which had been secured by junior liens on the property, the seller would also remain liable for those debts as well.

A landlord is currently in the foreclosure process on his investment property. The landlord has tenants that claim they no longer have to pay rent due to the foreclosure. Is this true?

NO. The tenants are still responsible for the payment of rent to the landlord under the terms of their lease, despite the property being in foreclosure.

I represent a buyer who is buying a foreclosed property from a bank. The bank has made a condition of the contract that it holds the earnest money deposit. I believe that this is illegal. Am I correct?

NO. There is no prohibition against the seller holding the earnest money deposit. Both the amount of the deposit and where it is to be held are negotiable items between the buyer and the seller.



General Licensing Issues
(Occupational Code and Rules)

Q/A

I am a licensed agent, and I will be out of town for 1 week on vacation. One of my buyers wants to see a home while I'm out of town. Would it be legal for my unlicensed assistant to arrange to accompany my buyer-client on a tour of the home? My assistant would not write an offer or even attempt to answer any questions about the home during the showing.

NO. Historically, DLARA has taken the position that only licensed agents can show property.

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 2 weeks. May I have my partner show one of my listings during this time?

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

I am a licensed real estate agent. Whenever I host an open house, I have my unlicensed assistant accompany me to answer the door and ask prospective buyers fill in a register. Several agents have told me that unlicensed assistants cannot attend open houses. Is this correct?

NO. While a non-licensee cannot independently conduct an open house, an unlicensed assistant can accompany a licensee so long as he/she does not perform any licensed activities.

"Independent contractor relationship" means a relationship between a real estate broker and an associate real estate broker or real estate salesperson that satisfies both of the following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate real estate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) At least 75% of the annual compensation paid by the real estate broker to the associate real estate broker or real estate salesperson is from commissions from the sale of real estate.

MCL 339.2501(h).

Can I treat my licensed personal assistant as an independent contractor rather than an employee?

A licensed personal assistant qualifies as an independent contractor ONLY if at least 75% of his annual compensation is from commissions and he signs a written agreement agreeing that he is not an employee for federal and state income tax purposes.

(1) Unless the owner engages the services of a real estate broker in connection with those sales, an individual who is the owner of real estate must obtain a license as a real estate broker to engage in the sale of that real estate as a principal vocation. For purposes of this subsection, each of the following is considered engaging in the sale of real estate as a principal vocation:
(a) Engaging in more than 5 real estate sales in any 12-month period.
(b) Representing to the public that he or she is principally engaged in the sale of real estate.
(c) Devoting over 50% of his or her working time, or more than 15 hours per week in any 6-month period, to the sale of real estate.
(d) If he or she is a real estate salesperson, a sale of real estate other than his or her principal residence.
(2) A sale of real estate that is owned by, or under option to, a real estate broker or associate real estate broker is subject to the provisions of this article.
(3) If a licensee is selling property that is owned by the licensee or in which the licensee has an interest, the licensee shall reveal the facts of the licensee's ownership or interest and the licensee's licensure to the purchaser, in writing, before an offer to purchase is signed. A licensee shall provide written proof of this disclosure that is satisfactory to the department on request by the department.
MCL 339.2502b.

I have a friend who owns and leases more than five separate homes. Doesn't she need a real estate license?

NO. Licensure is required if a person engages in more than five real estate sales in any 12-month period.

General Licensing Issues
(Occupational Code and Rules)

Q/A

A real estate broker shall maintain a place of business in this state. If a real estate broker maintains more than 1 place of business in this state, the real estate broker must obtain a branch office license for each of those additional places of business. If a branch office is located more than 25 miles from the nearest boundary of the municipality in which the main office of the real estate broker is located, the broker shall ensure that the branch office is under the direct supervision of an associate broker. As used in this subsection, "direct supervision" means that an associate broker is physically present at the branch office on a regular basis to supervise and manage the business during ordinary business hours. MCL 339.2505(3).

I have real estate broker's licenses in both Michigan and Indiana. Currently, I also have offices in both states. I want to close my office in Michigan but still operate in both states. Is this possible?

NO. The Occupational Code requires a real estate broker to maintain a "place of business" in Michigan. A "place of business" is defined as a physical location that a real estate broker represents to the public as a place where clients and customers may consult or do business with a licensee. MCL 339.2501(m).

The real estate brokerage that I own has numerous branch offices licensed with the state of Michigan. One of the branches sells vacation homes and is only open during the peak season. Other brokers have told me that an office must be open year round to be a legal branch office. Is this true?

NO. The Occupational Code does not set any rules requiring a branch to be open year-round.

I am a broker that specializes in property management. I was told that the law requires that any property that we manage be within 25 miles of our office. Is this true?

The Occupational Code does not provide any limits on the distance between a broker's office and the properties they manage. A managed property would not be considered a "branch office" of the real estate broker.

General Licensing Issues
(Occupational Code and Rules)

Q/A

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

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.

If a real estate salesperson is discharged or terminates employment with a real estate broker by giving the employer a written notice of the termination, the real estate broker shall deliver or mail by certified mail to the department, within 5 days, the real estate salesperson's license. If a written notice of termination of employment is not served on the real estate broker by the real estate salesperson, the department shall notify the real estate broker in writing that it has received an application for a transfer of license by the real estate salesperson. As of the date of the notification, the notification shall operate as if a written notice were served by the real estate salesperson or the real estate broker. MCL 339.2507(1).

I am a broker who has a salesperson who recently tendered her resignation in writing to me. This agent owes me a substantial amount of money in membership dues and MLS fees. I told the agent that I would not be sending her license back to the state until these obligations were met. Can I do this?

NO. If a salesperson has departed, a broker cannot impose any conditions upon the release of the license.

(1) If a licensee buys or otherwise acquires, directly or indirectly, an interest in real property, the licensee shall disclose to the owner of the property that the licensee is licensed under this part before the owner is asked to sign the purchase agreement.
* * *
(3) A licensee that buys or otherwise acquires an interest in real property, directly or indirectly, and that is owed a commission, fee, or other valuable consideration as a result of the sale, shall disclose that the licensee is licensed under this part to the seller or owner to receive the specified consideration.
MCL 339.2516(1) and (3).

General Licensing Issues
(Occupational Code and Rules)

Q/A

I am a real estate licensee and I would like to make an offer on some property but I do not wish to disclose the fact that I am a real estate licensee until after the purchase agreement is accepted. Can I do this?

NO. The Occupational Code requires that the disclosure take place before the seller is asked to sign the purchase agreement.

I am a licensee buying a property. I am not taking a commission. Does foregoing a commission exempt me from having to disclose the fact that I am a real estate licensee?

NO. You are required to disclose that you are a licensee when you buy or sell property. Whether you receive a commission or not has no bearing on your duty to disclose your license status.

A potential buyer of the property is a limited liability company, one of the members of whom is a real estate licensee. Do I need to disclose that fact to the seller?

YES. Disclosure is required if a real estate licensee is acquiring property "directly or indirectly." Acquiring property through a limited liability company in which you are a member would likely be viewed as an "indirect" acquisition.

I am a Realtor® representing a seller to whom I am related. I have spoken to other agents and they told me that I have to disclose this relationship to potential buyers. Are they correct?

NO. There is nothing in the Occupational Code or the rules that require agents to disclose that they are related to a seller or buyer whom they represent. When the Occupational Code refers to someone buying property "indirectly," it is referring to the situation where, for example, the licensee is a partner in a partnership that is buying the home. A licensee does not hold an "indirect" interest in a home by virtue of the fact that the home is owned by a relative of that licensee.

General Licensing Issues
(Occupational Code and Rules)

Q/A

An individual . . . shall not act as a real estate broker, associate real estate broker, or real estate salesperson if he or she does not have, on his or her person, his or her pocket card or temporary license or a photocopy or digital image of that pocket card or temporary license. MCL 339.2506(1).

I was at a continuing education class and the instructor told us that we are required to carry our pocket cards at all times. Is this correct?

YES. Licensees are required to have their pocket cards in their possession while they are performing licensed activities.

I want to change the name of my brokerage company. Do I need to get a new license?

NO. If you are simply changing the name of your existing company you should file Form LCL-013 (Request for Name and/or Address Update).

I am licensed salesperson. I am getting married, and intend to use my husband's last name socially, but continue to use my current name in my business. What name should I use for my real estate license?

DLARA's position is that the name on your real estate license should be the same as the name on your driver's license. If you change the name on your driver's license, you must notify DLARA of the name change within 30 days.

A former salesperson who has not been in the business for a number of years has contacted me and wants to join my company. How does she get back in the business?

A prior licensee who has been unlicensed for more than 3 years will need to retake the prelicensure classes or pass the licensing examination. The salesperson could also elect to complete 6 hours of continuing education for each year or partial year that has elapsed since the expiration of his/her license.

(1) A real estate broker or associate real estate broker shall supervise the work of a real estate salesperson. For purposes of this subsection, supervision of a real estate salesperson includes at least all of the following:

(a) Direct communication in person or by radio, telephone, or electronic communication, on a regular basis.

(b) Review of the practice of the salesperson.

(c) Review of the salesperson's reports.

(d) Analyses and guidance of the salesperson's performance in regulated activities.

(e) Providing written operating policies and procedures to the salesperson.

(2) A real estate broker shall not contract with an individual real estate salesperson or nonprincipal associate real estate broker who is employed by the real estate broker in a manner that limits the broker's authority to supervise the salesperson under subsection (1).
MCL 339.2512f.

It recently came to my attention that I am required to provide a written policy and procedures manual. Is this true?

YES. The Occupational Code provides that a broker must supervise the work of a real estate salesperson. "Supervision" is defined to include "Providing written operating policies and procedures to the salesperson."

Who can provide a market analysis and who can be paid for a market analysis?

The Occupational Code allows a salesperson to prepare a market analysis only for a customer or potential customer and only if the salesperson does not charge separately for this service. This means that a salesperson cannot prepare a market analysis for any third party. A broker or associate broker can prepare a market analysis for any person or entity other than in "federally related transactions" and can charge for this service. The market analysis must be in writing and also include this language in boldface print: **"This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser."** MCL 339.2601(a)(ii).

A licensee is not subject to disciplinary action for failing to submit to the seller any additional offers to purchase that are received after the seller has accepted an offer and the sales agreement is fully executed, unless a service provision agreement requires that subsequent offers be presented. Rule 307(5).

I am a listing broker and my seller has just recently accepted a purchase agreement. Today, I received another offer for this property. Does license law obligate me to present this offer to my seller?

NO. Unless your listing agreement provides to the contrary. To avoid some type of breach of fiduciary duty claim from a seller/client, Realtors® who do not wish to present additional offers are strongly encouraged to include a provision in their listing agreement form which expressly states that additional offers received after a binding purchase agreement is signed will not be presented to the seller.

Inspection Contingencies Q/A

My seller was home when the inspector showed up with the buyer's agent. The seller was told that he could not be present during the inspection. Is this true?

NO. There is no law that requires the sellers to vacate their property during an inspection.

I represent a buyer who entered into a purchase agreement with a 15-day inspection contingency. During the inspection, the buyer discovered numerous defects with the property. My client still wants to purchase the property but only if the seller remedies the defects. Can my buyer force the seller to do this?

PROBABLY NOT. While inspection contingency clauses vary, typically an inspection contingency clause gives the buyer the option of moving forward with the purchase agreement as written or terminating the purchase agreement. A buyer can request that a seller make repairs, but typically cannot require the seller to do so.

My seller client has entered into a purchase agreement. After the inspection, the buyers presented my client with a proposed addendum which provides that the seller will make certain repairs. Can my seller terminate the purchase agreement?

The effect of the buyers' request that the seller make certain repairs depends on the wording of the inspection contingency. Some inspection contingency clauses provide that if the seller does not agree to make the requested repairs, the buyers have the option of either terminating the purchase contract or waiving their objections and closing on the purchase. Other inspection contingency clauses give the seller the right to terminate in the event the buyer requests concessions.

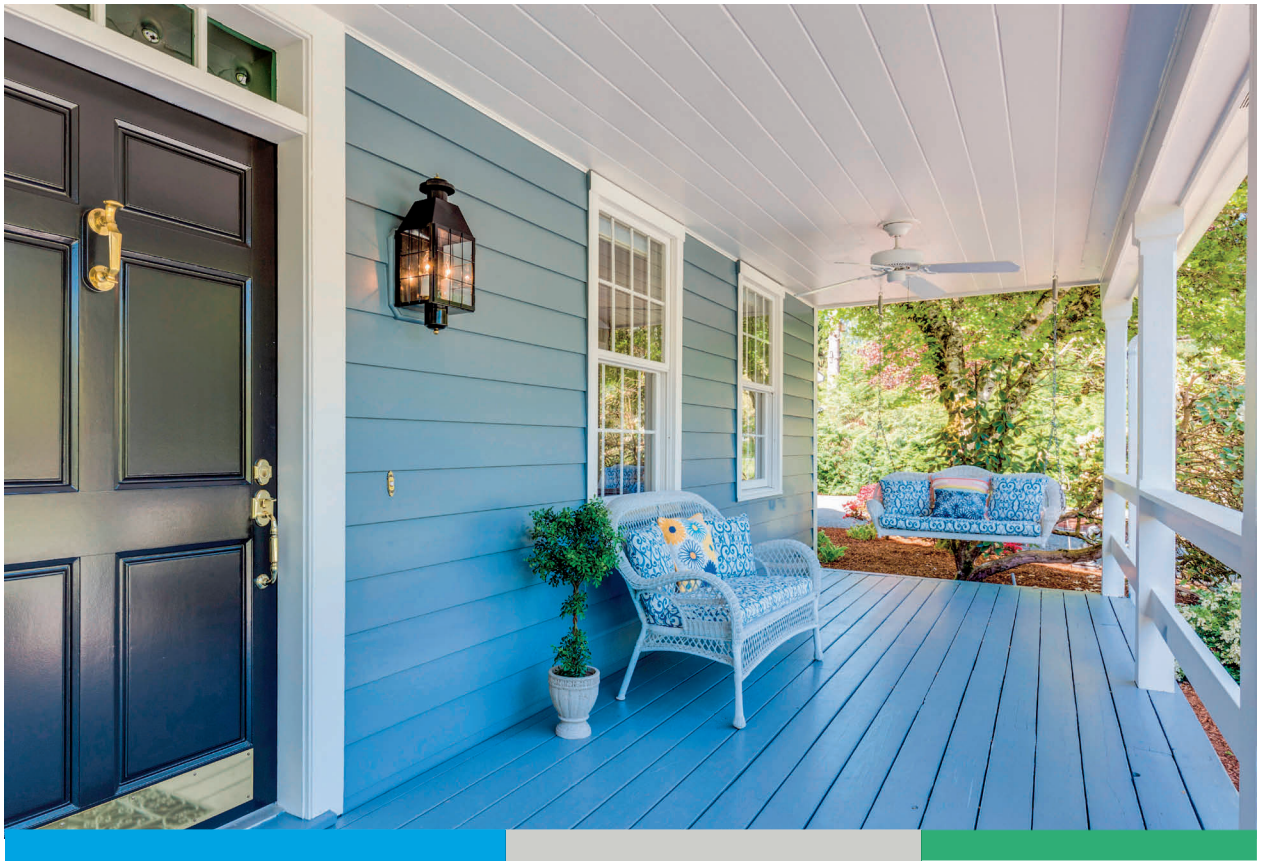
I am representing a buyer that entered into a purchase agreement to buy a house being sold by the trustee of an estate. During our inspection, we discovered that the house had a termite infestation. When we asked the seller about it, we discovered that the trustee seller had learned of possible infestation from a previous buyer who terminated their contract. Was the trustee seller required to disclose the existence even though exempt from the Seller Disclosure Act?

NOT NECESSARILY. While sellers may choose to disclose known defects, in Michigan, sellers generally have no legal duty to volunteer information about a home other than the requirements imposed by the Seller Disclosure Act. (On the other hand, sellers may not deliberately conceal known defects or make statements about the condition of a home that are incomplete or misleading.)

Inspection Contingencies Q/A

I represent buyers who terminated a purchase contract after discovering black mold in the house. I now have another interested buyer who would like to make an offer on the same home. The listing agent said that I cannot tell my buyer about the prior buyers' discovery of mold because I obtained that information during a prior agency relationship. Is this true?

NO. As a buyer's agent you have a fiduciary duty to notify your current client of any issues that you know of about the property. While most buyers' agency agreements expressly provide that the agent will not disclose confidential information learned through another agency relationship, the information about the discovery of black mold is not "confidential" as to the first buyer. Information known to both a seller and a potential buyer is not "confidential" as to either.



What is a "service provision agreement?"

A "service provision agreement" is the term that DLARA uses to refer to both listing contracts and buyer agency contracts. MCL 339.2501(w).

> A service provision agreement must include a definite expiration date and shall not contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement upon or after the expiration date. Rule 305(2).

A competitor's listing agreement has a clause that provides for an automatic 6-month renewal period if the seller does not cancel the contract before the listing expires. I don't believe this is a legal contract. Am I correct?

YES. There can be no automatic renewals in listing agreements.

I am contemplating entering into a listing agreement that will take effect a month from today, but I was told that such agreements are illegal. Is this true?

NO. There is nothing that prohibits you from entering into a listing agreement that takes effect at a later date. Keep in mind, however, that if the seller finds a buyer prior to the effective date of the listing agreement, you will not have an enforceable right to a commission.

My sellers sent me a written notice terminating my listing contract for their residence 6 weeks prior to its expiration. They will no longer return my calls or allow any showings. Aren't my sellers in breach of contract and can't I require them to let me show their home to potential buyers?

Even if your sellers are in breach of contract, you cannot require them to let you show their home. Your only remedy would be to file a lawsuit asking a court to compensate you monetarily for the sellers' breach of contract.

I am the listing agent on a listing that is about to expire. There is a binding contingent purchase agreement in place, but closing is not scheduled until next month. Do the sellers have to re-list with my company?

NO. The sellers are not required to re-list with your company once the listing period expires. They should be advised, however, that if they list with another company, they will need to exclude the pending sale from the new listing (so they don't find themselves inadvertently liable for two commissions).

I have a house listed. A buyer went directly to the seller with an offer which was accepted. Is this a valid purchase agreement?

YES. Although the buyer went directly to the seller instead of the listing agent, there is still a valid purchase agreement. Assuming the contract was an exclusive right to sell, the seller still owes a commission.

I am the broker/owner of ABC Realty Company. I have decided that I no longer wish to be associated with the ABC Realty franchise and I have decided to go with 123 Realty franchise. Do I have to get the authorization of all my clients to transfer the listings and agency agreements to the 123franchise name?

It depends. If you are setting up a new corporation, then you will need to transfer the listings from the old corporation to the new corporation and obtain the sellers' approvals to do so. If you are simply using your existing corporation with a new assumed name referencing the new franchisor, then no transfer will be required. (In the latter situation, however, a seller could argue that the new affiliation gives him the right to terminate the listing, if he chooses to do so. In other words, the seller could argue that his decision to list with your company was based upon your affiliation with the ABC-franchise.)

I currently have two buyers under buyers' agency contracts that are both interested in making offers on the same home. How should I handle this situation?

Your buyers' agency contract form should contain language notifying buyers of the possibility of competing offers. The contract should contain language that puts buyers on notice that other buyers you represent may make offers on the same property. The contract should also contain a provision that states that you will preserve any confidential information gained from the agency relationship. The MR Exclusive Buyer Agency Contract contains the following language in paragraph 7:

CONFLICT OF INTEREST (BUYERS): Buyer acknowledges that Broker may represent other buyers desirous of purchasing property similar to the Desired Property. Buyer acknowledges and agrees that Broker may show more than one buyer the same property, and may prepare offers on the same property for more than one buyer. Broker shall preserve any confidential information disclosed by any buyer-client and shall not disclose the existence of, or the terms of, any offer prepared on behalf of one buyer to another buyer. In the event Broker works for two competing buyer-clients in connection with any specific property, Broker will be working equally for both buyer-clients and without the full range of fiduciary duties owed by a buyer's agent to a buyer. In this situation, the competing buyer-clients are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.

If your buyer agency form contains similar language and you are careful not to disclose any confidential information to either client, you should be protected. If you do not have such a written waiver, you could face claims of breach of fiduciary duties from one or both buyers.

I am the listing broker. My sellers have told me that they need to receive a minimum amount of $200,000 from the sale but that I can keep any amount in excess of this amount as my commission. I told them that such an arrangement is illegal in Michigan. Am I correct?

YES. This would be a "net listing agreement" which is illegal. Rule 315.

Mortgage Contingencies Q/A

I represent the seller. My client received multiple offers and based his choice in large part on the fact that the buyer had submitted a pre-approval letter from a particular lender. I just discovered that the buyer has applied for a mortgage from a different lender. Can she do that?

YES. The fact that a buyer presents a pre-approval letter from one lender does not obligate the buyer to use that lender unless the purchase contract explicitly says so. Buyers often switch lenders and are ordinarily free to do so as long as they meet the time deadlines in the purchase contract.

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

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

I listed a home for $300,000. My seller has received a full price offer and wants to counter it at $310,000. Can he do this?

YES. Even if a full price offer is presented to the seller, he or she is not obligated to sell it at that price and can counter at a price that is higher than the listing price.

I am the listing Realtor®. An offer was made by a buyer that was well below the listing price. I telephoned the buyer's agent to tell him that my seller has rejected the offer. The agent said that it is necessary for the seller to reject the offer in writing. Is this true?

NO. A seller has no legal obligation to reject an offer in writing or to even respond to an offer at all.

I made a full price offer on a house on behalf of my buyer. The offer stated that the seller had until 5:00 p.m. on Friday to respond. The listing broker emailed me and said that the seller would not respond until Monday because he has an open house scheduled for the weekend and he wants to see if any more offers are made. Can the seller unilaterally extend the time for responding to my offer?

NO. The seller cannot "accept" an expired offer; rather any "acceptance" after the expiration of the offer would be deemed a counteroffer that your buyer could either accept or reject.

My buyer client made an offer on a house listed by another company. The listing agent told me that he had called his seller and that the seller had accepted my client's offer. I never received the written acceptance and I have since found out that the seller entered into a contract with another buyer. My buyer believes that he should get the house because of the verbal acceptance of his offer. Is he correct?

NO. The statute of frauds requires that a contract for the sale of real estate be in the form of a signed written document in order to be enforceable. Since the so-called acceptance came through verbal communications between the seller, the listing agent, and the buyer's agent and was never reduced to a signed writing, the contract is unenforceable. MCL 566.108.

I am a real estate salesperson representing a buyer. We submitted an offer on a home to the listing agent and 2 days later the listing agent sent me a text message indicating that his seller had accepted my buyer's offer. Later that same day I received another text from the listing agent stating that the seller had decided to go with a better offer. My buyer is angry and believes the seller accepted the contract through the text message. Am I correct?

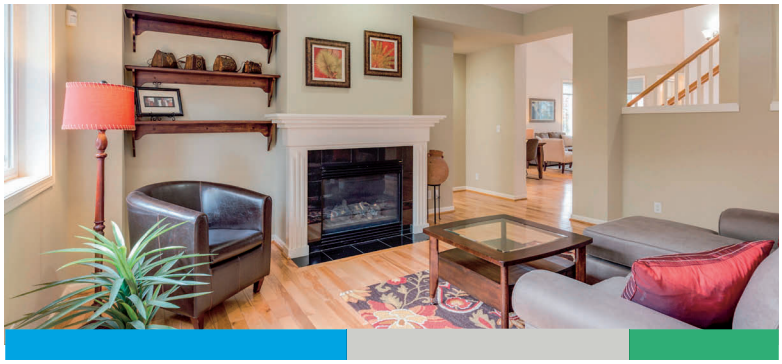
NO. Since it is a contract for the sale of real estate, the statute of frauds requires there to be a signed writing in order to have an enforceable contract. A text message from the listing broker notifying you that the seller has accepted the offer would not satisfy this requirement. It has no more effect than if the listing broker had called and told you the seller had accepted your client's offer. (If there had been a text message directly from the seller stating, "I accept," your buyer would have a better argument, particularly if the purchase contract expressly provided for electronic signatures.)

The seller just sent a counteroffer and now has received a better offer. Can the seller rescind his/her counteroffer?

A counteroffer can be rescinded up until the time it has been accepted. The rescission must reach the buyer or the agent for the buyer before the seller or the agent for the seller receives an acceptance.

My buyer made an offer that the seller countered. Before we could respond, the listing agent sent me a text stating that her seller was withdrawing the counteroffer and going with highest and best. Can a counteroffer be withdrawn in a text message?

YES. The seller may withdraw the counteroffer at any time prior to receipt of an acceptance by any means of communication.



We received an offer on a listing, and it was accepted by the seller. We delivered it back to the buyer's agent 2 days ago. Now we have been advised that the buyer refuses to bottom-line the purchase agreement. Can the buyer walk away from the deal and get his earnest money deposit back?

The buyer certainly cannot walk away from the deal and get his earnest money deposit back by simply refusing to bottom-line receipt of the purchase agreement. Unless the specific purchase agreement requires a bottom-line signature in order to form a contract, the contract between the buyer and the seller is formed when the seller signs the offer and delivers his acceptance to the buyer or the buyer's agent. Traditionally, the practice of bottom-lining has been done to assure that Realtors® can prove that they complied with Rule 307 which requires a licensee to provide a fully executed copy of the purchase agreement to the seller and buyer.

I represent a buyer who put in an offer on a home where there were multiple offers. My client's offer was not accepted. We have reason to believe that my client's offer was in fact the "highest and best." Are we entitled to see a copy of the offer that was accepted by the sellers in order to verify that it was the "highest and best" offer?

NO. Moreover, it does not matter whether the accepted offer was in fact the "highest and best." As long as the sellers did not engage in unlawful discrimination (for example, on the basis of national origin), they were not required to accept the "highest and best" offer or otherwise treat all offers equally.
A "Primer on Multiple Offers" prepared especially for buyers in this situation is available on MR's website.

My seller received an offer for $200,000 and countered that offer at $210,000. After the counteroffer had been delivered to the buyers' agent, but before the buyers responded to the counteroffer, the seller decided not to take a chance and withdrew his counteroffer and accepted the buyers' offer for $200,000. I have been told that the buyers will not honor the contract. Don't we have a binding contract?

NO. The sellers' counteroffer operated as a rejection of the buyers' offer. Once an offer has been rejected, it is "terminated" and cannot thereafter be resurrected and accepted. Legally, where you are at now is the seller has offered to sell the property on the terms originally proposed by the buyer, which offer can be accepted (or rejected) by the buyer.

Q/A

Does a buyer's agent have a legal right to present his client's offer to the seller or at least be present when his client's offer is presented to the seller?

NO. There is nothing in Michigan that grants such a right. Sellers can determine whether or not they wish to entertain an offer directly from a cooperating agent.

Property Management/Leases

Q/A

I run a property management company that specializes in luxury home rentals. In order to ensure that only eligible candidates apply, I have instituted a policy that requires prospective tenants to have a minimum credit score prior to viewing the property. Is this an allowable policy?

YES. It is permissible to require a minimum credit rating as a criterion to determine whether a prospective tenant is eligible to see a property. Such a policy should be disclosed to and approved by the owner of the property and must be applied to all applicants equally. Any variation in the application of the policy could subject you to a claim of unlawful discrimination.

I represent someone who is interested in leasing a house. Am I required to provide an agency disclosure form?

YES. The agency disclosure law defines a real estate transaction as one involving the sale OR LEASE of real estate consisting of not less than one or not more than four residential dwelling units or a building site for a residential unit. MCL 339.2517(11)(g). Although the "standard" agency form may be used in lease situations, MR has an agency disclosure form designed specifically for lease transactions available on its website (Form K-Lease).

I manage several residential rental properties. Is it okay to charge first and last months' rent plus a security deposit in advance?

The Landlord and Tenant Relationship Act allows landlords to charge up to 1 ½ months' rent as a security deposit. MCL 554.602. In addition, the first month's rent may be required in advance of move in. If a landlord also charges the last month's rent in advance, it must be considered part of the security deposit. Thus, the security deposit plus last month's rent cannot exceed 1 ½ months' rent. The last month's rent must be deposited with the security deposit and handled in accordance with the Security Deposit Act.

I heard that any residential real estate lease that is longer than 1 year is illegal in the state of Michigan. Is this true?

NO. There is no prohibition in Michigan against leases that are longer than 1 year.

Property Management/Leases

Q/A

I am a Realtor® representing an individual who owns rental properties. He prohibits pets in his apartments. A blind person who uses a guide dog has expressed interest in one of the apartments. Can the property owner refuse to rent an apartment to this individual based on the pet prohibition?

NO. A guide/leader dog is not considered a "pet," but rather a service animal. Prohibiting service animals would violate various laws/regulations prohibiting discrimination against disabled persons.

I have a rental house that I have recently rented to someone who has physical disabilities. The tenant wants me to install rails in a number of areas within the house at my expense. Must I do this?

If a person has a disability, a landlord must permit him or her to make reasonable modifications to the rental unit; however, the landlord can require the disabled tenant to pay for the modifications and to restore the property to its original condition at the termination of the lease.

I am a property manager for an apartment complex and the owner has a maximum occupancy restriction of two persons per bedroom. Is this legal?

To prevent discrimination against larger families, federal guidelines advocate allowing three people per bedroom. However, a landlord must also comply with local occupancy laws. For health and safety reasons, housing codes set minimum room sizes. Many local codes require that a bedroom have at least 170 square feet in order for there to be three people. If one of the bedrooms is larger than the minimum set by your local code, your client will need a strong justification to defend its 2-person per bedroom rule against a claim of discrimination.

I am representing a buyer in the purchase of an investment property that currently has a tenant who has 8 months left on his lease. Is the buyer obligated to honor the terms of the lease?

A buyer who had knowledge of the existence of the tenant will be obligated to honor the lease (because the buyer would not qualify as a bona fide purchaser). The seller will typically want to make certain that the buyer expressly agrees to assume the seller's obligations under the lease. Otherwise, if the buyer tries to evict the tenant, the seller could be liable to his tenant for breach of contract damages.

Property Management/Leases

Q/A

I am currently leasing a house to a tenant whose former boyfriend has been stalking and harassing her. She wants to terminate the lease early and go into hiding. Can she do this?

YES. If your tenant has a "reasonable apprehension of present danger." The Landlord Tenant Act allows tenants to terminate a rental agreement in cases of domestic violence, sexual assault or stalking. MCL 554.601b.

The law states: ". . . a tenant shall be released from his or her rental payment obligation in accordance with the requirements of this section after submittal of written notice of his or her intent to seek a release and written documentation that the tenant has a reasonable apprehension of present danger to the tenant or his or her child from domestic violence, sexual assault, or stalking. Submittal of written notice shall be made by certified mail."

Written documentation of a reasonable apprehension of present danger includes:

- A valid personal protection order.
- A valid probation order, conditional release order or parole order.
- A written police report that has resulted in the filing of charges by a prosecuting attorney.

I am a broker who wants to get into property management. Can I use my existing trust account for property management funds or should I set up a separate account?

A broker should set up a separate property management account, which may be an interest-bearing account. MCL 339.2512c(3).

There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when the instrument is recorded:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

(c) Contracts for the transfer or acquisition of a controlling interest in any entity only if the real property owned by that entity comprises 90% or more of the fair market value of the assets of the entity determined in accordance with generally accepted accounting principles which shall be recorded.

MCL 207.523(1).

I have a client that is transferring her house to her sister in return for her sister's agreement to pay off the mortgage. Is this transaction exempt from transfer tax? If not, how will the transfer tax be calculated?

Transfers between siblings are not exempt from transfer tax. Here, the consideration paid is the amount of the mortgage being assumed. Note, however, that if there is consideration paid, the transfer tax is calculated based upon the value of the real property and with the amount of consideration.

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

NO. A transfer of mineral rights is exempt from both state and county transfer taxes. MCL 207.505(h); MCL 207.526(g).

My church is selling some property it owns which is exempt from real property taxes. Will the deed be exempt from transfer tax?

NO. The transfer of real property from a non-profit organization is not exempt from transfer tax.

I am selling a property on land contract payable over a 5-year period. When is the transfer tax due in such a transaction?

According to the State Real Estate Transfer Tax Act, the transfer tax is not due until legal title is passed from the grantor to the grantee after all consideration is paid. MCL 207.526(o). On the other hand, the property is subject to the "pop up tax" at the time the land contract begins. MCL 211.27a(6)(b).

Some clients of mine sold their principal residence last year and the SEV was lower at the time they sold it than when they purchased it. They just found out that they might be entitled to a refund of the state transfer tax they paid. They sold the house at a profit; will they still be entitled to the refund?

YES. To qualify for the state transfer tax refund, the SEV at the time of purchase must be higher than the SEV at the time of sale. The fact that they sold the house at a profit has no effect on their ability to get a refund. The only requirement is that the home was sold at the price that would be arrived at through an arms length negotiation.

I am selling a piece of commercial property that has a lower SEV now than when I purchased it. Is this transaction exempt from state transfer tax?

NO. The declining SEV exemption from the state transfer tax is not applicable to commercial property. It is only applicable to residential property that is your principal residence.

I have clients that are in the process of selling one of their properties to their adopted granddaughter. It is my understanding that this is an exempt transaction for purposes of state transfer tax transfer. Am I correct?

YES. Under the State Real Estate Transfer Tax Act, this is an exempt transfer. MCL 207.526(k). No state transfer tax is owed.

A principal residence is exempt from the tax levied by a local school district for school operating purposes . . . . MCL 211.7cc(1).

I have a new listing for a property I thought was a condo. It turns out it is a "cooperative housing" unit that is part of a "cooperative housing corporation." Can the buyer still get a principal residence exemption?

YES. If it is occupied as the principal residence of the person who buys it. The buyer will need to file the PRE Affidavit on the state's form, but, in addition, the cooperative housing corporation must also file a form for the unit to qualify.

I am currently listing for sale the home of a man who has moved into an assisted living facility. Is he still eligible for the principal residence exemption?

YES. The general property tax act provides:

A person who previously occupied property as his or her principal residence but now resides in a nursing home or assisted living facility may retain an exemption on that property if the owner satisfies all of the following conditions:

(a) The owner continues to own that property while residing in the nursing home or assisted living facility.
(b) The owner has not established a new principal residence.
(c) The owner maintains or provides for the maintenance of that property while residing in the nursing home or assisted living facility.
(d) That property is not occupied, is not leased, and is not used for any business or commercial purpose. MCL 211.7cc(5).

My client is purchasing a second home that he will be using as a primary residence. It is my understanding that he may claim a homestead exemption on the house he is selling. Is this true?

YES. Provided certain criteria are met.

The Michigan Department of Treasury allows for a Conditional Rescission of Principal Residence Exemption (PRE). A conditional rescission allows an owner to receive a PRE on both the owner's current property and on previously exempted property if the previous principal residence meets ALL of the following criteria:

- is not occupied.
- is for sale.
- is not leased.
- is not used for any business or commercial purpose.

If your client's property meets ALL of these criteria, he can claim a Conditional Rescission of Principal Residence Exemption.

I am a Realtor® who just recently acquired a real estate license in Arizona. I have moved to my new home in Arizona and am trying to sell my home here in Michigan. Can I claim the Conditional Rescission of a Principal Residence Exemption (PRE) on my Michigan home?

NO. You can only claim the Conditional Rescission of a Principal Residence Exemption if both of the residential properties you own are in Michigan.

I am representing a seller who is buying a second home to live in while he tears down his existing home in order to build a new one. Can he claim the Conditional Rescission of the Principal Residence Exemption under these circumstances?

NO. In order to qualify for the conditional rescission, the prior home must be listed for sale.

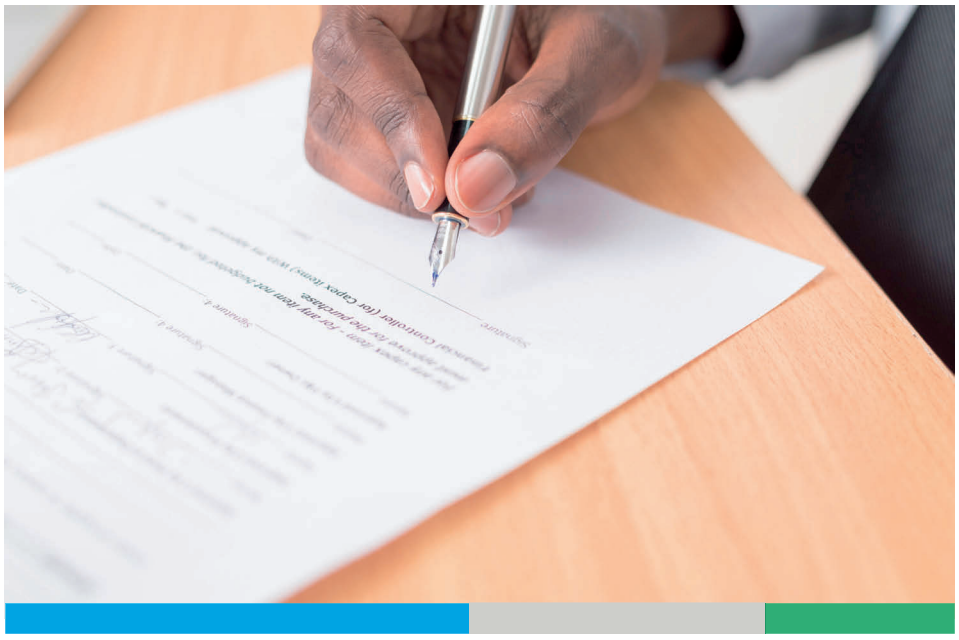
I have a client who recently remarried and has moved to her new husband's house, but is not on the title for that house. She has listed her prior home for sale, but has not found a buyer. Can she claim a Conditional Rescission of Principal Residence Exemption on her prior home?

NO. In order to qualify for a conditional rescission on a prior residence, the owner of that property must be eligible and claim a principal residence exemption on her current home.

(2) Except as otherwise provided in subsection (3), . . . the taxable value of each parcel of property is the lesser of the following:
(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions . . . .
(b) The property's current state equalized valuation.
(3) Upon a transfer of ownership of property . . ., the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.
MCL 211.27a(2) and (3).

I own 100% of a corporation, which in turn owns an apartment complex. The corporation has owned the property for many years and the current taxable value is significantly lower than the SEV. I am in the process of selling this property and the buyer has asked that we structure this sale as a stock sale in order to prevent the assessor from uncapping the taxable value. Will this transaction result in an uncapping?

YES. A sale of more than 50% of the ownership interest in an entity will trigger the uncapping of the taxable value. (Such transaction will also be subject to state transfer tax.)



Referral Fees/Promotional Incentives Q/A

[A licensee is in violation of the Occupational Code if he/she] shares or pays a fee, commission, or other valuable consideration to a person that is not licensed . . ., including payment to any person that provides the name of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of a commercially prepared list of names. However, a licensed real estate broker may pay a commission to a real estate broker that is licensed by another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid. MCL 2512(1)(h).

I want to start a marketing program where I will contact past clients for referrals and then enter their names into a drawing to win prizes. Is this legal?

NO. You cannot pay any consideration to individuals who are not licensed under the Occupational Code. Even a chance to win a prize would likely be viewed as "consideration." The only exception is a landlord may pay a referral fee to an existing tenant for a referral of another tenant, so long as the value does not exceed ½ month's rent.

Can I agree with my church that I will donate $500 to every member of my church who lists and sells their home with me?

NO. While you can agree to make a donation for every property you list and sell, you cannot pay a fee to an organization for referring its members to you. The fact that the organization is a religious or charitable organization does not change the analysis.

Can I advertise a program whereby I agree to donate $400 to my local high school booster club for every home I list and sell?

MAYBE. If the promotion is advertised broadly in the community (e.g., in the local newspaper), the promotion is probably permissible. If, on the other hand, the promotion is advertised only in the local booster club's newsletter, it may be viewed as an unlawful referral fee. In the latter case, the booster club may be viewed as referring business to you in exchange for a donation. Again, the fact that the booster club is a community service program does not change the analysis.

I have a property that I am trying to move. To generate interest, I am offering tickets to a Detroit Red Wings game to anyone that refers a buyer to me, provided that the sale successfully closes. Is this permissible?

NO. The Occupational Code prohibits such a payment to anyone who is not licensed. (It would, however, be permissible to give the Detroit Red Wings tickets to the actual buyer of the home as DLARA does not consider this to be a "referral fee.")

An agent licensed in the state of California referred a buyer to me. Can I pay that agent a referral fee?

YES. A Michigan broker can pay an out of state agent a referral fee provided the out of state agent does not represent either the buyer or seller in a Michigan real estate transaction.

A local attorney referred his client to me to purchase one of my listings. He is not a real estate licensee but he is demanding a referral fee. He said because he is an attorney, he is exempt from the rule prohibiting referral fees to nonlicensees. Can I pay him?

NO. There is no exemption from the licensing requirement for attorneys.

I have clients that have bought and sold many properties through me over the years. They have just referred a couple to me so that I could assist them in locating a home. I would like to give a gift certificate to my long-term clients. Can I do this?

It depends on the reason for the gift. You may not give your long-term clients a gift for a referral. In this example, unless your client is a real estate licensee, you are prohibited from making any payments for this referral. On the other hand, a licensee can give a gift to the client to show his/her appreciation for the client's past business.

> A plan or scheme involving a lottery, contest, game, prize, or drawing shall not be used by a real estate broker or real estate salesperson for the sale or promotion of a sale of real estate. However, a game promotion . . . may be used by a real estate broker or real estate salesperson for any purpose other than the direct promotion of a specific piece of real estate. MCL 339.2511.

> [T]he term game promotion shall mean any game or contest in which the elements of chance and prize are present but in which the element of consideration is not present. MCL 750.372a(a).

Based on a large volume of questions on promotional incentives, we put together the following summary of basic rules:

1. If an incentive program does not involve any element of "chance," then it is permissible.

EXAMPLE: A broker may offer a commission rebate or discount to every seller who lists with him before a particular date.

2. If an incentive program involves both "consideration" and "chance," then it is not permissible. (The question of whether there has been "consideration" is typically determined by whether or not the promotor gained some type of financial benefit from the method of entry.)

EXAMPLE: A listing broker may not offer a chance to win a new car to every seller who lists with him before a particular date.

3. If an incentive program involves "chance," but no "consideration," then it is permissible unless it is being used to promote a specific piece of real estate.

EXAMPLE: A listing broker may not offer everyone who visits his open house for 123 Main Street a chance to win a gift certificate.

We are having a client appreciation event and we plan on giving all attendees a gift basket that will include a Michigan lottery ticket. Is it legal to give such a gift?

YES. The lottery tickets are from a state licensed lottery and can be given as gifts. If everyone receives a lottery ticket, there is no "chance" involved in the broker's promotion. The "chance" is at the next level, where the promotion is being done by the State of Michigan.

(a) Business referrals
No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges
No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

12 USC §2607(a) and (b). (RESPA, Section 8.)

I am selling commercial property to a buyer that is paying cash. Is RESPA applicable to this transaction?

NO. RESPA applies only to residential transactions that involve a federally related mortgage loan.

Does the buyer or seller get to choose the title company?

This is simply a matter of contract between the parties. Realtors® should keep in mind, however, that RESPA prohibits a seller from requiring the buyer to purchase title insurance from a particular title company. This restriction would not prohibit a seller from choosing the title company for an owner's policy purchased by that seller. However, this restriction would prohibit the seller from requiring the buyer to purchase the lender's policy from a particular title company.

I am a Realtor® and I am interested in going into a joint advertising venture with a title company. Would this be possible?

IT DEPENDS. RESPA does not prohibit joint advertising; however, if one party is paying less than its pro-rata share of the cost of the advertisement, there may be a RESPA violation.

I am representing a buyer in the purchase of a home. I have referred the buyer to a moving company and I will be receiving a referral fee from this company. Is this a violation of RESPA?

NO. RESPA regulates "settlement services" related to the making of a federally related mortgage loan. Services that are provided after closing, such as moving services, are not considered "settlement services."

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

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.

I am an agent representing a seller in the sale of the home. He wants me to advertise that the payment on this house is $600 per month. Can I do this?

YES. But only if the advertisement includes additional information. Regulation Z of the Federal Truth in Lending Act provides a list of criteria one must follow when advertising financing terms. This regulation states that if a "triggering term" is used in the advertisement, then the advertisement must include additional information. A "triggering term" includes one or more of the following:

1) The amount of the down payment expressed as either a percentage or dollar amount.
2) The amount of any payment expressed as either a percentage or dollar amount.
3) The number of payments or the period of repayment.
4) The amount of any finance charge.

If the advertisement uses a "triggering term," then it must also contain the following information:

- The amount or percentage of the down payment.
- The terms of the repayment.
- The annual percentage rate or "APR."

Title Issues Q/A

I am representing three siblings who own a house as joint tenants with full rights of survivorship. They entered into a purchase agreement to sell the property. Prior to closing, one of the siblings passed away. Can the property still be sold by the remaining siblings, or do we have to wait for the deceased sibling's estate to go through probate?

NO. You do not have to wait for probate. Since the property was owned in joint tenancy, upon the death of one sibling, her interest automatically passed to the other siblings.

What if only one spouse of a married couple signs a listing agreement? Is the result the same where only one spouse signs the purchase agreement?

A listing agreement or buyer's agency agreement signed by only the husband or wife is binding on that party even if his/her spouse does not sign the agreement. In the event of sale, the spouse that signed the listing agreement would be legally bound to pay a commission. The same is not true for the seller on a purchase agreement. In order to be valid, a purchase agreement must have the signatures of all of the owners of the property. A husband or a wife can make a binding contract to buy property without the signature of his/her spouse.

I was contacted by a prospective seller who wants to sell her deceased father's home. She believes she should be able sell it without going through probate because she has her father's power of attorney. Is she correct?

NO. The power of attorney expired upon the death of the father.

For estate planning purposes, my neighbor would like to add her 14-year-old daughter to the deed to her home. Is this legal?

YES. There is nothing prohibiting a minor from holding title to real property. The difficulty will arise if the neighbor and her daughter later want to sell the home while the child is still a minor. Your neighbor should consult an estate planning attorney prior to adding her daughter to the deed.

Title Issues Q/A

I represent the buyer on a transaction that fell through after the title work uncovered a large IRS lien that the seller did not have sufficient funds to pay. Isn't the seller in default, and if so, can my buyer recoup his expenses from the seller?

As always, you should advise your buyer to consult with an attorney. However, as a general rule, most purchase agreements permit the seller to terminate the purchase contract without penalty if there are title defects he or she cannot cure.

I am a Realtor® that represents a seller of a home. He recently had a construction company build a deck and patio for him. Because of a dispute, he did not pay the full amount he was charged for construction. The contractor filed a construction lien and is threatening to foreclose. Can the contractor do this?

YES. The contractor claiming the lien may sue to foreclose at any time within 1 year after the lien is recorded. Provided it is a valid lien, a circuit court may order the sale or partial sale of the property.

I am a buyer's agent. The title work shows the seller's deceased father as record title holder of record to a small portion of the land my client is purchasing. Seller has asked his father's estate attorney to take care of this matter. Buyer does not want to delay closing. Should I let my buyer close before this title problem is worked out?

While it may not be advisable to close under these circumstances, the buyer cannot be prevented from closing. In circumstances such as this, a buyer's agent should give his client something in writing recommending that the closing not take place until the buyer consults with an attorney.

I am a Realtor® that is representing a seller who is selling a large parcel of land in northern Michigan. The oil and gas rights were reserved 30 years ago by the previous owner. There has been no drilling done during this timeframe. Does the previous owner continue to retain these rights?

IT DEPENDS. Under the Michigan Dormant Minerals Act, under certain circumstances, reserved oil and gas rights will terminate after 20 years.

The Dormant Minerals Act applies only to oil or gas rights, and not to other mineral rights. You should advise your seller to discuss this issue with an attorney to see what steps can be taken to clear title.

Title Issues

Q/A

Can a property owner on an inland lake exclude his neighbor from swimming in that portion of the lake located directly in front of his home?

NO. Assuming the neighbor's property also abuts the lake, the neighbor's riparian rights include the right to boat, fish, swim and wade anywhere on the lake.

I am a buyer's agent. My clients had their attorney review the offer after I wrote it but before it was presented to the sellers. The lawyer is asking for many changes to the offer which, in my opinion, are unreasonable and will make it unacceptable to the sellers. How should I advise my buyer-clients?

Do not ever advise a client to ignore the advice of counsel, even if the advice of counsel seems like bad advice.

Can I list a boat slip and the yacht located within the boat slip for sale?

YES. A boat slip that may be bought and sold is typically set up as a condominium unit created through the recording of a master deed. As such, it is clearly an interest in real estate. All watercraft 20 feet or larger, and all watercraft with a permanently affixed engine regardless of length, are considered "motor vehicles." However, you do not need a motor vehicle license unless you broker five or more motor vehicles within a 12month period.

My buyer just closed on the purchase of a home and is allowing the seller to have 6 months occupancy post-closing. Is there a limit to the time of possession allowed for the seller?

NO. There is no law restricting the length of a seller's occupancy period. Buyers who are entering into long-term arrangements should be encouraged to consult with an attorney about putting together a formal lease agreement. Buyers should also make certain that their insurance agent is aware of this arrangement and make certain that the correct insurance is in place.

I have received a Writ of Garnishment on one of my agents. It is my understanding that since my agent is an independent contractor, I do not have to obey this order. Am I correct?

NO. The Writ of Garnishment is a court order, and you must obey it. The fact that the agent is an independent contractor does not absolve you from obeying the order. Failure to honor a writ of garnishment can result in you becoming liable for all or a portion of the agent's debt.

My next-door neighbors' fence is the color brown, but I want to paint the side facing my yard a different color. If the fence is on the property line, do I need my neighbor's permission to paint my side of the fence a different color?

YES. Since the fence is your neighbors' property, you will need their permission to paint the fence.

Some agents in my area are giving potential buyers the combination or code to the lock boxes on vacant properties. Is this permissible?

NO. Although this situation is not specifically addressed by the Occupational Code, it is extremely ill-advised to provide the code or lock box combinations to non-agents. Doing so could subject the agent (and the agent's firm) to any number of possible claims, including breach of fiduciary duty and negligence claims. (This practice may also be deemed to violate the Code of Ethics. Standard of Practice 3-9 provides that "REALTORS® shall not provide access to listed property on terms other than established by the owner or the listing broker.")

I am a Realtor® who wishes to sell some investment property on land contract. What is the maximum amount of interest that I will be able to charge?

The answer to this question depends on the status of the buyer. While generally, the maximum amount of interest on land contracts cannot exceed 11% per year, a buyer who is a corporation or limited liability company may be charged up to 25% per year.

My real estate company used to be a franchisee with a national company whose name is a registered trademark. During this time, I bought a number of Internet domain names that included the name of the franchise. I am no longer a franchisee for this company. May I still legally use the domain names that I purchased?

NO. Since the name of this national company is trademarked and you are no longer a franchisee, you are not licensed to use this domain name.