

# The Title Examiner

A QUARTERLY PUBLICATION OF THE



WINTER 2011

**Happy  
Holidays &  
Best Wishes  
for the  
New Year  
- from the  
Examiner  
Staff**

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## MICHIGAN SUPREME COURT PERMITS MERS TO FORECLOSE MORTGAGES BY ADVERTISEMENT

*by Gregg Nathanson, Couzens, Lansky Fealk, Ellis, Roeder & Lazar, P.C.*

On November 16, 2011, the Michigan Supreme Court ruled the Mortgage Electronic Registration System (MERS) has the legal right to foreclose mortgages by advertisement.

Earlier this year, the Michigan Court of Appeals ruled against MERS, in *Residential Funding v. Saurman*. According to the Court of Appeals, MERS was not “the owner... of an interest in the indebtedness,” and, therefore, had no legal standing to foreclose by advertisement the mortgage securing payment of the indebtedness. Instead, MERS must seek to foreclose by judicial process. The Michigan Supreme Court disagreed and reversed the Court of Appeals.

In this case, the borrowers financed the purchase of property by executing a promissory note and mortgage. The mortgage provided for foreclosure by advertisement in the event of a default. The lender, is named in the mortgage, but not designated as the mortgagee. Instead, MERS is the mortgagee, but the mortgage addresses the relationship between MERS and the lender. The mortgage states, in part, that the borrower mortgaged the property to MERS solely as nominee for the lender, with the power of sale. The borrower acknowledges that MERS, as nominee for the lender, has the right to foreclose by advertisement and sell the property.

The central issue in the case is: how to interpret a provision of Michigan’s Foreclosure By Advertisement statute, MCL §600.3204(1)(d). The statute requires the party foreclosing the mortgage be “either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage. MERS was neither the owner of the indebtedness nor the

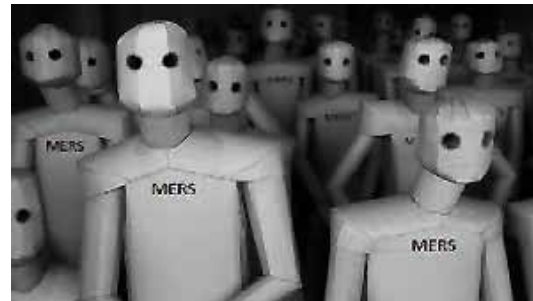
servicing agent. The question then, is whether MERS constituted the “owner...of an interest in the indebtedness secured by the mortgage”?

The Court of Appeals differentiated between the indebtedness (i.e. the promissory note) and the mortgage. These are two different legal transactions providing two different sets of rights. The mortgage is a conveyance of title to property that is given as security for the payment of a debt. The mortgagee has an interest in the property. Unlike a note, which evidences a debt and represents

an obligation to repay, a mortgage represents an interest in real property. The Court of Appeals held that MERS did not own an interest in the debt, even though MERS was the mortgagee under the mortgage.

MERS’ inability to comply with the statutory requirements rendered the foreclosure by advertisement void.

The Michigan Supreme Court took a different view. The Supreme Court found that MERS is “the owner...of an interest in the indebtedness secured by the mortgage.” Why? Because MERS’ contractual obligations as mortgagee were dependent upon whether the mortgagor met the obligation to pay the indebtedness which the mortgage secured. MERS’ status as an “owner of an interest in the indebtedness” does not equate to an ownership interest in the note. Rather, as record holder of the mortgage, MERS owned a security lien on the property, the continued existence of which was contingent upon the satisfaction of the indebtedness. This interest in the indebtedness – i.e., the ownership of legal title to a security lien whose existence is



*Continued on Page 2*

# MLTA

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Continued from Page 1

wholly contingent on the satisfaction of the indebtedness – authorized MERS to foreclose the mortgage by advertisement under Michigan's Foreclosure by Advertisement statute.

The Supreme Court stated that, under Michigan law, the mortgage and the note are to be construed together. The mortgage and the indebtedness need not be in the same hands. The Court interpreted the Legislature's use of the phrase "interest in the indebtedness" to denote a category of parties entitled to foreclose by advertisement, indicates the intent to include mortgagees of record among the parties entitled to foreclose by advertisement, along with parties who "own the indebtedness" and parties who act as "the servicing agent of the mortgage." Thus, the Court found that MERS, as an undisputed record holder of a mortgage, possesses the statutory authority to foreclose by advertisement.

*The information contained herein does not attempt to give specific legal advice. For advice in particular situations, the services of a competent real estate attorney should be obtained. These materials are the exclusive property of Gregg A. Nathanson, Esq., and no reprint or other use of the information contained herein is permitted without Mr. Nathanson's express prior written authorization. ©2011 Couzens Lansky*

## BOARD BIZ

by Bob Wuerfel, Secretary/Treasurer MLTA

The MLTA Board of Directors is committed to the members and our industry. This fall we put together a Strategic Plan Dashboard of the items that we're looking to make progress on. The dashboard concept is new to the board, brought to us by our new MLTA President Cathy LaMont. The dashboard provides clarity, and we connect on these topics every month. We have a great Association and a lot to look forward to in 2012 and beyond.

Board Biz Strategy Dashboard topics for 2011-2012:

- Increase Agent Involvement
- Further MLTA Legislative Agenda
- Formalize Public Relations Efforts
- Provide Meaningful Education to Members
- Attract and maintain robust membership
- Develop and Implement Professional Designations
- Accomplish Governing Tasks of the MLTA

Our Membership has remained constant as we head into 2012. It's great to see the renewals and commitment to the Association. Below is the membership breakdown by category.

Abstractor / Agent = 104  
Professional = 35  
Underwriters = 6

## THE TITLE EXAMINER STAFF

Editor & Board Representative: Bob Wuerfel ■ Lighthouse Title Group  
Publisher: Laura Veldhof ■ Laura Veldhof Designs, L.L.C.  
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with any questions, comments, or if you would like to contribute.



## Paul Alexander

**Position:** Owner

**Company:** Mt. Pleasant Abstract & Title Inc. family of offices. Working in Mt. Pleasant, Isabella County

**MLTA Involvement:** Summer Conventions and Mt. Pleasant Educational Seminars



**About Paul:** Originally from Saginaw, I graduated from Central Michigan University in 1975 (BS), 1979 (Masters), and never left. After graduation, I worked as a loan originator for Mutual Savings and Loan (now Independent Bank) in Mt. Pleasant for six years. In 1981, I started Mt. Pleasant Abstract and Title. Since then we have grown to 10 offices through startups and acquisitions, serving central and northeastern Michigan.

Believing strongly in community involvement, I am the past president of the local Chamber of Commerce, first treasurer of the Mt. Pleasant Community Foundation, charter member of the Art Reach Board of Directors, first ever affiliate member elected to the Central Michigan Realtor Board of Directors, and three time Central Michigan Board of Realtors Affiliate of the year award winner.

I have three sons with whom I am very fortunate to work and whom I see daily. Matt is our searcher/examiner for our Clare office, Gateway Title. Brad is the financial coordinator for all offices and works out of Mt. Pleasant. Zach will graduate from CMU in December 2011 and will begin his career in Escrow and Marketing. For all of you who have not met my wife, Maryanke, it doesn't take long to figure out her passion, HORSES! Specifically, Friesians.

I love what I do and work a lot of hours. Most mornings you can catch me at the office by 6:00 a.m. When I'm not working, I enjoy hunting, fishing, and polishing up my green thumb with the flowers in the yard. This is a great business! I have had the privilege of crossing paths and working with many dynamic, interesting and special people over the last 30 years.

## Crystal Bowyer

**Position:** Agency Production Manager

**Company:** Lighthouse Title Group in Holland Office, Ottawa County

**MLTA Involvement:** Education seminars

**Interests:** Reading, sewing, knitting, camping, hunting and fishing.



**About Crystal:** My husband and I have been together for 12 years. I have 4 children (3 stepchildren), 4 grandchildren and 1 dog. Some people think my husband looks like Kid Rock or Tom Petty; I guess it depends on their age. I started out as a temp in title insurance by typing final policies and then moved into construction draws. Typing commitments, and then learning how to examine came quickly after that. I have been in the title insurance business going on 13 years now, spending the last 10 years at Lighthouse.



**Attorneys Title Agency (ATA)** acquired **Pinnacle Title Agency** on December 1, 2011, expanding the agency's West Michigan presence. "Though we have a significant presence in West Michigan through our affiliate Midstate Title Agency, the Kalamazoo market was yet-untapped prior to this acquisition," said **William Robinson**, ATA President. "We feel this region has significant growth potential and partnering with the great team at Pinnacle is a phenomenal entry point."

Pinnacle was owned and operated by **George Amar**, a highly respected title insurance professional with more than 35 years of experience in the industry. George and his expert staff will be valuable additions to the ATA team. Pinnacle Title Agency will operate as an ATA office, supervised by the agency's Southwest Michigan manager, **Terry Pingel**.

"George and the Pinnacle team have been providing outstanding customer service in southwest Michigan for more than three decades, which has led to strong customer loyalty and deep industry expertise," stated Pingel. "As we look to 2012, we're poised for growth in the Kalamazoo region and a strong team on the ground will be critical to our progress."





# ABSTRACTIONS

by Allan Dick, Best Homes Title Agency, LLC

Here's a bit of a switch. According to the Standard & Poor's/Case-Shiller index August report, home prices actually rose in half of the 20 major cities, with Detroit being one of the leaders (after reaching its lowest point since the 2007 housing bust). But, over the past 12 months, prices have fallen in all but 2 cities – Washington, D.C. and Detroit!

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In a broader survey of the 1,000 largest cities nationwide, Zillow reported on the largest gainers and losers in home values since February 2009. Two Michigan cities made the top 25 gainers – Portage at #10 with an 11.6% increase, and #25 East Lansing, up 7.9%. Unfortunately (but maybe not surprising), Pontiac ranked high on the biggest loser list (-47.4%!).

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More mixed news – according to the Mortgage Bankers Association's quarterly report, fewer home loans are delinquent these days. (That's the good news.) However, because of the backlog in foreclosures, due to the concerns regarding mishandled legal paperwork (and robo-signings), foreclosure activity is expected to increase in the coming months. The Center for Responsible Lending, a non-partisan advocacy group, reports that the nation is only now approaching the mid-way point of the foreclosure crisis that mires the economy. But, Freddie Mac reports that the 30-year mortgage rate dropped below 4% in early November for the second time this year, and continues to hover around 4% (3.3% for 15-year loans). Anyone remember 17% mortgages in 1981-2? What a difference, when it come to the TIL!

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Regardless of your political persuasion (or frustration!), the latest mortgage program sponsored by the Obama Administration is the Home Affordable Refinance Program (HARP), which likely won't really roll out until the second quarter of 2012. Will it have a real impact? We can only hope (remember HAMP – the Home Affordable Modification Program? No?) Only time will tell. A broader criticism of the refinancing programs is that they haven't adequately addressed the 2 main drivers of foreclosures – (1) home values being significantly less than their mortgage balances, and (2) the sudden loss of income, as from unemployment.

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Finally, you may have heard or seen that the first ever Bloomberg Economic Evaluation of States (BEES), recently released, ranked Michigan as having the second BEST economic record of the 50 states since the end of 2008 (with a 7.4% decline). Only North Dakota ranked higher (with the only positive economic progress during that period). I guess everything is relative. But, we'll take any good news we can get, right? Happy Holidays!

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Mortgage fraud is a material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan. It continues to evolve as lenders and fraudsters alike adapt to changing economic conditions and government regulations. How much do you know about it? Take the quiz to find out.

1. A title policy insures against:

- a. Fraud and forgery
- b. Principal and interest
- c. Madness and mayhem
- d. Metes and bounds

2. A straw buyer is:

- a. Someone who purchases straws in bulk
- b. Someone with good credit who agrees to help someone with bad credit obtain a loan
- c. A first time home buyer
- d. Someone who is over 65

3. Which of the following items are commonly fabricated in order to induce a lender to approve a loan:

- a. Employment verifications
- b. Mortgage loan applications
- c. Bank statements
- d. All of the above

4. What document is the most forged document in a real estate transaction:

- a. Deed
- b. Power of Attorney
- c. Mortgage
- d. Purchase Contract

5. Flopping occurs in what type of transaction:

- a. Refinance
- b. Deed in Lieu
- c. Bulk Sale
- d. Short Sale

6. Which of the following steps can a settlement agent follow to assist in preventing fraud from occurring in one of their transactions:

- a. Disclose all receipts and disbursements on the HUD-1 Settlement Statement
- b. Make sure the funding lender has everything the settlement agent has
- c. Trust their escrow gut
- d. All of the above

7. Proper identification should be issued by a governmental entity and include a physical description and (select all that apply):

- a. Include the bearer's signature
- b. Include the expiration date
- c. Include the bearer's weight
- d. Include the bearer's photograph

8. Which of the following is a red-flag warning of a possible fraudulent transaction (select all that apply):

- a. Purchase offer is more than the list price
- b. Unusual expenses paid by the seller
- c. Silent second mortgages
- d. Transactions not recorded on the HUD-1 Settlement Statement

9. What are the two classifications mortgage fraud schemes are put into:

- a. Fraud for profit and fraud for housing
- b. Tit for tat
- c. Civil and criminal charges
- d. Tax evasion and wire fraud

10. Who are usually the perpetrators in a fraud for housing scheme:

- a. Cops
- b. Industry professionals
- c. Drug dealers
- d. Ex-cons



## QUIZ ANSWERS:

1. a. The Covered Risks section of both an Owner's and Lender's title policy state the insured is covered for; "a defect in the title caused by...forgery, fraud..." Since this coverage is offered in all of the title policies available, fraud and forgery is of major concern to the title industry as well as our company.

2. b. Generally, a straw buyer is someone recruited by a perpetrator to take out a mortgage and purchase a house in their name. The straw buyer normally does not live in the house or have the intent to reside at the house. They often receive cash in exchange for the use of their credit and name.

3. d. Mortgage fraud schemes involve falsifying a borrower's financial status by including material misstatements on documents the lender's underwriter relies on when evaluating the eligibility of a borrower. This is done by supplying fictitious employment verifications, mortgage loan applications and bank statements

4. b. A Power of Attorney is written authorization to represent or act on another's behalf in private affairs, business or some other legal matter. As a result, perpetrators sometimes forge the names of property owners in order to sell a property out from under the rightful owner or use the Power of Attorney to get a loan to strip all the equity from a property unbeknownst to the property owner.

5. d. A flopping scheme requires the perpetrator to conceal or provide falsified information to the loan servicer. This is information the servicer needs to make informed short sale decisions. These concealments might include hiding the true parties to transaction, any contingent transactions or the true value of property.

6. d. The settlement agent is often the best defense against mortgage fraud. Without them, the fraud might never be prevented. It is important the settlement agent fully disclose all receipts and disbursements on the HUD-1 Settlement Statement and material facts to the funding lender.

7. a & d. Forged documents are often one of the many elements included in a mortgage fraud scheme. It is important to the lender and title company the borrower is properly identified. Although the identification requirements for the purpose of notarizing vary from one state to the next, it is often the lender who requires the borrower present identification which contains all of these elements.

8. a, b, c and d. Although any one of these items alone might not be an indicator, combined they definitely have the makings of a scheme.

9. a. The FBI defines these two classifications. They state fraud for housing entails misrepresentations by the applicant for the purpose of purchasing a property for a primary residence. This scheme usually involves a single loan. Fraud for profit often involves multiple loans and elaborate schemes perpetrated to gain illicit proceeds from property sales.

10. b. Industry professionals are the ones most familiar with the ins and outs of the loan process - and most often the perpetrators involved in a fraud for housing scheme. The scheme could never occur without the cooperation of the real estate agents, loan officers, appraiser and settlement agent assisting in all the material misrepresentations which must be provided.

# VIEWS FROM THE SHORE

By Sam Hill

So, you came back for more, eh? Thanks. Well, by the time you read this it will be yesterday's news. But, I hope it's worth sharing anyway. Here's what's happening in small town Northern Michigan. It's almost opening day! No one here cares that last Friday the Fed was closed for Veteran's Day. Oh, don't get me wrong, we love and honor our vets. But, let's face it, what really matters is November 15th (the first day of deer hunting season for you city folk).

Bankers grow beards and the staff wears plaid to dress down and celebrate. We can't get a parking spot at the court house, 'cause the judge has scheduled extra trials and hearing days, since no one will be available for at least a week (maybe a month for some). At the mall on Tuesday (opening day), they are having a women's spa day, where we can all go and get a massage and have our toe nails painted (they even have camo nail polish, but no, mine will still be red). The DNR reports that the white tail herd numbers 1.6 million, and they hope the hunters will knock that down by 20%. Finally, something we can all agree on.

This time of year, our contractors are frantically trying to get their jobs finished because of the weather and hunting season. We have one guy who drives around in his truck with a camper on it. He lives in it during the building season at his job sites. Guess you'd call that a mobile home. He is also a FSBO. He and his sister are selling their deceased mom's house (or at least trying to). He carries all the paperwork around in a big Red Wings boot box, and he drops in every once in a while with the box under his arm.

Another old guy came in last week. In the back of his pick up was a load of pumpkins. He tried to trade us pumpkins for a deed. Seems he wanted to take "the wife" off title. We told him we weren't an attorney law firm and that probably he needed a divorce attorney. He left us a pumpkin anyway and off he went. Well, it won't be long 'til the holiday season and measurable snow. So, bundle up and stay warm. That's the way I see it, and this is the view from the shore, so you can see what it looks like from here to there from time to time.

Regards,

*Samantha Hill*



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# IN MEMORIAM

## WILLIAM B. CONN (1922-2011)

William B. Conn, of Harbor Springs and Les Cheneaux Islands, passed away peacefully on August 26, 2011.

Born in Minneapolis, MN on December 14, 1922, he was the son of Norman Conn and Grace Code. On July 9, 1966, Bill married Diane Blondal, and they lived in Birmingham, MI, until 1972 when they moved to Harbor Springs. Bill graduated from Lincoln High School in Ferndale, MI, and the University of Michigan.

He served his country as a Navy pilot during World War II. He was admitted to the Michigan Bar in 1948. After a period of private practice, Bill joined Fred Burton Abstract Company, merging with Burton Abstract & Title. Bill continued his career in the title field becoming president of Burton Abstract & Title and St. Paul Title Ins., in 1970. Upon moving to Harbor Springs, Bill bought Emmet County Abstract, Petoskey, continuing his practice of law.

Bill loved the game of life and played it well. He enjoyed many interests. An avid sailor, he raced Port Huron to Mackinac races and summers would find him in the North Channel aboard his boat "Edward Bear." He loved the game of bridge which he played with command. He could be found on tennis courts and ski hills of Nub's Nob. In later years, with his two labs in attendance, he enjoyed observing the outer islands from the deck of his cottage.

## DON SARE, SR. (1936-2011)

Donald George Sare, Sr., age 75, died September 30, 2011 at his home in Kincheloc, MI. Born in Detroit, Don grew up in Detroit and Grand Rapids and worked as an abstractor with the Kent County Abstract Company before joining Burton Abstract & Title Company as a title examiner. Don later moved to Cheboygan in 1971 to manage the local Burton Abstract office, as well as manage Burton's Northern Agency Division. In 1975, he purchased Chippewa Abstract & Title Company in Sault Ste. Marie, and hired Carla Ann Oxley to examine titles and do escrow. They were married seven years later. Don is survived by Carla, a daughter and two sons, as well as five grandchildren, two brothers and numerous nieces and nephews.

A converted Yooper, Don Sare was a man in constant motion, active in his church, various community organizations and local boards (too numerous to list), including two three-year terms on the MLTA Board of Directors. We are told that he never missed a Board meeting, crossing Big Mac and traveling hours for each one, even through the winter months. Don was always an active and vocal contributor to the MLTA, until his retirement from the title business, and was awarded the Robert J. Jay Award in 1993 "In Sincere Appreciation for Outstanding Leadership and Contributions to the Michigan Land Title Association."

MLTA Past President Doug McDougal, who attended Don Sare's memorial service, fondly remembers Don and Carla graciously welcoming him and his wife, Marie (as well as others), to MLTA Summer Conventions. Doug also recalled Don attending and "hosting" Upper Peninsula underwriting meetings in the "Soo". An avid outdoorsman and involved in just about everything, Donald Sare was indeed one-of-a-kind. He will be missed!



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# Education Committee

by Allan Dick, Best Homes Title Agency, LLC

## ACCESS ISSUES AND A WHOLE LOT MORE – THE FALL EDUCATION SEMINAR COVERS A LOT OF GROUND (AND WATER, TOO)

The topics covered in the MLTA Fall Education Seminar, presented in Mt. Pleasant and then again in Livonia, reflected a mixed bag of back-to-basics and other points of interest. With MLTA President Cathy LaMont attending the ALTA Annual Convention, President-Elect Allan Dick welcomed the attendees and introduced MLTA lobbyist Cami Pendell from Michigan Legislative Consultants, who delivered the Lansing Report. She covered a number of facets of the Lansing scene, including the issues of personal property taxes, a proposed reduction in the judiciary, the recently passed mortgage fraud legislation and various recall efforts, as well as the MLTA's focus on presenting legislation to offset the Neal Case, to establish the enforceability of a mortgage, if only an executed copy of that mortgage is recorded attached to a proper affidavit. More to come on that issue in 2012. Cami's presentation was comprehensive, as always.

Access Issues, Private vs. Public Roads and Shared Access Maintenance Agreements were the areas covered by our next speaker, Corporate Settlement Solutions attorney, Maura Snabes. Maura began by establishing various ways that a highway (the generic term) can become public and then discussed easements and private roads. While this was a review of a rather basic topic for title folks, Maura's thorough coverage of the issues regarding access was most informative with interesting scenarios drawn from legal cases administered to by her law firm of Jelinek, Bila & Snabes, P.C. Her excellent presentation set the stage for the following speaker, an old favorite, former MLTA President and attorney with Plunkett Cooney, Michael Hagerty.

Michael addressed the somewhat shorter topic of the Vacation and Abandonment of Streets and Alleys. Drawing upon Maura's explanation of how streets and alleys are created, Michael explained that vacating of those streets and alleys has been done by municipal resolution and circuit court action. He addressed the issue of how title is vested in those vacated and abandoned streets and alleys, citing Michigan Land Title Standard 13.4, in particular.

The final "access" issue of the morning session was that of Riparian Access and Ownership Issues, presented by attorneys Randy Schipper and Vincent Duckworth from the Holland, MI law firm, Cunningham Dalman P.C. Their presentation underlined the potential hazards and confusion inherent with the determining of water and shoreline rights. With some particularly illustrative photos and examples, they distinguished the various bodies of water and how the riparian and subsurface property rights might be determined – but pointed out that this was anything but uniform, owing to the irregular shapes of the bodies of water. It was both entertaining and informative and reinforced why title companies do not insurer riparian rights.

After the lunch break, we heard Debbie Bartlett (in Mt. Pleasant) and Debbie Wiley (in Livonia) provide an explanation of the new MLTA Education Designation Program and the newly established Certified Land Title Professional (CLTP) and Associate Land Title Professional (ALTP) designations, representing knowledge and achievement in the title industry. More information on this program can be found on the MLTA website ([www.mlta.org](http://www.mlta.org)). The first people to achieve these distinctions (both CLTPs) are Mary Lou Hartwell and Sarah Sutton, who were so recognized and presented in Mt. Pleasant.

Next was a short presentation by Allan Dick of a Title 101 Public Relations and Marketing Tool, soon to be found on the MLTA website, to accompany the white board video, Closing Costs & Steps Explained Visually. This "Title 101" power point presentation will be available to MLTA members for customer and

community group presentations, to help explain and promote the important role that title insurance plays in real estate sales and financing transactions.

Oil, Gas and Mineral Title Issues was the next topic, courtesy of Landmen Russell Shinevar (in Mt. Pleasant) and David Millsop, Jr. (in Livonia). These Landmen provided information as to the scope of the oil and gas activity in the state of Michigan (17th in the US in Oil & Gas production, for nearly \$2 billion annually!). Perhaps surprisingly, oil and gas production can be found throughout the Lower Peninsula. The U.P. doesn't have any O&G activity, but has various other minerals (139 different minerals in Marquette County alone). Even gold has been found in 22 Michigan counties. Russell and David provided insight as to their searching process and the various state websites and resources from which they draw. While it may not have shed a lot of light on our related title examination and processing, it was very illuminating and informative.

The final speaker was attorney Brian Henry, of eTitle Agency and Orlans Associates, P.C., who addressed the delicate subject of the Unauthorized Practice of Law. Brian recognized that we in the title industry are often requested to provide documents and quasi-legal assistance that borders on the unauthorized practice of law. More than worrying about the Michigan Bar's scrutiny of our title and closing activity, Brian cautioned that the greater vulnerability was in the preparation of legal documents with potential liability coming from the parties to a transaction, if something was to go awry and could perhaps be traced back to such document preparation and activity, alleging negligence or "you told me ...". It's a fine line that we often walk, and he cautioned us all to protect ourselves as best we can. It's best to have an attorney prepare or at least review your forms. That brought another excellent seminar to a close with the promise of yet another informative presentation in the spring of 2012. Kudos to the MLTA Education Committee.





# Fall Seminar

*Photos courtesy of Jacquie Brink*

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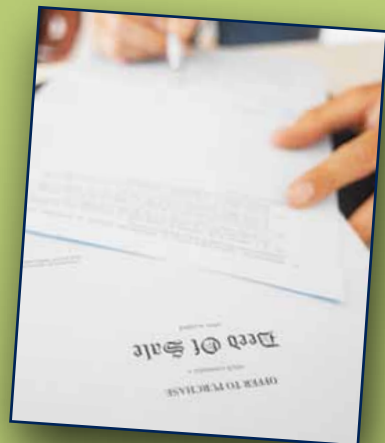
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# SURVEYOR'S VIEW POINT: Traversing the Law:

## HOW TO READ A DEED

by Jeffery N. Lucas,  
PLS, Esq.



Many land surveyors, if not the majority, do not know how to read a deed.

I'm primarily referring to the descriptive part of the deed, often called the legal description. The proof of this statement lies in the fact that too many surveyors treat the boundary problem as a math problem rather than a legal problem. The physical evidence supporting this statement is the multitude of pincushion corners where only one corner exists under legal contemplation. My explanation for this approach is that surveyors are much more comfortable with their math than they are with the law. This isn't surprising given that we are way too focused on measurements and math than on the legal concepts behind the interpretation of written documents and the application of boundary law.

I have often been critical of "deed-stakers"--those who utilize the measurements (bearings and distances) in the deed to the exclusion of superior descriptive parts, calls and unwritten elements contained in the deed. In actuality, and in the vast majority of cases, staking the deed is exactly what needs to happen. However, due to misinterpretation or outright inability, the surveyor isn't staking what is actually called for in the deed. I have been just as critical of those who completely ignore the deed, such as the fence-line surveyor and the bar-room-napkin-description staker. They don't need to read or consider the client's deed because it "would not make any difference in the survey."<sup>[1]</sup>

### Deed Basics

The primary inquiry for the proper interpretation of any deed is to identify the true intent of the grantor and, to a lesser extent, the grantee. The first stop in this inquiry must be the deed itself. If the deed is clear and unambiguous, both on its face (*prima facie*) and when an attempt is made to place it on the ground (*latent*), then intent resides in the deed. Staking, or more likely, refurbishing the boundary's established location on the ground, is all that is necessary. In most cases, some form of monument is probably already in place

on the ground. Don't create conflicts that truly do not exist. *De minimis non curat lex*: The law does not concern itself with trifles. Only the land surveyor asks, How close is close enough?

If, on the other hand, the deed is subject to more than one interpretation, such as when the words or descriptive calls have more than one meaning, or when an attempt is made to locate the property on the ground and more than one location is possible, then true intent does not reside in the deed. In this situation, true intent resides somewhere in the extrinsic evidence (evidence outside the deed). Generally speaking, the extrinsic evidence includes testimony evidence, the subsequent acts of the parties, deeds of adjoining properties, the location of improvements and reputation in the community. The first clue that the deed is subject to more than one interpretation is the pincushion corner--multiple monuments all ostensibly representing one corner. However, we must keep in mind that many surveyors have created pincushions for no real reason other than to satisfy their math needs. In many cases, the surveyor is fixated on trivialities that the law does not consider.

### In the Face of Ambiguities

When ambiguities abound, it's time to look at the extrinsic evidence in order to find intent. Think of intent as Elvis and the deed as a building where someone has sworn he can be found. If Elvis has left the building, he is no longer in the building but somewhere else. Extrinsic evidence represents the possible locations where Elvis can be found. Maybe he's in Vegas doing an extended show. Maybe he's back at Graceland down in the "jungle room." This is where our research and investigative techniques come in handy. If we are familiar with Elvis and his usual hangouts, we can shorten the process of finding him.



The most logical way to find Elvis is to ask his friends where he might be. The grantor and the grantee know him the best and can possibly give us some clues. People in Elvis' community might have some information, as well. If Elvis comes up missing, police investigators and the courts will hear from these people first, so why shouldn't we as expert investigators seek them out?

If these sources aren't helpful or if they seem unreliable, we need to find out what Elvis did when he

left the building. Did he simply step next door and take up residence there? If we can't find him next door, then we need to expand our search. Maybe he made some improvements at some alternative location. Is it possible he never left the building at all but has hidden himself in some unknown chamber or passageway? After all, the building is full of ambiguities and hidden passages.

The search must continue until Elvis is found. When you file your report with your client, the question will be, Did you really find Elvis, or did you find an Elvis impersonator? If your client doubts that you really found Elvis, or if some third party who also has a vested interest in knowing where Elvis is files a missing person report (let's

just call either one of these situations a lawsuit), then the courts may well be called upon to determine who's innocent and who's guilty in Elvis' disappearance. The work that you did as an expert private investigator will be scrutinized, as well. If you didn't find Elvis but merely an impersonator, maybe you were negligent for not conducting your investigation as a reasonably prudent investigator would. After all, you put yourself out there as an expert investigator, and you couldn't tell the difference between the real Elvis and an impersonator. You obviously don't know Elvis.

## Title Doctrines vs. Location or Establishment Doctrines

Often the question comes back to me: So you're advocating that I recognize adverse possession has taken place and simply hold the fence? I'm not saying that at all and never have. Adverse possession is both a title doctrine and a location or establishment doctrine. Adverse possession says that a conveyance of land has taken place outside of the deed and outside of a correct and proper interpretation of the deed. The statute of frauds requires that all conveyances of land be memorialized by a written document. Adverse possession requires that a court decree be made. The court decree granting adverse possession conveys the disputed strip to the plaintiff and divests the defendant of the same. This process satisfies the statute of frauds and settles the question of title and location.

The boundary location or establishment doctrines (e.g., agreement, acquiescence, practical location, estoppel, prescription, repose, etc.) pass muster under the statute of frauds because no land is being conveyed. They do not claim that what the boundary is has changed. They simply establish the true location of what the deed already contains. The location doctrines, in the face of ambiguities, answer where on the face of the Earth the boundary is located. They work hand-in-glove with ambiguities and the rules of construction (discussed below). In many cases, they are the silent witnesses to the true intent of the original parties to the transaction and/or the subsequent acts of the original parties to the transaction (almost the same thing). When properly interpreted and applied, they speak volumes to the subject of intent.

If a land surveyor advocates that adverse possession has taken place, then the surveyor isn't just interpreting the deed through the extrinsic evidence; the surveyor is advocating a position. In most jurisdictions, paid advocacy is the practice of law. Many surveyors who can't recognize the difference between advocating a position for a client and rendering a well-reasoned opinion on boundaries have accused me of suggesting that surveyors should be lawyers or practice the law. Interpreting deeds, recognizing ambiguities, gathering and evaluating extrinsic evidence, knowing and applying the law as a disinterested third party to the conveyance and rendering a well-reasoned opinion on the property boundaries involved is the practice of professional land surveying. Anything less is the work of a technician or, at best, a second-class professional. I wonder why so many of us have the feeling we're second-class professionals.

## The Rules of Construction

The rules of construction are court-made rules [2] for interpreting ambiguous written documents when all other means have been exhausted for finding true intent. Prior to resorting to the rules of construction, the courts will hear the testimony from the parties to the transaction and from locals in the community who have knowledge concerning the history and general reputation of boundaries in their community. Without the original parties to the transaction, which is often the case encountered by the courts and the land surveyor, boundary location and establishment doctrines will be employed to testify on behalf of the original parties. Acquiescence is just such a doctrine. The courts imply through the acquiescence of the parties that an agreement has been reached as to true intent and location of the boundary line in question.

Basic propositions under American property law, in priority, are that occupied boundaries that have ripened into legal boundaries are the most superior boundaries in existence. They extinguish written title when they are fully recognized under the law. Adverse possession falls into this category but certainly is not the only way the state recognizes the occupied boundary line. Next, the senior conveyance is superior to the junior conveyance based on the proposition that no one can convey that which he/she has already conveyed. Therefore, a junior conveyance must always be read in light of the senior conveyance. Finally, the intent of the grantor, and to a lesser extent the grantee, is paramount.

The basic rules of construction, but not an exhaustive list, are that natural monuments

are paramount to artificial monuments, and these are paramount to bearings, distances and acreage. Many states have taken the further step of establishing that a call for an adjoiner is the same as a call for a natural or artificial monument and/or that a call for an adjoiner automatically creates a junior/senior rights situation. A junior conveyance is always read in light of the senior; thus, overlaps and gaps do not exist in American property law. Those things that are the most certain are given the most amount of weight, and those things that are least certain are given the least amount of weight. All of the rules are for the purpose of ascertaining true intent; therefore, they are thrown out or rearranged if application produces absurd results.

In the final analysis, all of this boils down to common sense, which surveyors for the most part possess in abundance. However, when it comes to a choice between applying common sense or math, for some reason surveyors just can't let go of the math.

The boundary problem is a legal and factual problem, not a measurement and math problem. If we were as confident in our legal and factual analysis abilities as we are in our ability to make measurements and apply math, I wouldn't have anything else to write about. It doesn't appear that I'll be running out of material anytime soon.



*Neither the author nor TTE intend this column to be a source of legal advice for surveyors or their clients. The law changes and differs in important respects for different jurisdictions. If you have a specific legal problem, the best source of advice is an attorney admitted to the bar in your jurisdiction.*

*This column is a forum for analysis and discussion of closed court cases. Facts and information cited are limited to what is contained in the published legal documents. It is not TTE nor the author's intent to re-try cases that have already been resolved and closed by the court system.*

### References

1. *Andrews v. Barton*, 2008 Fla.App. LEXIS 1836, 4 (Fla. App.2008).
2. In some cases, state legislative bodies have stepped in and codified some or all of these rules.



*Dar's Dabbles*



*by Darlene Wilsey,  
Fidelity National Title Group*

## 2012 Expectations

What expectations have you set for yourself, in 2012? I'm not referring to personal resolutions, to-do or bucket lists! I'm asking what work-related expectations have you set for yourself in 2012. Are you waiting for your manager to tell you what he or she expects? Why wait? Take it upon yourself to raise your performance bar in 2012!

What consistently displayed behaviors will assist your organization in meeting its revenue, expense and profit margin benchmarks? What behaviors are most appealing to your clients and prospects? Don't consider your perspective when setting performance expectations, more importantly, take into account what your clients perceive as exceptional and raise the bar accordingly. While client expectations may be considered unachievable, at times, it's important that we don't buy into this excuse to continue our status quo service levels.

If you're not sure where to start, consider Social Psychologist, Amy Cuddy's examination of what drives people's perception of others. Amy discovered warmth and competence are the two critical variables that form an individual's perception



of another. They account for about 80 percent of our overall evaluation of people. Of the two, warmth is the most important factor in determining how we feel about another person. There are many simple methods for business professionals to demonstrate warmth-kindness to others, including: facial expressions-smile, body language, eye contact and tone of voice. It's important to note that an individual's perception of warmth includes genuineness, so if your personality is more reserved or carefree (and there's nothing wrong with either of these personalities) you may want to consider

practicing these skills (yes, they are skills), to ensure your behavior is perceived as being genuine. In addition, an individual's perception of another's competency can be enhanced, in part, by our attire, body language, and posture.

You might also consider ways to display your cooperativeness, flexibility and creativity. There are many opportunities for each of us to enhance our performance and serve as role models within our respective organization! Looking for ideas? Brainstorm with your co-workers, management team or underwriter! Most importantly, expect more from yourself in 2012, and your clients, your organization and YOU will all benefit!

## Thank You Sponsors & Exhibitors

The Michigan Land Title Association Board of Directors and the Sponsorship Committee would like to personally thank all of our sponsors and exhibitors for their participation in the 2011 Summer Convention.

We are appreciative of the interest these firms have shown and are grateful for their support of our association. The MLTA 2011 Summer Convention at Crystal Mountain was a great success and the support of the companies listed to the right played a key role in that success.

Our Sponsors and exhibitors bring a variety of services to our industry and would love the opportunity to work with you. They have dedicated both their time and their financial support to the MLTA. We encourage you to utilize their services whenever possible.





# Legislative Update

by Cami Pendell,  
Michigan Legislative  
Consultants

## NOVEMBER 8TH ELECTION RESULTS: SCOTT RECALLED, CANDIDATES FOR THE 29TH HOUSE DISTRICT SET

After several months of not knowing whether Rep. Paul Scott's (R-Grand Blanc) name was going to appear on the November 8th ballot, two weeks before the election the state Supreme Court determined that the recall would move forward and his name would indeed be on the ballot. The voters of the 51st House District spoke and Scott narrowly lost his recall election. He lost by 197 votes and it does not appear that he will challenge the results with a recount. He is the first legislator since 1983 to be recalled.

Moving forward, Michigan Election Law requires that a special election be held to fill the vacancy and it must occur at the next election which will take place on February 28, 2012. The 51st House District election will be a partisan election with the nominees selected by the county committees of each political party. A primary election will not be held. Additionally, Paul Scott may not run in the special election to fill the remainder of this term. He may run next year for the new term starting in 2013. However, he has not yet announced his intentions for that election.

Another important election took place that will also impact the House of Representatives. Earlier this year, Representative Tim Melton (D-Auburn Hills) stepped down to take a Washington, D.C. based lobbying position. Governor Snyder called for a special election to fill that vacancy and the primary election was on Nov. 8th. The voters in the 29th House District selected Oakland County Commissioner Tim Greimel to be their Democratic candidate and former high school teacher Bob Gray to be their Republican candidate. Their general election faceoff will take place on Feb. 28th. The 29th House District has traditionally been held by Democrats. With the Republican Presidential Primary taking place on that same day, it could create a more favorable dynamic for the GOP in this otherwise heavily Democratic district. But, it's too early to tell if it will be enough for the Gray. Political pundits still give the advantage to Greimel in this race.

## REP. TYLER WILL NOT SEEK RE-ELECTION

Rep. Sharon Tyler (R-Niles) announced that she will not seek re-election to the 78th House District. Instead of running for her third and final term, she is going to run for Berrien County Clerk. The current clerk, Ms. Louise Stine, is going to retire after holding the post for the past 21 years. Tyler noted that the clerkship does not open up very often so this was the time to seize the opportunity to run for that position.

## LEGISLATIVE SCHEDULE

The Michigan Legislature will be on break from November 14 through November 25, 2011. This is a traditional break held at the beginning of opening season for hunters and in observance of the Thanksgiving holiday. When they return, the Legislature is scheduled to hold 3 weeks of Session and then begin their Winter Holiday break on December 16, 2011. In accordance with the state Constitution, they will then return on the second Wednesday in January at twelve noon - which will be January 11, 2012.

## GOVERNOR SIGNED MORTGAGE FRAUD PACKAGE

Starting January 1, 2012, mortgage fraud will be a felony punishable by up to 20 years in prison under a package of bills that Governor Snyder signed into law. In addition to the felony penalty, there could also be a fine of up to \$500,000 for properties valued at more than \$100,000.

Other bills in the package raise the penalties for forging deeds and obtaining property under false pretenses. The statute of limitations to bring charges on real property crimes will also increase from six to 10 years under the new law.

The bills that were signed into law, and their corresponding public act numbers are as follows: SB 43 (PA 205), SB 249 (PA 201), SB 250 (PA 202), SB 251 (PA 203), SB 252 (PA 204), HB 4462 (PA 206), HB 4478 (PA 207) and HB 4492 (PA 208). MLTA worked closely with many of the bill sponsors and their staff members to resolve concerns that we had with specific language in the bills and to ensure that the language that was ultimately signed into law did not negatively impact the good businessmen and women in the industry.

## NEAL CASE FIX LEGISLATION NEARING INTRODUCTION

Earlier this year, MLTA's legislative priority to prohibiting private transfer fees was signed into law (PA's 34 and 35 of 2011). MLTA's Board, Legislative, and Legislative Steering Committees have continued to work on our legislative priorities and are nearing the introduction of legislation that would address the In re Neal decision that held a copy of an original document along with a verified affidavit does not satisfy the necessary requirements for recording a real estate conveyance because it does not contain the "original signature". MLTA is in the process of having legislation reintroduced from last year that will allow a copy of an original instrument that is verified by an affidavit and recorded to be deemed as complying with all recording requirements in this state. The language will be retroactive so that it will cover these types of recordings that have happened in the past. MLTA has identified

a sponsor for the legislation and is working with this member and House leadership to put the final logistics in place so that it can be introduced and referred to a committee.

## LEGISLATIVE MEMBER SPOT LIGHT



Randy Richardville was elected to the Michigan Senate in November 2006. Upon re-election in 2010, he was selected as Senate Majority Leader by his fellow Republican caucus members. Prior to his election to the Senate, Randy spent three terms in the Michigan House of Representatives from

1999-2004. He held a leadership position in the House in each of his terms - serving as the House Majority Floor Leader during his final term.

Throughout his years in the Legislature, Randy has been a leader in several areas - especially economic development, and veteran's and children's issues. Among his legislative accomplishments, he has passed laws to expand neighborhood enterprise zones; extend brownfield tax credits to clean-up industrial property; expand Smartzones; and, create a lead-free safe housing registry.

Prior to being elected to office, Randy worked in the business community - with 20 years experience in Fortune 500 companies. He served as the Economic Development Director for the Port & City of Monroe before being elected to the Senate.

He has been active for years in several community organizations. Randy is a former member of the Monroe County Planning Commission and a former member of the Michigan Education Trust Fund Board of Directors and the Monroe Family YMCA Board of Directors. He is currently a member of the Michigan Coalition for Responsible Gun Owners Board of Directors, Michigan Children's Trust Fund Board, National Rifle Association, Ducks Unlimited, Habitat for Humanity Church Relations Committee, Education Foundation for Monroe Public Schools, the Monroe Senior Center Board of Directors, the Community Foundation of Monroe County, and the Bedford Business Association, and Saline Area, Manchester, Milan, Jackson and Monroe County Chambers of Commerce.

Randy was born and raised in Monroe County. He earned a degree in Finance from Albion College and later earned his Masters of Management from Aquinas College. He and his wife, Sarah, have two adult children, Amanda and Adam, and make their home in Monroe County.



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*by Gregg Nathanson,  
Couzens, Lansky Fealk,  
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For further information, contact Gregg A. Nathanson, Esq., an attorney at the law firm of Couzens, Lansky, 39395 W. 12 Mile Road, Farmington Hills, Michigan 48331, telephone 248-489-8600 or [gregg.nathanson@couzens.com](mailto:gregg.nathanson@couzens.com)

*The information contained herein does not attempt to give specific legal advice. For advice in particular situations, the services of a competent real estate attorney should be obtained. These materials are the exclusive property of Gregg A. Nathanson, Esq., and no reprint or other use of the information contained herein is permitted without Mr. Nathanson's express prior written authorization. ©2011 Gregg A. Nathanson, Esq. All rights reserved.*

Good news for underwriters. The U.S. Court of Appeals for the 6th Circuit (which includes Michigan) determined that an underwriter is not vicariously liable for its agent's actions in closing fraudulent "flip" transactions.

In *Bergin Financial v. First American Title Company*, Bergin Financial ("Bergin"), a mortgage company, was the victim of a fraudulent "flipping" scam. Bergin sued First American Title Company ("First American"). First American provided title insurance for the flipped transaction. Bergin did not assert any title defects. Rather, Bergin argued that Lincoln Financial, an independent agent for First American, knowingly engaged in the fraudulent scam in its capacity as the closing agent, and that First American should be vicariously liable for Lincoln Financial's actions. Bergin argued that, under the theory of implied or apparent agency, Lincoln Financial was First American's agent for the purpose of closing the scam transactions. The Court disagreed, and determined that acting as a closing agent was outside the scope of Lincoln Financial's agency agreement with First American. Under Michigan law, implied agency cannot contradict the clear terms of an agency agreement, and the agreement in this case explicitly limited the scope of Lincoln Financial's agency to issuing title insurance contracts. Therefore, First American was not vicariously liable to Bergin for Lincoln Financial's fraudulent actions.

Lincoln Financial was an independent agent of First American for purposes of issuing title insurance policies. The written agency agreement between First American and Lincoln Financial governed the relationship, including the limited extent of Lincoln Financial's authority to act on behalf of First American. The agency agreement authorized Lincoln Financial to issue title insurance commitments and policies. The agency agreement also granted First American the right to audit Lincoln Financial's escrow accounts.

Problems arose when Lincoln Financial engaged in fraudulent flipping schemes. Owner A sold property at a low price to Flipper. Flipper then re-sold the property at inflated values to Straw Purchasers. Straw Purchasers borrowed the money to finance the purchases from Bergin. The goal of the scheme was for Flipper to receive the borrowed money from Bergin, based upon the inflated values, and for the Straw Purchasers/borrowers to default on the loans, thereby defrauding Bergin in favor of Flipper. Flipper eventually went to prison for his role in this fraudulent scheme. The Court dismissed all of Bergin's arguments that Lincoln Financial was acting as First American's

agent when it closed the fraudulent transactions. The Court held that implied agency cannot contradict clear written agency agreements and Bergin failed to produce sufficient evidence of apparent agency.

The written agency agreement between First American and Lincoln Financial provided that Lincoln Financial did not have actual authority to close real estate transactions as First American's agent. Lincoln Financial was the agent of First American only for the purposes and in the manner set forth in the Agreement (i.e. issuing title insurance commitments and title insurance policies) and for no other purpose.

The Court found that industry practice supported the conclusion that Lincoln Financial did not act as First American's agent when closing real estate transactions. Title insurance industry practice generally requires an additional document – a closing protection letter or CPL – before title insurance companies can be liable for the actions of their independent title insurance agents while those agents are conducting closings. The Court differentiated between closing a transaction and issuing a title policy, and noted that lenders routinely ask for a CPL from the underwriter. The purpose of the CPL is for the underwriter to indemnify the lender for, among other matters, any problems that arise from a closing agent's failure to properly apply the funds at closing. The Court concluded that Lincoln

Financial did not have actual authority – express or implied – to close real estate transactions on First American's behalf.

The Court further concluded that Bergin did not establish that Lincoln Financial had "apparent" authority to close real estate transactions as First American's agent. Under Michigan law, apparent agency authority exists only where the principal (First American) has made a representation that leads the plaintiff (Bergin) to

reasonably believe the agency exists, and to suffer harm based on justifiable reliance. Here, the Court did not find evidence of a representation made by First American to Bergin that Lincoln Financial was its agent for purposes of closing transactions. There was no First American representation that could be reasonably relied upon by Bergin. Since Bergin could not establish apparent agency, First American was not liable for Lincoln Financial's actions as closing agent.







# COMMITTEES, CHAIRS AND GOALS

The MLTA encourages involvement and participation of its members. If you'd like to join a committee, please email the chairperson/liaison of the committee.

## ABSTRACTOR/TITLE AGENT COMMITTEE:

*Ray DeBates, Chair:*

rdebates@colonialtitlecompany.com

*Jeff Basil, Liaison:* JeffB@SafeTitle.net

Goal: The Committee shall promote professional standards and provide for the dissemination of information to those members of the Association who are abstractors and title insurance agents. The Committee shall also provide a forum for abstractors and title insurance agents for discussion and examination of matters of particular concern to them. *MLTA Bylaws Article VII, Section 10*

## AUDIT COMMITTEE:

*Allan Dick, Chair & Liaison:*

adick@besthomestitle.com

Goal: To complete a year-end audit of the finances.

## AWARDS COMMITTEE:

*Tim McDonnell, Chair & Liaison:*

tmcdonnell@oldrepublictitle.com

Goal: To select those persons to receive awards at the Summer Convention.

## BYLAWS COMMITTEE:

*Tim McDonnell, Chair & Liaison:*

tmcdonnell@oldrepublictitle.com

Goal: The By-Laws Committee shall consider all proposals to amend, and may on its own motion propose amendments to the Articles of Incorporation and By-Laws of this Association. *MLTA Bylaws Article VII, Section 4*

## COMMUNICATIONS & PUBLIC RELATIONS:

*Bob Wuerfel – Chair/Editor & Liaison:*

bwuerfel@lighthousegroup.net

Goal: The Communications Committee shall collect and disseminate useful information to the membership as the Committee deems appropriate. *MLTA Bylaws Article VII, Section 12*

The Public Relations Committee shall work with and cooperate with other state professional or trade associations and state government departments and agencies whose actions affect the business of members of the Association. The Committee shall also consider and recommend ways and means of effectively advertising and publicizing the title business, and securing a more wide spread understanding and knowledge of the functions and purposes of title insurance and abstract companies. *MLTA Bylaws Article VII, Section 7*

## CONVENTION COMMITTEE:

*Allan Dick, Chair & Liaison:*

adick@besthomestitle.com

## Sponsorship Sub-Committee:

*Marcy Welburn, Chair:* mwelburn@transmi.net

*Dave Martyn, Liaison:* dmartyn@stewart.com

Goal of the Convention Committee: To secure locations for upcoming conventions. To review price and policies for spouse attendance. To review whether a "big name" speaker really increases attendance vs. costs. To put together the Mid-Winter Convention in Lansing. *MLTA Committees, Chairs & Goals 2007*

## EDUCATION COMMITTEE:

*Dawn Patterson, Chair:*

dmpatterson@firstam.com

*Allan Dick, Liaison:* adick@besthomestitle.com

Goal: The Education Committee shall plan, organize, promote and be responsible for the execution of a continually improving program of instruction for the general benefit of Association members and for the special benefit of beginning and intermediate employees of members, to promote Association seminars and workshops and to conduct such seminars and workshops and to carry out such other duties as may from time to time be assigned by the President and/or the Board of Directors of the Association. *MLTA Bylaws Article VII, Section 5*

## EXECUTIVE COMMITTEE:

*Cathy LaMont-Chair & Liaison:*

clamont@lamonttitle.com

Goal: The Executive Committee shall be comprised of the President, who is the Chairperson of this Committee, President-Elect, Secretary-Treasurer and Past President. Executive Committee shall have no decision making authority, but may, upon its own investigation or evaluation of matters which concern the association, make recommendations to the Board of Directors at its monthly meeting. *MLTA Bylaws Article VII, Section 3*

## GRIEVANCE COMMITTEE:

*Tim McDonnell, Chair & Liaison*

tmcdonnell@oldrepublictitle.com

Goal: The Committee shall consist of five members, who shall perform the function set forth in Article III Section 9. *MLTA Bylaws Article VII, Section 6*

## LEGISLATIVE COMMITTEE:

*John Bommarito, Chair:*

jbommarito@atatitle.com

Goal: The Legislative Committee shall review proposed or pending state legislation affecting the land title industry. The Committee shall also review regulations, or attorney general opinions, as directed by the Board of Directors. *MLTA Bylaws Article VII, Section 8*

## LEGISLATIVE STEERING COMMITTEE:

*Phil Savich, Chair:* psavich@oldrepublictitle.com

*Tim Ward, Liaison:* tim@mlcml.com

Goal: The Committee shall make recommendations to the Board of Directors on action it determines should be taken on such proposed or pending legislation or regulations. The Committee shall also propose to the Board of Directors areas in which it determines the Board of Directors may wish to initiate legislation or seek legislative or regulatory assistance.

The Committee in the performance of its duties may attend hearings on proposed legislation, seek the assistance of non-committee members in this regard and advise the Board of Directors when it determines that testimony at a legislative hearing by a member of this Association is warranted. *MLTA Bylaws Article VII, Section 8*

## MEMBERSHIP COMMITTEE:

*Gregg Nathanson, Chair:*

gregg.nathanson@couzens.com

*Lisa Cicinelli, Liaison:*

lcicinelli@oldrepublictitle.com

Goal: The Membership Committee shall foster and encourage membership of all eligible persons and corporations in the industry. The committee shall review all applications and make recommendations to the Board of Directors. *MLTA Bylaws Article VII, Section 11*

## NOMINATIONS COMMITTEE:

*Tim McDonnell, Chair & Liaison:*

tmcdonnell@oldrepublictitle.com

Goal: The Nominations Committee shall present to the Board of Directors its slate of candidates for Officers and Directors not less than thirty (30) days prior to the annual convention. The Committee shall present to the annual convention of the Association its recommendation for persons to fill expiring and/or vacant seats of the Board of Directors. The Committee shall also recommend to the annual convention a slate of officers for election. A quorum for Committee meetings shall be seven (7) or more qualified members. *Article VII, Section 13*

## PAC COMMITTEE:

*Steve Frank, Chair:* sfrank@attorneys-title.com

*Dave Martyn, Liaison:* dmartyn@stewart.com

Goal: To raise monies for the PAC. To help institute a new program for pledges during the year. To investigate how corporate dollars may be used legally. *MLTA Committees, Chairs & Goals 2007*

## PROFESSIONAL DESIGNATION (BOARD OF REVIEW):

*Debra A. Bartlett, Chair:*

dbartlett@corporatetitle.com

*Debbie Wiley, Liaison:* dwiley@firstam.com

Goal: The Board of Review – Professional Designation Committee shall oversee the implementation of the Association's recognition program for awarding professional designations to those persons within the MLTA who, through combinations of education, experience and performance have demonstrated a proficient knowledge of land title insurance and escrow procedures. *MLTA Bylaws Article VII, Section 13*

## AD HOC HABITAT FOR HUMANITY:

*Cy Tope, Co-Chair:* htope@corporatetitle.com

*Darlene Wilsey, Co-Chair:* dwilsey@fnt.com

*Marcy Welburn, Liaison:* mwelburn@transmi.net

Goal: This committee shall initially work in concert with Habitat for Humanity of Michigan to create a program wherein any MLTA member can become involved with and support the Habitat for Humanity Chapter in their area. The committee will also coordinate the Habitat for Humanity efforts of the board of directors at the annual convention. *MLTA Board of Directors, August 11, 2008*

# COUNTY SPOTLIGHT

## HILLSDALE COUNTY

### REGISTER OF DEEDS



#### HISTORY:

Hillsdale County land records go back to 1835. The Register of Deeds office also held the abstract office until the retirement of Register of Deeds Elizabeth Seitz in 1972. The office recordings were computerized in 1984 at the direction of Register of Deeds Judy VanZandt; the company who aided in this computerization was a Michigan-based company, D.A.R.T.



#### BAMBI SOMERLOTT, REGISTER OF DEEDS:

I was first elected in 2001. I had worked in the office since 1992, first as Administrative Assistant being promoted to Chief Deputy in 1994.

#### 1. How many team members are in your Department?

There are three members total: myself; the Chief Deputy, Vicki Burger who has worked in this office since 1998; and the Administrative Assistant, Tamra Lang, another long-term member with 11 years of service.

#### 2. What is the approximate number of documents your team records annually?

Over the past six years we have averaged 11,400 documents annually

#### 3. As Register what are some of the advancements (such as: upgrades in computers, software, on-line, team members, etc.) that have occurred in your department to better service the public and title companies.

In early 2002, the office changed from a DOS-based product to a Windows-based operation, vastly improving efficiencies and allowing for off-site access. Over the last 9 years, with the help of the tech fund and our partner, Record Fusion (now Property Info), we have further streamlined processes, added e-recording, integration with equalization and, to a lesser extent, the treasurer's office, and improved off-site access.

#### 4. Anything that as a Register you can see title agencies and/or the MLTA assist you with to maintain the integrity of the recording of public records?

If the last few years have taught us anything, it is that title agencies and recording offices have a symbiotic relationship. Title agencies are recorders' largest consumers and accurate, readily available land records are vital to the title industry. I think if both parties continue to work together for the improvement of the land title/land records industry as a whole, we will be doing our customers and our constituents a great service.



#### 5. Outside of being Register, any special activities and/or hobbies that you like doing in your spare time?

I am particularly proud of my involvement with the Hillsdale County Community Foundation - many of the wonderful things available to my community would not be possible without grants from the Foundation. I highly recommend to anyone reading this article to think about charitable contributions to your local community foundations; they truly are for good, forever.

#### 6. Any other area you'd like to tell us about, either ROD or personally?

I am the current President of the Register of Deeds Association and consider it an honor to serve in this capacity.



# Riparian Rights and Ownership in Michigan

by Randy Schipper and Vince Duckworth, *Cunningham Dalman, P.C.*



This article reviews some of the points we made at the recent MLTA conferences in Mount Pleasant and Livonia which, we hope, identified some of the perils present when water touches land being bought or sold. There is something about water. Living on it, just having access to it, adds value to real property

and so property owners care deeply about these things when they are threatened. They'd be well-advised to investigate before then, before they buy their dream. You, too, may want to investigate riparian land. Some of the land you insure may actually be exposed bottomland and not owned by the "apparent" owner. Or, some of the land could actually be fill dirt, placed in a manner which has artificially changed the shore but not riparian boundaries.

There are two distinct classes of waters in Michigan, Great Lakes and Inland Waters, with different riparian rules.

## Great Lakes

An owner of land touching one of our Great Lakes owns only to the water and that ownership is subject to the "public trust" below the "ordinary high water mark". The public trust allows anyone to walk along the shore of the Great Lakes, below the ordinary high water mark, even though a private landowner holds title to the water's edge. Generally the ordinary high water mark is the vegetation line, but, if disputed, it is up to a jury or judge to determine where it is at a particular point on the shore. In the case setting this out, the state Supreme Court limited its ruling to walking but explained that fishing, hunting, and boating are within the public trust. It is not hard to imagine a court allowing standing, sitting, lounging, and picnicking.

The State owns the bottomlands of the Great Lakes and cannot transfer or lose them to others. No one can put a structure in a Great Lake without a permit from the Michigan Department of Environmental Quality (MDEQ) and US Army Corps of Engineers (USACE), and they can grant such permission to anyone. That could be a permit to the riparian owner for a seawall or a permit to an energy company for wind turbines. Wind turbines are three times as effective on water as on land and it is not yet feasible to put them in deep water. The MDEQ has sought public input on a request for turbines in Lake Michigan, but it does not need the approval of the riparian owner or local government to permit them. Likewise, the MDEQ could allow drilling for gas and oil under a Great Lake and data indicates they are likely present under them. It is politics, not law, which keeps turbines and drilling rigs out of our Great Lakes.

## Inland Lakes and Streams

Land touching a natural lake or stream has riparian rights. Also, land separated from the water by a right of way running along the shore has riparian rights. Land abutting artificial water does not have riparian rights, although the artificial status is sometimes ignored. A classic example is an impoundment behind a dam. If the dam is removed, many people who thought they had riparian land would find their "waterfront" property to be far from the riverbank and without riparian rights. Riparian rights and boundaries are determined by the natural, usual, ordinary and normal water level.

The owner of riparian land that borders on an inland lake owns the bottomland to the "center" of the lake and land that borders on a river or stream owns the bottomland to the "thread" of the stream, both subject to public rights of navigation and use. Thus, the owner's

exercise of rights on his/her bottomland must be reasonable and not interfere with the rights of other riparian owners or the public. E.g., one's dock can't block a neighboring riparian from reaching his/her dock. Only the owner of the bottomland can place a structure on that bottomland, but a permit must first be obtained from both the MDEQ and USACE. Such structures may also be subject to local zoning. The public right of navigation includes the right to anchor on the bottomland but the riparian owner can bar mooring, the functional difference being the length of time involved.

Riparian boundary lines do not run out from shore and are not perpendicular to shore or parallel with side boundary lines. (Some lawyers and courts say otherwise but they mistake the efforts of courts to apportion the waterfront among riparian owners in way that assures all of a reasonable access to the water.) Instead, riparian boundary lines run from center/thread of the water, as perpendicular as may be possible while ensuring an equitable allocation of the waterfront, to the land boundaries, all based on the natural shore as it existed at the time of Government Land Office (GLO) survey of 1835. That shore may not be today's shore and GLO maps are not very detailed. If the water levels have receded, land that was bottomland would now be above water but it would be exposed bottomland subject to riparian boundaries, and not upland boundary lines. Artificial fill is also to be ignored. Yet, surveys and legal descriptions often run to the shoreline as it now exists or existed at some time after the GLO survey, in effect, possibly including land that is within a neighbor's riparian boundary. There are often disputes over whether the location of the center of the lake

or thread of a stream, or even whether a body of water is a lake or stream. Having an attorney and surveyor who understand these principles is critical to resolving riparian disputes on the best possible terms.

## Other Points

Developers have used many mechanisms to extend riparian rights to "backlots", i.e., those not directly on the water. Many laid out "roads" along the water; courts have held these give those having the right to use the road the right to access the water for launching a boat, fishing, and swimming, but not to lounge, sunbathe, or picnic along the shore, since those are not intended uses for "roads". The

same is true for roads running perpendicular to the water except, for such roads, the road authority for public roads or those having an easement for private roads can install a dock to facilitate access to the water. Both sorts of roads are commonly abused for lounging, sunbathing, and picnicking. While that is not legal, if carried on long enough, a prescriptive easement might be created. Abutting property owners can bar such abuse—if they fight hard enough. Some developers have extended canals inland to give backlots "frontage" on the water but our Supreme Court later ruled they provide no riparian rights. Some have created "parks" and either granted backlot owners an easement over or title in the riparian park land. Such easements usually intend to allow lounging, sunbathing, and picnicking and sometimes the right to install a boat dock, but sometimes only expressly refer to right of access to the water so could be held not to allow those shore activities. Shared title makes the benefitted backlot owners riparian owners. The MDEQ can restrict the number of docking slips allowed on riparian frontage to prevent overburdening waterfront or body of water. (The USACE focuses only on not impairing navigability.) More recently, some local units of government have adopted riparian restrictions through zoning. These limits do not show up in title records but they are legally effective.

Disputes over water access and rights are quite common. Consulting experts well-versed in riparian law is essential to reaching the best resolution to such disputes. Your goal should be to encourage parties to investigate and answer questions over riparian rights before buying and to avoid insuring riparian rights without a careful investigation.

Disclaimer: This article is for general information only and covers only broad legal concepts and is not intended as legal advice. If you have further questions regarding a legal matter, please consult an attorney.

# 23 Survivors

by Darlene Wilsey,  
Fidelity National Title Group

In our fast-paced, high stress world, it is easy to get caught up in, among other things, the frustrations of bumper-to-bumper traffic, the inconvenience

of snow-covered-roads, and the stress of an impending deadline. So easy, that we forget to appreciate the time to reflect that bumper-to-bumper traffic affords us, the beauty of the snow-covered scenery, or the sense of accomplishment associated with completing an assigned task. Far too often, we simply move through our day, oblivious or irritated by small inconveniences. That is unless you or a family member has faced a cancer diagnosis and treatment.

Several months ago, during the MLTA Summer Conference, I learned of John Voso's (Old Republic National Title Ins. Co) plight to raise funds for The Richie White Pediatric Family Fund. John's nephew, Richie White Jr. was born on August 31, 1987. For the first 18 months of Richie's life, he and his family enjoyed his healthy and happy existence. All that changed, however, when it was discovered that Richie had an ependymoma tumor on the base of his brain. During the next three-and-a-half years, Richie endured countless medical procedures, including 13 surgeries. On September 3, 1991, 4 year old,

Richie succumbed to his illness. Two months after Richie's death, Richie's parents, Rich and Linda, started The Richie White Pediatric Family Fund, at the Cleveland Clinic, with one goal in mind, making children smile! John shared, "The highlight of Rich and Linda's day was when Richie smiled. Through every surgery, through the ups and downs of the positive and negative diagnoses the best feeling was when Richie SMILED!"

Since Richie's death, The Richie White Pediatric Family Fund has made over 2000 children smile. During the Cleveland Clinic's annual Christmas party, "They have sat on Santa's lap, received gifts, enjoyed some snacks and laughed, and yes- SMILED"! In addition to its annual Christmas party, The Richie White Pediatric Family Fund sponsors a summer picnic, with the same goal in mind.

With the goal of raising \$500,000.00 for The Richie White Pediatric Fund, John started the journey of penning "Today's Heroes - Surviving With Style", in 2005. As the title indicates, this book is about surviving cancer. John introduces his readers to 23 SURVIVORS, "all currently healthy and living their lives to the fullest, from 14 to 84 years old." Knowing of Andi McDonnell's (wife of Tim McDonnell, MLTA Past-President) recent cancer diagnosis, John asked Andi to write the forward for "Today's Heroes", detailing her courageous battle.



John continues to memorialize Richie's life and solicit contributions for The Richie White Pediatric Fund, by speaking to individuals and civic associations, alike, in an effort to fulfill Richie's family's goal of making children smile!

Upon seeing Richie's picture on the back cover of John's book, Richie's mom, Linda, responded, "My little boy is going around the world"! Since the book was published, last spring, Richie's story, and those of 23 cancer survivors, has gone global, with copies sold in the United States, Australia, Hungary, Canada and Mexico.

Yes, in this fast-paced, high stress world, it is easy to forget to count our blessings and share our good fortune with others. Let us keep Richie and his family (and countless others like them) in mind the next time we start to sweat the small stuff! Most importantly, please consider purchasing a copy of "Today's Heroes - Surviving With Style" or making a contribution to The Richie White Pediatric Fund, to help Richie's family with their efforts in Making Children Smile!

The book is available at [www.richiewhitefund.com](http://www.richiewhitefund.com) or [Www.halopublishing.com](http://Www.halopublishing.com). If you would like to order multiple copies or obtain information on making a donation to The Richie White Pediatric Fund, please contact John, at [jvoso@oldrepublictitle.com](mailto:jvoso@oldrepublictitle.com) or 216-408-8866 for pricing and shipping information.



## Residential Sales Statistics October 2011

Local Association	2011 Oct Sales	2010 Oct Sales	11-10 % Change	2011 Oct Avg Price	2010 Oct Avg Price	11-10 % Change	2011 YTD Oct # Sales	2010 YTD Oct # Sales	11-10 YTD % Change	2011 YTD Oct Avg Price	2010 YTD Oct Avg Price	11-10 YTD % Change
Ann Arbor Area Board of REALTORS*	210	214	-1.87%	\$188,892	\$167,382	12.85%	2,576	2,592	-0.62%	\$191,337	\$185,513	3.14%
Antrim Charlevoix Kalkaska Association of REALTORS*	39	55	-29.09%	\$121,203	\$158,032	-23.30%	426	477	-10.69%	\$152,713	\$186,558	-18.14%
Battle Creek Area Association of REALTORS*	119	109	9.17%	\$66,622	\$85,436	-22.02%	1,090	1,057	3.12%	\$81,098	\$88,969	-8.85%
Bay County REALTOR* Association	110	117	-5.98%	\$66,874	\$74,802	-10.60%	1,162	1,118	3.94%	\$69,206	\$70,850	-2.32%
Branch County Association of REALTORS*	38	48	-20.83%	\$94,488	\$98,755	-4.32%	355	366	-3.01%	\$82,574	\$76,916	7.36%
Central Michigan Association of REALTORS*	74	88	-15.91%	\$87,667	\$110,450	-20.63%	656	817	-19.71%	\$86,762	\$84,304	2.92%
Clare-Gladwin Board of REALTORS*	61	59	3.39%	\$67,364	\$68,408	-1.53%	555	557	-0.36%	\$69,652	\$69,275	0.54%
Dearborn Board of REALTORS*	188	253	-25.69%	\$66,003	\$68,410	-3.52%	2,257	2,443	-7.61%	\$61,860	\$66,918	-7.56%
Detroit Board of REALTORS*	519	557	-6.82%	\$17,545	\$17,036	2.99%	5,521	6,132	-9.96%	\$15,769	\$16,036	-1.67%
Down River Association of REALTORS*	114	107	6.54%	\$67,642	\$81,745	-17.25%	1,126	1,137	-0.97%	\$73,424	\$79,186	-7.28%
Eastern Thumb Association of REALTORS*	135	98	37.76%	\$103,386	\$77,503	33.40%	1,401	1,278	9.62%	\$92,685	\$92,252	0.47%
Eastern U.P. Board of REALTORS*	26	30	-13.33%	\$109,287	\$86,420	26.46%	316	294	7.48%	\$94,054	\$86,267	9.03%
Emmet Association of REALTORS*	53	43	23.26%	\$370,705	\$272,841	35.87%	435	427	1.87%	\$298,784	\$218,697	36.62%
Flint Area Association of REALTORS*	482	459	5.01%	\$79,501	\$76,131	4.43%	4,741	5,329	-11.03%	\$71,861	\$75,078	-4.29%
Grand Rapids Association of REALTORS*	778	660	17.88%	\$123,199	\$117,094	5.21%	9,014	8,294	8.68%	\$119,378	\$117,170	1.88%
Greater Kalamazoo Association of REALTORS*	271	252	7.54%	\$127,072	\$132,502	-4.10%	2,673	2,777	-3.75%	\$134,842	\$132,384	1.86%
Greater Lansing Association of REALTORS*	403	376	7.18%	\$97,063	\$94,420	2.80%	4,230	4,463	-5.22%	\$101,106	\$102,789	-1.64%
Greater Metropolitan Association of REALTORS*	1,023	925	10.59%	\$131,192	\$128,051	2.45%	10,126	9,606	5.41%	\$134,375	\$134,277	0.07%
Hillsdale County Board of REALTORS*	29	28	3.57%	\$93,355	\$110,332	-15.39%	265	324	-18.21%	\$72,307	\$78,853	-8.30%
Jackson Area Association of REALTORS*	168	163	3.07%	\$92,035	\$81,642	12.73%	1,533	1,578	-2.85%	\$82,594	\$82,466	0.15%
Lapeer & Upper Thumb Association of REALTORS*	134	124	8.06%	\$103,030	\$79,293	29.94%	1,177	1,209	-2.65%	\$93,620	\$90,263	3.72%
Lenawee County Association of REALTORS*	90	79	13.92%	\$83,114	\$121,477	-31.58%	783	885	-11.53%	\$85,736	\$85,268	0.55%
Livingston County Association of REALTORS*	217	201	7.96%	\$152,450	\$151,025	0.94%	2,293	2,165	5.91%	\$148,206	\$150,368	-1.44%
Oakland	639	560	14.11%	\$147,370	\$135,476	8.78%	6,405	6,332	1.15%	\$146,597	\$138,926	5.52%
Macomb	732	666	9.91%	\$90,391	\$92,237	-2.00%	7,157	7,326	-2.31%	\$102,091	\$92,462	10.41%
Mason-Oceana-Manistee Board of REALTORS*	70	74	-5.41%	\$116,831	\$132,008	-11.50%	616	700	-12.00%	\$114,394	\$108,613	5.32%
Midland Board of REALTORS*	74	73	1.37%	\$136,870	\$140,409	-2.52%	695	787	-11.69%	\$143,320	\$142,668	0.46%
Monroe County Association of REALTORS*	102	113	-9.73%	\$111,000	\$119,575	-7.17%	978	999	-2.10%	\$113,684	\$113,828	-0.13%
North Oakland County Board of REALTORS*	375	377	-0.53%	\$141,492	\$127,349	11.11%	4,015	3,995	0.50%	\$146,138	\$140,260	4.19%
Northeastern Michigan Board of REALTORS*	60	54	11.11%	\$76,009	\$81,067	-6.24%	495	474	4.43%	\$77,655	\$78,071	-0.53%
Paul Bunyan Board of REALTORS*	97	108	-10.19%	\$81,204	\$80,895	0.38%	1,029	1,074	-4.19%	\$81,887	\$81,904	-0.02%
Saginaw Board of REALTORS*	131	150	-12.67%	\$76,010	\$76,350	-0.44%	1,578	1,588	-0.63%	\$75,311	\$82,236	-8.42%
Shiawassee Regional Board of REALTORS*	47	77	-38.96%	\$74,751	\$70,648	5.81%	568	714	-20.45%	\$68,517	\$67,671	1.25%
Southwestern Michigan Association of REALTORS*	199	219	-9.13%	\$148,297	\$170,512	-13.03%	1,951	1,953	-0.10%	\$157,327	\$160,582	-2.03%
St. Joseph County Association of REALTORS*	52	56	-7.14%	\$96,991	\$86,414	12.24%	510	557	-8.44%	\$93,131	\$93,252	-0.13%
Traverse Area Association of REALTORS*	191	190	0.53%	\$172,016	\$200,222	-14.09%	1,772	1,727	2.61%	\$183,679	\$186,243	-1.38%
Upper Peninsula Association of REALTORS**	132	182	-27.47%	\$83,336	\$98,751	-15.61%	1,439	1,458	-1.30%	\$96,942	\$97,715	-0.79%
Water Wonderland Board of REALTORS*	163	145	12.41%	\$90,559	\$76,049	19.08%	1,323	1,291	2.48%	\$94,366	\$94,369	0.00%
West Central Association of REALTORS*	104	90	15.56%	\$85,027	\$79,401	7.09%	815	740	10.14%	\$78,447	\$81,205	-3.40%
West Michigan Lakeshore Association of REALTORS*	268	263	1.90%	\$150,460	\$140,288	7.25%	2,717	3,155	-13.88%	\$130,197	\$126,553	2.88%
<b>TOTALS</b>	<b>8,717</b>	<b>8,442</b>	<b>3.26%</b>	<b>\$109,708</b>	<b>\$109,171</b>	<b>0.49%</b>	<b>88,774</b>	<b>90,195</b>	<b>-1.58%</b>	<b>\$107,941</b>	<b>\$106,430</b>	<b>1.42%</b>

\*Escanaba, Iron Mountain, Keweenaw, Western Upper Peninsula, and North Central Upper Peninsula





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## *MLTA Upcoming Events*

### 2012 Education Seminars:

April 11 – Mt. Pleasant, Comfort Inn  
May 2 - Livonia, Marriott  
October 17 - Mt. Pleasant, Comfort Inn  
November 7 – Livonia, Marriott

## *ALTA Events*

2012 Business Strategies Conference  
March 25 - 27  
Marriott Louisville, Louisville, KY

2012 Federal Conference and Lobby Day  
May 6 - 9  
Regency Capitol Hill, Washington, DC

2012 Annual Convention  
October 17 - 20  
Broadmoor, Colorado Springs, CO



Tim McDonnell, MI-Agency Representative with his friends Greta and Bou.

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