



# THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

SPRING 2010

Finally! An informative video from the MLTA for the consumer explaining the entire home buying process. Screenshots from video on right.

Turn to Page 11 for Article and DVD!

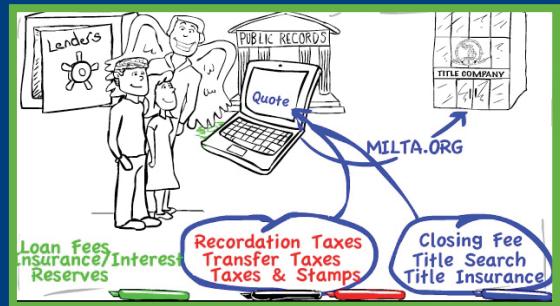
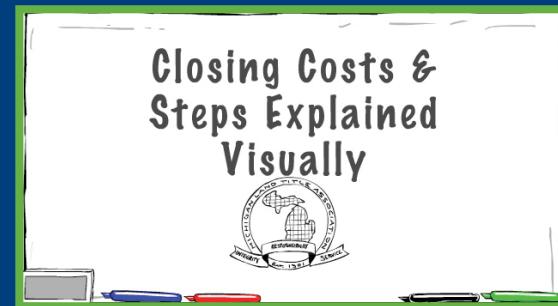
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## MLTA Launches Consumer Video

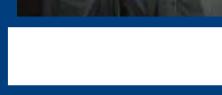


## Legislative Update

by Cami Pendell, Manager of State Government Affairs

### Successful MLTA Legislative Day

Neither snow, sleet, nor the threat of treacherous roads could keep MLTA members away from their State Capitol on Feb. 9, 2010. Despite a powerful winter storm, nearly 30 MLTA members, 22 Senators and staff, along with 31 Representatives and staff, braved the weather to spend a day at the Capitol to advocate for important land title issues. The day began with a lobbyist briefing where Tim Ward and Cami Pendell reviewed the topics that members were going to discuss with their legislators. These issues included: concern over government efforts to run title insurance; support of SB 791 (e-recording) and SB 825 (reinsurance); and asking legislators their positions on tax restructuring reform efforts. Additionally, the Legislative Day served as the official launching of the MLTA "Closing Costs & Steps Explained Visually" DVD. Each member's office received a copy of the DVD, along with a MLTA pen and Legislative Issues brief. The association also hosted a legislative luncheon for its members to have even more opportunity to get to know their Legislators and further develop relationships with state officials and their staff. One of the most successful events of the day included the one-on-one meetings that MLTA members had with their Representatives and Senators. By building such camaraderie at the state level, it will help to further ensure MLTA's position at the table when land title issues are before the Legislature.



# MLTA

Michigan Land Title Association  
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(*Legislative Update continued from page 1*)

## Revenue Estimating Conference Projects Budget Deficit for 2011

The State Treasurer, Senate Fiscal Agency Director and the House Fiscal Agency Director reached an agreement during the revenue estimating conference, that the state will be facing a \$1.725 billion budget deficit for Fiscal Year (FY) 2011. This figure is comprised of \$1.3 billion from the General Fund and \$425 million from the School Aid Fund. They unanimously agreed that the 2011 FY budget will be the most difficult budget year the state will have to face because of the lack of federal stimulus money. In FY 2009-2010 the stimulus money helped to prop up Michigan's budget by providing at least \$1 billion dollars. The good news coming out of the conference was that the Governor will not have to issue Executive Orders this month making further cuts to the FY 2010 budget that is currently in place. It was determined that lapse funding (money being carried over from the last budget cycle) will fill the deficits in General Fund and the School Aid Fund. With this news, the Governor confirmed that she will not have to make an additional \$127 per-pupil cut to schools for the remainder of this school year.

## Governor Granholm's Last State of the State Address

On February 3, 2010, Governor Jennifer Granholm delivered her last State of the State address. The Governor focused primarily on Michigan's continued economic crisis and her efforts to transition from Michigan's old economy to its' new economy. These transition elements include renewable energy, life sciences, tourism and the film industry. She emphasized that she has put in place the right economic transition, which is now starting to take effect. She also laid out proposals to help small business development in the state. She also touched on the fact that Michigan has a \$1.7 billion deficit, said that she will leave the details of how she plans to address the shortfall for the budget announcement. That announcement is scheduled for February 11, 2010, when the state's Budget Director will present the Governor's last budget to a joint meeting of the House and Senate Appropriation Committees. The Governor has already stated that she intends to propose reinstituting the Michigan Promise Grant. She has not yet announced if her budget will include new revenues based on tax increases or further cuts in order to balance the budget and fill the projected deficit.

## Senate Republicans Unveil Government Reforms Initiative

A series of 10 reforms to restructure and downsize state government were unveiled by Senate Republicans that they estimate could result in a potential savings of more than \$2 billion. The 10 Senate Republican initiatives cover six key reform areas: (1) Public employee health care (\$615 million in savings); (2) Local police and fire (\$70-118 million); (3) K-12 school spending (\$363-663 million); (4) Medicaid spending (\$160-500 million); (5) Government efficiency (indeterminate); and (6) Public employee compensation (\$1.2 billion). Additional highlights of the Senate reform package include: reducing the number of state departments to 11; combining all permitting and licensing into one department; expediting the arbitration process for police and fire; reducing school administrative costs to direct more resources into the classroom; and, competitively bid K-12 non-instructional services, including transportation, custodial and food. The Senate has already started to hold committee hearings on several of these initiatives.

## U.S. Supreme Court's Decision on Corporate Funds

In *Citizens United v. FEC*, the Supreme Court reversed its decision in *Austin v. Michigan Chamber of Commerce* and ruled that corporations can make independent expenditures in campaigns. *Austin v. Michigan Chamber of Commerce* stemmed from an effort the Chamber launched in 1985 when it proposed to buy a quarter-page newspaper ad in the Grand Rapids Press expressly advocating the election of a candidate (Richard Bandstra) in a special election in the 93rd House District. The Chamber wasn't allowed to do this because of a state law prohibiting corporate expenditures associated with a candidate's campaign. The Chamber sued and the case made its way to the U.S. Supreme Court. The Court upheld the state's prohibition on corporate expenditures. However, in its new decision, the Supreme Court stated that corporations and unions have a First Amendment right to the Freedom of Speech and they are permitted to make independent expenditures in support of or in opposition to candidates. However, they still are not allowed to make direct contributions to candidates. In assessing the impact of this decision, MLC lobbyist Tim Ward said, "While this decision gives corporations and unions new funding power, overriding each company's decision is a business judgment call. Corporate executives will evaluate whether the direct funding of independent campaigns will have a negative

(*continued on page 5*)

## THE TITLE EXAMINER STAFF

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or MLTA 517-374-2728

with any questions, comments, or if you would like to contribute.

# MLTA Member Spotlight

Name: Shelley Quinn - Becker

Position: Owner / Manager

Company: Transnation Double D Title Agency

County and Office you Work out of:

Grand Traverse County, Traverse City, MI (We service Grand Traverse, Leelanau, Antrim, Wexford, Manistee and Kalkaska)



**Community Involvement:** I am involved in many community organizations.

2008 and 2009 *Affiliate of The Year for the Traverse Area Assoc. of Realtors*  
2008, 2009, and 2010 *Committee Leader for the Traverse Area Assoc. of Realtors Affiliate Ambassador Group*

2003-2010 *Member of the Traverse City Chamber of Commerce*

2009 and 2010 *Treasurer for the Northern Michigan Women's Council of Realtors*

2009 and 2010 *Director board member of the Traverse Area Assoc. of Realtors*

I regularly attend MLTA and ALTA functions, meetings and seminars.

**Personal Interests/ Hobbies:** Travel, golf, reading, yoga, love my work and love watching it grow & flourish.

**Something about you to share with the MLTA members:** I am proud that I am able to be an owner of my own business, and that I never found it necessary to move away from Traverse City. I believe Traverse City has it all, sometimes a bit chilly, but having lived here all my life I have learned to deal with the winters. I am married to, what I believe, to be the best husband in the world; he is truly the other half that makes me whole. I share 5 grandchildren with my husband, and truly enjoy them. I grew up in a family owned construction company, and that is where my strong work ethic began. I have four older brothers, and I am the only girl. Instead of playing with Barbie or baking brownies, I was learning how to shingle a roof or install a door. Bottom line is I love my life and the wonderful people in it!!

## On the Move

Attorney Michael S. Hill has joined the Gallagher Law Firm where he will focus on real estate, business and bankruptcy law. Michael graduated from Michigan State University and the University of Toledo College of Law. Michael was a law clerk for the Honorable Michael W. LaBeau of the 38th Circuit Court in Monroe, Michigan. The Gallagher Law Firm maintains offices in Detroit, Lansing and Grand Rapids.

Tony Viviani has partnered with fellow MLTA member Sandy Koehler and has started American Title Agency, LLC. Located in Macomb County, Michigan, this National Title and Escrow center works with brokers, banks, lenders and agents, closing their refinance and purchase mortgage loans in all 50 states. All from one location.

Name: Tim McDonnell

Position: Michigan Agency Representative

Company: Old Republic National Title Insurance Company

**County and Office you Work out of:** I cover the entire state of Michigan. My official address is the State office at 4000 Main Street, Suite 150, Bay Harbor, MI 49770; however, I work primarily from my home office in Pinckney, MI



**MLTA Involvement:** I have been a member of the PAC Committee since 1996 and have been the chair of that committee for the last several years. Through this committee, I have been involved in many memorable fundraising schemes including the "Sky-Dive for Dollars" at Boyne Mountain. For the last 5 years, I have been a member of the Board of Directors, Secretary-Treasurer and am currently serving as President-Elect. As President-Elect, I am also the chair of the convention committee and we are hard at work planning the 2010 Summer convention.

**Personal Interests/ Hobbies:** I am very involved with the sports that my son's compete in, which are currently football and bowling. I have been involved in the Hamburg Pirate Youth Football Association for the last 5 years as a coach or Board member. I currently serve as the Registrar/Assistant Treasurer for the HPYFA Program even though my son's have moved on to Pinckney High School Football. This past football season, I was the PA Announcer for the Freshman Football home games and I have also provided game films for the JV and Varsity Teams. I am currently helping the Pinckney High School bowling team as an assistant coach. Tim and Joey are members of the varsity squad and are preparing for the Regional and hopefully State meets. My other hobbies include boating and other outdoor activities. I also collect antique vending machines - primarily Coca-Cola machines, but I also have vintage candy and cigarette vendors as well.

Another passion of mine is raising money for breast cancer research and education. I participated in the 2009 Susan G. Komen Breast Cancer 3-Day 60 Mile walk and was the top fundraiser in Michigan. In 2010, I will be competing in the Michigan and Tampa Bay Walks. You can view my progress at [www.the3day.org/goto/Tim.McD.2010](http://www.the3day.org/goto/Tim.McD.2010)

**Something about you to share with the MLTA members:** I joined the title industry in 1985, having worked in banking for many years before that. The one thing that I have always liked about the Michigan Land Title Association is the fact that everyone checks their business cards at the door. As an association we work together for the betterment of the industry. I never dreamed, that I would be President of the organization, and am looking forward to working with all the members to make positive changes for our industry.



Name: Dennis Bila

Position: Board member and underwriting Counsel

Company: Corporate Title Agency



**County and Office you Work out of:** My physical office is located in Emmet County, Michigan

**MLTA Involvement:** I regularly attend MLTA and ALTA functions, meetings and seminars.

**Personal Interests/ Hobbies:** Most of my personal interests revolve around spending time with my family and friends doing recreational activities. I enjoy boating, hunting, camping and traveling. I try to devote as much time as possible to my children.

**Something about you to share with the MLTA members:** some of the most enjoyable work related experiences I have relate to MLTA and ALTA functions. Not only are the gatherings educational, they also advance our common business interests. Socializing with underwriters, agents and others in the field has been invaluable in the success of Corporate Title, and me personally. Everyone involved in business should get involved with their particular trade association. Each event yields something new, allows me to form new relationships and, as important, building on existing relationships.

# State of the Association

by Darlene Wilsey, State Sales Representative, Fidelity National Title

Recently, I had an opportunity to catch up with our very busy MLTA President, Doug McFarlane. Doug has been working tirelessly to initiate and further develop MLTA programs that will help promote, educate and unite title industry professionals, throughout the state of Michigan.

Doug shared the status of a few of these MLTA programs, during our discussion:

## MLTA – Habitat for Humanity Michigan Initiative:

The purpose of this initiative is to encourage and administer MLTA member involvement with their local Habitat for Humanity Michigan affiliate. The framework for this program has been developed, in collaboration with Habitat for Humanity Michigan, and will be introduced to our MLTA members, during the second quarter of 2010.

## MLTA – Product Definition Delivery Project:

The goal of this project is to develop a presentation that details

what our product is, how it is made, and all the steps that go into it. The Public Relations Committee has recently completed the first phase of this initiative, by posting a Closing Overview video, on our MLTA website, [www.MiLTA.org](http://www.MiLTA.org). This video can be used, by MLTA members, to help educate others on the closing process.

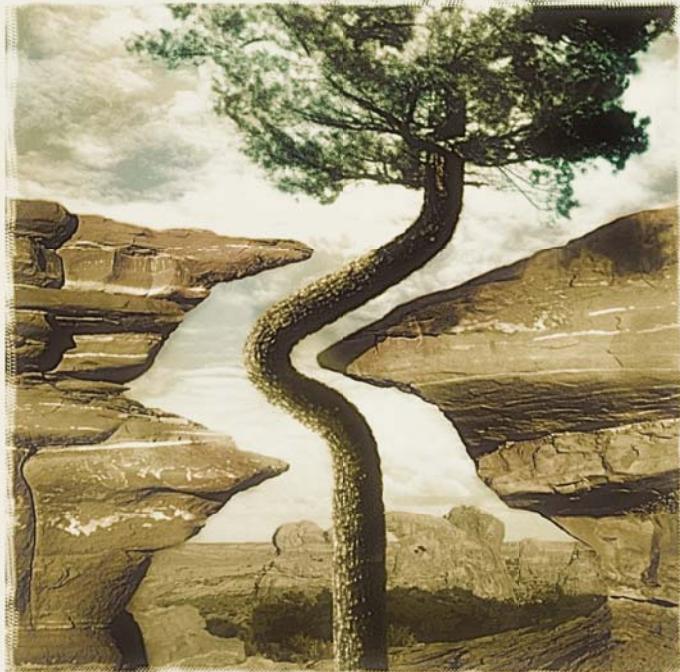
## MLTA District Delegate Initiative:

District Delegates are in place and district meetings are being conducted, throughout the state. "In the coming weeks, we should be well underway with the district delegates supplying the board with information we need to hear."

## Land Title Professional Designation Program:

This program was created to identify and recognize those in our membership who, through a combination of education, experience and performance, have demonstrated proficient knowledge of land title insurance and escrow procedures. This project is still a work in progress. The committee is finalizing the criteria and will be accepting applications very soon.

As evidenced above, Doug, and many others, are working diligently to ensure the Michigan Land Title Associations' continued and enhanced value to its membership. 



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## MLTA-PAC Needs Your Help



The fundraiser for the PAC at this year's Summer Convention will be a silent auction. The MLTA-PAC Committee is seeking items for the silent auction. Past items have included I-Pods, sporting event tickets, spa certificates and sports memorabilia. We are looking for a good variety of items so that we will have something for everyone.

If you can donate an item, please contact Tim McDonnell at [tmcdonnell@oldrepublictitle.com](mailto:tmcdonnell@oldrepublictitle.com) with the item description and donor value. We will have e-mail bidding for this auction so you will be able to participate even if you can't make the Convention. Thanks in advance for supporting the MLTA-PAC!

## Welcome New Members

Community First Title Agency  
(Sandusky, MI) 

Antrim County Register of Deeds  
(Bellaire, MI) 

Cunningham Dalman, PC  
(Holland, MI) 

(continued from page 2)

decision is a business judgment call. Corporate executives will evaluate whether the direct funding of independent campaigns will have a negative impact on its brand image, corporate governance or shareholder value. This may not result in an immediate change in how campaigns are carried out in Michigan."

#### State Spot Light...Sen. Jason Allen

Senator Jason Allen (R-Traverse), a long standing supporter of land title issues, has introduced Senate Bill 825 at the request of the Michigan Land Title Association. He was re-elected to Michigan's 37th State Senate District in November 2006, representing Grand Traverse, Antrim, Charlevoix, Emmet, Cheboygan, Presque Isle, Chippewa and Mackinac counties. Senator Allen is the chair of the Senate Commerce and Tourism Committee and the Senior Citizens and Veterans Affairs Committee. He serves as a member of the following committees: Economic Development & Regulatory Reform; Health Policy; and Local, Urban and State Affairs. Allen is a member of the Legislative Council and serves as the Senate majority whip. Allen was first elected to the Michigan Senate in 2002. Prior to being elected to the Senate, Allen served in the Michigan House of Representatives for the 104th District from 1999 through 2002.

Senator Allen is a lifelong resident of Traverse City. He graduated from Traverse City High School and continued his education at Northwestern Michigan College. He completed his education at Miami University of Ohio, earning a Bachelor's degree in Finance with a minor in Fashion Merchandising. After graduation, Jason returned to Traverse City to work with his father in the family menswear business. He is currently the vice president of sales at the Captain's Quarters.

Allen entered the National Guard and received basic training at Fort Knox in Kentucky. He returned home from the guard to successfully run for the Grand Traverse County Board of Commission. Allen served on the Great Lakes Community Health Board and the Northwestern Michigan Council of Governments, a 10-county multi-jurisdictional agency dedicated to law enforcement, planning and economic development.

Senator Allen remains active in his community. He is a member of the Central United Methodist Church, the Traverse City Rotary Club, and the Traverse City Area Chamber of Commerce. Allen is an Eagle Scout and remains involved in scouting, serving on the Scenic Trails Council Executive Board and counseling merit badges. He is also a member of the Michigan Conservation Foundation, Ducks Unlimited, Michigan Whitetails, the Ruffed Grouse Society, Michigan Elks and the American Legion.

Senator Allen's family includes his wife, Suzanne, and their daughters, Meredith and Amanda.



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## Industry news



#### Old Republic makes Exec. Changes, Names New President

Old Republic International Corp. has made several executive changes in its title insurance segment that take effect July 1, 2010. Mark Bilbrey was appointed president of the Old Republic Title Companies. He succeeds Rande Yeager who retains his responsibilities as chairman and chief executive officer. Both continue in the title segment's Office of the Chief Executive Officer (OCEO), which is being enlarged from its eight member configuration with the appointment of Cheryl A. Jones, Executive Vice President - Human Resources & Communications, and Charles Kovaleski, executive vice president of Old Republic National Title Insurance Co. and president of the Attorneys Title Division.



#### SoftPro introduces Web-based Service Portal

SoftPro has introduced a Web-based service portal that attempts to streamline the ordering of closing, title and escrow services. According to the company, SoftPro 360 connects customers with title and closing vendors to generate and transmit orders for whatever services are needed. SoftPro 360 transfers the appropriate data digitally from the customer's file to the vendor.



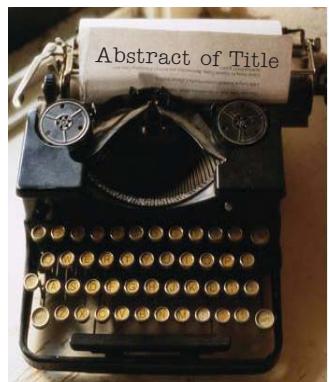
# ABSTRACTIONS

by Allan Dick, COO, Best Homes Title

Short Sales – we all know about them. We've addressed them in MLTA Education Seminars. Some title operations even have entire departments dedicated to them. And, while there are often special details to be attended, the mystery surrounding them has long since past. Short sales often make deals happen – thank goodness! But, a new concern has emerged – one that we should all be mindful of as settlement agents – that concern is possible bank fraud.

Certainly, we all know second lien holders are in a precarious position. If the first lien is foreclosed, their junior lien gets wiped out. But, what about short sales? The second lien is not wiped out. So, to make a short sale work (where the senior lender will accept a "short" payoff), the junior lender must cooperate – often getting little or nothing, yet be willing to release their lien (but remember, if not for the short sale, that junior lender would get absolutely nothing). In those circumstances, apparently some junior lien holders have been demanding payments "on the side" from either the short sale buyers, sellers or the realtors, not to be shown on the HUD (so the first lien holder won't see it). This is a very questionable practice. But, to be sure, a settlement agent should never be involved with such payments, unless they are clearly shown on the HUD. Of course, we cannot control, nor do we have an obligation to try and police what goes on between the parties to a transaction. We must, however take care not to appear to have colluded or failed to disclose information to the parties we are representing.

So long 2009! The worst year in the housing market since a world war is now history. But, according to David Crowe, chief economist for the National Association of Home Builders, while a recovery has begun, Michigan's recovery is likely to lag due to continued high unemployment, constricted credit and the on-going distress in the housing market. Surprised? One of every 38 Michigan households was involved with a foreclosure last year, compared to one in 45 households nationally. But, at least Michigan no longer leads (or threatens to lead) the nation in foreclosures. Those honors go to Nevada, Arizona, California and Florida – the sun belt. Fear not, we still make the top ten. But, at least the economy is growing nationally – at a 5.7% pace in the last quarter of 2009. And the fed rate just increased 1/4%, a sign of increased confidence.



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New ALTA President has stressed the need for the title industry to make our legislators better aware of the protection and services we provide. To that end, as you will read here and elsewhere, the MLTA held its second annual Legislative Day (and luncheon) at the Capital Building in Lansing on February 15. While our numbers were down a bit from last year, there was still a strong enthusiastic representation from our membership and an encouraging response from several legislators and their staff. We distributed some literature and a CD of the new MLTA sponsored "Closing Costs and Steps Explained" video, which you'll also find on page 11. We will also use that video, when a select MLTA group makes a presentation to the Office of Finance and Insurance Regulation in March. 

# Views from the Top



Greetings from the North to all my land title buddies. What a winter this has been, eh? Sure am missin' that mini-refi boom of last winter. Gettin' caught up on final policies though. But that hasn't been easy. Me and my law partner Gordie Gillespie told our

long time paralegal/secretary/final policy dept. Twila Murfburger that she had till the end of the month to get caught up. She tells us she loves deadlines...especially the whooshing sound they make when they fly by and if we don't back off she's gonna go to work for Mildred Beefbottom...our ROD. Seems Mildred has offered her a position as title company liaison and will raise the copy fee to \$1.20/page to cover the expense. She figures this is okay 'cause the extra .20 is really an admin fee and not a copy fee. No one will argue with ole Mildred. She's tough as nails. She's buried three husbands ya know...and two of 'em was just nappin'.



Looks like me and Gordie are going to have to get into this new fangled dangled HUD/RESPA reform business. With all the email, alerts, bulletins, seminars and such flying around we figured there must be something to it. We had a meetin' at our local City Hall and Bank (yup, we've lumped them together up here) with Ebenezer Tillbetter, the President of the Shady Dale

Bank, and he says he's heard rumblings about this too through his banker grapevine. Six beers later, me and Gordie told ET (yup, ET) that we would get up to speed on it and fix him up and phone him when we were ready.



Our fine Gov. had her state of the state address, and that was a dandy. Seems funny to me that the call it "state of the state". Everyone up here pretty much knows what state we're in...and it ain't pretty. Saying all the same ole things, and then those officials do their usual nothin', and a year from now we'll be looking in the same state. Biz as usual I reckon.

I keep thinkin' one of these days I gonna retire. My pappy Sam Hill would've told me to hang 'em up a long time ago. Ole Gordie is chompin' at the bit to take things over. He keeps tellin' me it's time. I tell him that everyday when I get up I look through the Forbes list of the richest men in America, and if I ain't on it, I'm comin' to work. Gordie's gettin' a little tired of that line but he knows I'm just joshin'. Soon. Soon.

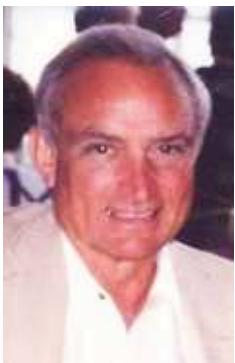
Well, keep a stiff upper lip as my pappy always told me. Things are gonna get better. That's the way I see it and this is the view from the North so you can see from the country what it looks like from here to there from time to time.

Regards,

*Lester Sam Hill*

## IN MEMORIUM.....

*We are saddened to report that our long-time member, Carl A. Hasselwander, passed away last December at the age of 79.*



*Carl was a graduate of the University of Michigan and the University of Michigan Law School. He was first admitted to practice law in 1954, and shortly thereafter, joined the Burton Abstract and Title Company. Carl served for many years as its Grand Rapids manager, but relocated to the Detroit area in the early 1970s where he worked in a variety of positions for Burton's successor, the St. Paul Title Insurance Company. Later, when its Burton Division was sold to First American, Carl became the CEO of First American Title Insurance Company of Mid-America as well as a regional vice-president of First American and a member of its Board of Directors.*

*Despite all of his years in management, Carl remained a highly respected title attorney. He acted as Chair of both the State Bar of Michigan's Real Property Law Section and its Land Title Standards Committee. Carl also spent time on a number of ad hoc Committees for the Michigan Land Title Association where his sage advice was always greatly appreciated.*

*Like so many of our peers, however, Carl also had hidden talents. Admittedly, many of us knew of his love of golf, gardening, Michigan football and a good beer. Not many, however, knew that Carl was an accomplished singer. His steady bass anchored several barbershop quartets including the "Four States Four" and the "Aftershock." Carl was also active in the Catholic Church and, in that vein, acted as a mentor for innumerable friends, relatives and colleagues.*

*Carl is survived by his lovely wife Laurie, by his daughter Carol Ann, and his son Thomas, and by many grandchildren, great-grandchildren, nieces, nephews and lifelong friends. Our condolences go out to all of them. Carl will be sorely missed but not forgotten.*

# Traversing the Law: Finding Common Ground

## A professional land surveyors perspective

by Jeffery N. Lucas, Professional Land Surveyor, Esq., reprinted with permission

We surveyors are a house divided, so fundamentally split over one core issue that we are forever destined to be known as the profession where no two surveyors could ever agree on a single corner position. That is, unless we can find some common ground despite our differences.

The core issue that divides us is what constitutes an original surveyor with regard to an original survey (the first surveyor on the ground or the first surveyor to draw protracted lot lines). There is also the collateral issue of “following in the footsteps.” Your feelings about the core issue directly impact how you approach the collateral issue.

These two companion issues completely divide the surveying profession--and everything we do with regard to boundaries--into two camps. Very few surveyors, if any, who are in one camp or the other will be persuaded by what I have to say on the subject, so I am not going to even try to persuade you one way or the other on these issues. Instead, I want to focus on one point where, perhaps, we have an opportunity for some common ground. That point is whether there is such a thing as a lost corner. If we could agree on this one issue, these other matters would resolve themselves.

If lost corners exist (please excuse the oxymoronic implications), then our destiny is sealed--we can end the discussion. If there is no such thing as a lost corner, our future looks a bit brighter. Over time, the pincushion corner will begin to disappear (or at least not escalate); there will be no more prorated corners based on “new” measurements establishing “new” corner locations that contradict established boundary lines and corners; land that has been subdivided once will remain subdivided forever; the arrival of the land surveyor will be welcomed because landowners will know that their boundaries will be recovered and rehabilitated, not cast aside in favor of new precise measurements; and never again will the arrival of the surveyor be characterized as “a great public calamity.”

### Who Says a Corner Can Be Lost?

The vast majority of cases that deal with the concept of a lost corner are in the PLSS (Public Land Survey System) context. Other courts outside of the PLSS that have dealt with lost corners treat them more like obliterated corners that are restored by extrinsic evidence. In the PLSS context, the real-world application seems to be that once hope is abandoned that the corner will be found, apportionment is applied even in the face of extrinsic evidence to the contrary.

The root source of the problem comes from the instructions to the government surveyors for surveying the lands of the federal government; that is to say, lands that have never been conveyed out of the public domain and into private ownership. Once the lands are conveyed into private ownership, the federal government has no more jurisdiction, and the instructions for the survey of the federal lands are no longer applicable.

The guiding legal principles are not in dispute. Where there is no controlling federal legislation or rule of law, questions involving ownership of land are determined under state law, even where the Government is a party. The rule is recognized implicitly by the federal statute permitting resurveys. 43 U.S.C.A. § 772 provides in pertinent part: “The Secretary of the Interior may, as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement.” (*United States v. Doyle*, 468 F.2d 633 (10th Cir. 1972))

The “Manual of Surveying Instructions, 1973” (the Manual) essentially says the same thing in the very first sentence of the first section: “The Manual of Surveying Instructions describes how cadastral surveys of the public lands are made.” We, the private practice land surveyors, are the ones who, in contradiction to established law and the intent of the

instructions, have elevated the instructions and the Manual to something they were never intended to be--a bible for surveying private property.

This has been a mistake from day one because the Manual is misinterpreted, it contains errors, sections are read out of context and, most importantly, because it provides easy answers to complicated problems. This is the problem with the lost corner concept. You can call a corner lost and create a mathematical solution to a problem that may or may not require math. This pleases our technically oriented minds and lulls us into a euphoric numbness toward reality when the math seems so perfect, and armed with it, we can bring order to chaos.

Even the BLM (Bureau of Land Management) is loath to call a corner lost—and the instructions were written by them and for them. As BLM well knows, and hence its petition for reconsideration in this case, the standard enunciated here comports with the agency’s own interpretation of the Survey Manual, which it wrote, and the actual manner in which it has consistently applied the provisions of the manual throughout the years in thousands of survey decisions. The entire thrust of the Survey Manual is to recognize corners as existent, rather than lost, if at all possible. (*Jacobsen and Downer v. BLM*, 103 IBLA 83 (July 8, 1988))



## Who Can Call a Corner Lost?

The reality is that calling a corner lost was never an instruction that was intended for the private practice land surveyor. If we step back and look at the Manual as a whole, we discover that the Manual describes four general “types” of surveys. First, there are the original surveys of the public domain whereby the unconveyed land of the federal government was subdivided into townships and ranges and then further subdivided into sections and fractional sections. If needed, these sections can be further subdivided into quarter sections and quarter-quarter sections--and so on and so forth. Chapter 3 is all about the original surveys.

Second, there are the dependent resurveys of the unconveyed lands of the federal government. Third, there are the independent resurveys of the unconveyed lands of the federal government. There are ancillary instructions for special surveys of private claims and other miscellaneous issues that comprise the balance of Chapter 6, but they all relate to either dependent or independent resurveys.

The fourth type of survey described in the Manual is the “retracement” survey. The Manual’s definition of a retracement survey, in pertinent part, reads as follows:

A retracement is a survey that is made to ascertain the direction and length of lines and to identify the monuments and other marks of an established prior survey. Retracement may be made for any of several reasons. ... Recovered corners are rehabilitated, but a retracement does not include the restoration of lost corners or the reblazing of lines through the timber. The retracement may sometimes be complete in itself, but usually it is made as an early part of a resurvey.

The argument is often made that this instruction is only for the BLM surveyors. If you want to make that argument, then ditto for the entire Manual! If you want to argue that Section 3-87 not only applies to virgin sections but also to previously subdivided or partially subdivided sections when some previous surveyor “didn’t get it right,” then 3-76 and 3-95 apply equally, as well.

These instructions read together tell us that the original intent of the original grantor under the PLSS (the federal government) was that once the sectional framework was laid out by the BLM, the local surveyor would be employed to further subdivide the sections into their aliquot parts. Given a virgin section, straight lines were to be run through the opposing quarter-section corners (and all other corners that control center lines) to establish the aliquot parts of the section. If this work has already been done, as when a section has been partially subdivided, then those previously marked corners are used to control the remainder of the section.

Section 3-76 of the Manual deserves its own special attention in the context of the present discussion. It states more fully:



The Bureau of Land Management assumes no control or direction over the acts of local and county surveyors in the matters of subdivision of sections and reestablishment of lost corners of original surveys where the lands have passed into private ownership, nor will it issue instructions in such cases. It follows the general rule that disputes arising from uncertain or erroneous location of corners originally established by the United States are to be settled by the proper local authorities or by amicable adjustment. The Bureau desires that the rules controlling the acts of its own cadastral surveying service be considered by all other surveyors as merely advisory and explanatory of the principles which should prevail in performing such duties. (*Manual at Sec. 3-76*)

What the BLM is saying is that, as the authors of the concept of a lost corner, the concept has no meaning outside of the context of the original surveys and resurveys that they conduct on the undisposed-of lands of the federal government. Unfortunately, that’s like handing a loaded gun to a child and telling him to go play nice with the other neighborhood kids. If there are any problems, the police can handle it. Oh, and by the way, we don’t assume any responsibility if you shoot somebody.

## There Are No Lost Corners

If we could recognize that, outside of the PLSS context and the rules written by the BLM for surveyors surveying the un-conveyed lands of the federal government, there are no lost corners, then it would be easy to recognize that there are truly only two “types” of surveys. There are original surveys of previously unsubdivided land, and there are retracement surveys to retrace existing boundaries and to rehabilitate their corners--not to call them lost and thereby set “new” corners with “new” measurements rendering the survey some hybrid “quasi-original” or “quasi-retracement” survey. The standard to be applied is “best available evidence,” which includes all relevant extrinsic evidence, whether it be direct, collateral or parol. Being able to call a corner lost allows the surveyor to make easy work out of what may be a complicated problem. Expediency should not be the criterion for our work; rather, our criterion should be the protection of property rights that have been vested under the law and equity. Anything less renders us mere technicians looking for technically correct answers when well-reasoned opinions are needed.

Jeffery N. Lucas, PLS, Esq.

Jeff Lucas is a licensed land surveyor and attorney in private practice in Birmingham, Ala.



# Motivational Moment

by Tom Lico, President of Capital Title Insurance Agency

## Are You 100% Alive?

Many people live their lives with hesitance and apprehension, and lack confidence in their own abilities. They are not showing the world all that they have to offer. Without realizing it, they're only 50% alive. There are also those that constantly talk about how wonderful things used to be in the past. Sorry, but those people are living less than 50%. It's ok to celebrate the past, but you can't live in it and expect to get the most out of life. Some people are confident and make things happen, but there is a disconnect in how they communicate with others. They're up the scale a bit, but cap out around 75%.

## So what does it mean to BE 100% alive?

It's about being the best version of you. It's taking all the positive attributes you bring to the table, and then exploiting the heck out of them. It's putting yourself in position to succeed - in what ever you do. It's living life without hesitance or apprehension. It's knowing what you want and making daily decisions that move you closer to it. It's being confident in your abilities – not arrogant, but confident. It's about accepting challenges, exceeding expectations and making a difference in the lives around you.

Living your life this way can be contagious. People will want to be a part of whatever you have going on. They'll seek your advice and/or assistance in whatever they have going on. It's about being the richest person in town. Not rich in the monetary sense - it's about emotional wealth.

Ok, you may be asking - how do I get there? Well, it's a conscious choice you make every day you get out of bed. Ask people what they like about you and do more of it. Ask people what they don't like about you and do less of it. Figure out what you want out of life and write it

down. This will help every day when you have to make decisions. Just ask yourself the simple question - will this move me closer to my goal or farther? If the answer is closer, then do it. If the answer is farther, then don't. It's that simple. If you don't have a goal, then you're living your life by accident - meaning you just react to what life throws at you. That's like wanting to build a house and never drawing up blue prints - just going to Home Depot, buying materials and start building. Do you know anybody who has built a house like that? But we watch people live their lives like that everyday.



Don't live your life by accident. Live your life by design. It's never to late to draw up the blue prints, make decisions on things that are IN your control and that move you closer to your goal. Then go out and be the best version of yourself. The residual effects will blow you away, and you just might become the richest person you know. 



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# Michigan Land Title Association Launches Informative Video for the Consumer

By Bob Wuerfel – MLTA Public Relations Chairperson and President of Lighthouse Title Group

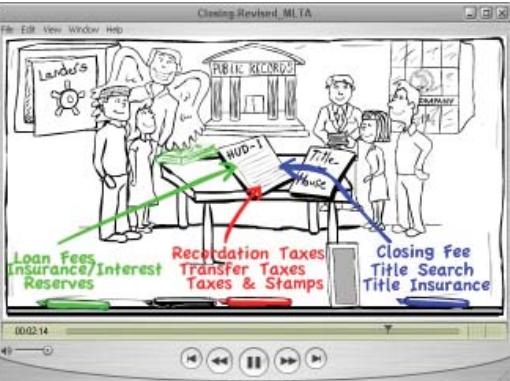
The Public Relations Committee of the MLTA capped a three month project with the launching of an informative video for the consumer on February 9, 2010 at the Legislative Day in Lansing, at the Capital. The video, simply entitled “Closing Costs and Steps Explained Visually” explains the entire



home buying process; from making an offer, to who is involved, to why title insurance from an MLTA member is necessary in the process. *Say It Visually*, located in Bellingham, WA, creates custom Whiteboard Story media to make

complex topics clear and engaging....such as the role of the title company in the closing process. They hit the mark with our video which covers: the offer, loans steps, legal steps and title steps in the closing process, and is also consumer friendly, and short at only 2 minutes, 45 seconds.

The consumers know the Realtor they are working with, the Loan officer they are obtaining a loan from, but very few know the role of the title company in the closing process. This presentation from *Say It Visually* is a great vehicle for MLTA members to educate the consumer as to our role and significance in the closing process. It was important that



we launched this in Lansing during our Legislative Day at the Capital as this a great tool, not only for consumers, but also for our State Officials to gain a better understanding

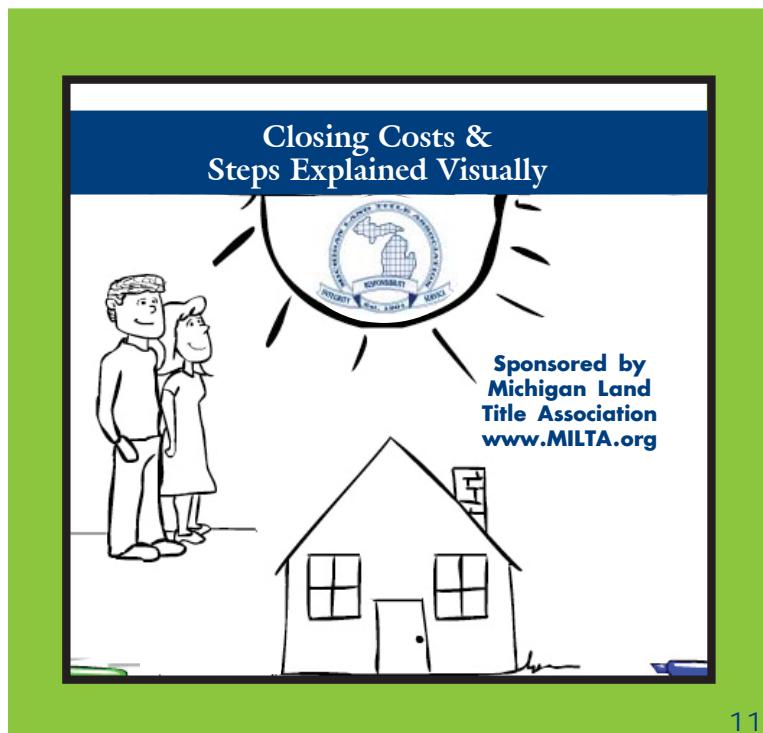
of our vital role in the closing process, as we protect and insure homeownership for Michigan Residents. The MLTA members who were at the launch, along with our Lobbyists Tim Ward and Cami Pendall, commented on the simple, yet effective way this video captured the closing process and steps.

This video can be found on the homepage of Michigan Land Title Association Website, ([www.MILTA.org](http://www.MILTA.org)), where members can direct consumers, their customers, and even link to it as well. Additionally, we have attached a Mini DVD with the “Closing Costs and Steps Explained Visually” video on it. This DVD can be used for presentations to Customer Groups, Consumer Groups, Chamber Groups, etc. in your

communities. (The DVD is clearer than the [www.MILTA.org](http://www.MILTA.org) website for larger screen viewing.) You can burn additional copies from this MiniDVD, but the presentation cannot be altered or edited per our contract with *Say It Visually*. If you would like to add your company name and logo at the end of the video and state that “ABC Title Company is a proud member of the Michigan Land Title Association, which has sponsored this video,” this would be permissible. Additional MiniDVD’s of this presentation, can be requested by emailing: [jsmalldon@lighthousegroup.net](mailto:jsmalldon@lighthousegroup.net) . The video can be found on YouTube.com by typing in “Closing\_MLTA” in the search box to find the link. You may link this to your website, but the Michigan Land Title Association cannot be held responsible for the streaming content of other videos on the YouTube.com website.



Finally, the Public Relations Committee would like to thank the Michigan Land Title Association Board of Directors for approving this project at the December 2009 Board Meeting. The MLTA Board recognized the need for our Association to better educate the general public on what we do, as well as provide a great tool for our Michigan Land Title membership base to use in their local markets. While the cost to produce this informative video was in the thousands, the hope that a better informed public on our role in the closing process, is priceless! ☺



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# THOSE TROUBLESONE RAILROADS

by Rosemarie Franco-Bell, Kalkaska-Antrim Title Company

*This is a reprint from our Winter edition, due to an unintentional omission of a portion of the article.*

Hello everyone, my name is Rosemarie Franco-Bell and I am the owner of, and an examiner for, a small title agency located in Kalkaska, Michigan (since 1987). I am sure most of you have never heard of this lovely little community or myself (being that I am a quiet person and a bit on the shy side), yet this winter, I was asked to do a little something/something for a VERY prestigious publication called the “The Title Examiner”. After fighting off a case of the FEARS (for weeks), I decided to give it a shot.

Not wanting to revisit the current economic climate or try to touch on serious issues, those much smarter then I labor over on our behalf, I thought I would write about the history of and the struggle with “THOSE TROUBLESONE RAILROADS”.

We, as Michigan examiners, have all been warned about those pesky railroad lines that run through our State of Michigan. As an examiner in Kalkaska, knowing the county’s history has kept me mindful of not only those lines still used/visible, but also those rails long ago abandoned.



Kalkaska County became organized in 1871 and in the early 1880’s the GR&I (Grand Rapids and Indiana) Railroad Company extended their lines through Kalkaska up to Mackinaw City. As was the case for other lines; camps and towns popped up along the route, population and business exploded. The General Store, saloons (and saloon brawls), boarded sidewalks, and muddy rutted streets with horse pulled wagons were the landscape as one walked down Main Street toward the Manning House Hotel.

Early settlers found this area a beautiful fertile wilderness covered with a large variety of trees. Farming and logging became the major industries of the area. Many settlers worked summers on farms and winters in the logging industry. The railroads made the moving of these goods and people in and out of remote areas much faster and more efficient. The lumber industry continued to flourish and this county was covered with

not only the main rail lines, but an uncountable number of spurs.

Most of the rails are long removed, reclaimed by nature, and now part of properties owned by new families. When walking through the forests, we are overcome by the beauty around us, and most of the old rail beds go undetected, even by the experienced eye. If you know where to look you may be able to find sections of these lines appearing as long narrow mounds running through the forest.

Modern times have certainly changed our reliance on railroads, yet we need to remember our history. The rail lines may not be detectable on the ground, but they are detectable in the county records, and are important in our abstracting.

As examiners we work within the parameters of the Marketable Title Act. We start at a warranty deed around 40 to 50 years back and come forward. We determine the state of title and suggest cures for problems we find. Unfortunately the rights to railroad land started earlier in history and are missed by many examiners. If you are asked to search railroad lands you will need to find the origin of the railroad’s interest. The railroad companies can acquire interests by adverse possession, Congressional Act, condemnation proceeding, deed, grant of easement, even a dedication in a plat. Even if these chains of title seem to be complete and similar to what you would be looking for in other situations, beware. All these methods of conveyance are riddled with pitfalls, so take copies for reviewing. Seek the opinion of your underwriter and/or general counsel. In certain locations, your office may want to consider a general exception. If so, contact your underwriter for language.

Just a side note; When working in a tract index, keep a watch for any easements granted by a railroad company in the general area of your property and take the time to look at any you find.

I am an old school examiner, remembering and being able to talk about “the way things were”. So much has changed in our industry in the last twenty two years. When times are tough and we may feel unappreciated, we need to remember, our jobs are important, so smile. ☺



Kalkaska Train Depot, circa 1920

# First-Time Homebuyer's Credit Scam

by Lisa Tyler, National Escrow Administrator, Fidelity National Title Group

The Mexican custom of using the paternal grandmother's maiden name is used in the United States to circumvent the First-Time Homebuyer's Credit laws.

In Mexico, the father's surname does not suffice on legal documents, men must include their mother's maiden name. The reason is simple and practical: There are so many Hispanics with the same surnames that they need to include their mother's maiden name to legally separate their identities.

A few months ago, Mona Rodriguez from Fidelity's Fresno, CA operation closed a short sale transaction for Antonio Sandoval Abrica. Mr. Abrica owned the property as his sole and separate property. He sold the property for \$90,000 to an investor. There was approximately \$206,500 owed to the current lien holder, but they agreed to a short pay amount of \$84,000.

The investor returned a month later and opened a new transaction with Mona for the sale of the same property. The buyer in the new transaction was Maria Aguilar Sandoval, a married woman, as her sole and separate property. She was purchasing the property for \$115,000 with a 100% seller carry-back financing. The note was for 30 years, but the investor told Mona that Maria would refinance in a few years and pay him in full. Maria was paying all closing costs, including title and escrow fees.

The seller wanted to close by month's end so Maria could claim a First-Time Homebuyer's Credit and receive \$8,000 from the IRS.

Mona set an appointment to review the escrow documents with the buyer and notarize her husband's signature on the inter-spousal deed, conveying his interest back to his spouse. Mona was told the husband's name was Antonio Sandoval. When the gentleman arrived Mona asked for his identification, which read "Antonio Sandoval Abrica." Mona asked if he went by any other name, he said no just "Sandoval."

She thought he looked familiar and excused herself from the signing room to do a search on the name "Abrica" in her escrow system. Suddenly she remembered! Mr. Sandoval was really Mr. Abrica, the previous owner of the subject property. Mona felt too uncomfortable to continue with the transaction and halted the document signing appointment. Later, she

resigned as escrow holder. She knew several parties to the first and second transactions would be harmed AND the former lien holder could possibly re-attach their lien. If the lien holder re-attached their lien it could cause a title claim.

## Who is harmed in this type of transaction?

The short pay lender who took a shortage of more than \$122,500 on their payoff.

The U.S. taxpayers who would have paid \$8,000 to someone who was not qualified to receive the First-Time Homebuyer's Credit.

The future refinance lender who should know Maria and her husband defaulted on a previous loan that caused a short sale of the property.

## What is the definition of a first-time home buyer?

The law defines "first-time home buyer" as a buyer who has not owned a principal residence in the last three years. For married couples, the law tests the homeownership history of both the homeowner and the spouse. For example, if you have not owned a home in the past three years, but your spouse has owned a principal residence, neither you nor your spouse qualifies for the first-time home buyer tax credit! The Sandovals and the investor were attempting to circumvent this law through the use of the paternal grandmother's maiden name.

It probably would have been easier to close, but Mona rightfully resigned. She went one step further to protect the Company by asking the title officer to post the parties' names and property address to the plant records to prevent a sister company from opening the same transaction. For her recognition of a bad deal and for her courage in resigning as escrow holder, the Company rewarded her \$1,000 along with a letter of recognition. ☺



(Reprinted with permission from Sarah Sutton, Fidelity National Title Group)



## Residential Sales Statistics January 2010

Local Association	2010 Jan Sales	2009 Jan Sales	40460 % Change	2010 Jan Ave Price	2009 Jan Ave Price	40460 % Change	2010 Jan # Sales	2009 Jan # Sales	10-09% % Change	2010 Jan Ave Price	2009 Jan Ave Price	10-09% % Change
Ann Arbor Area Board of REALTORS*	164	152	7.89%	\$165,842	\$153,486	8.05%	164	152	7.89%	\$165,842	\$153,486	8.05%
Antrien Charlevoix Kalkaska Association of REALTORS*	24	36	-33.33%	\$205,217	\$109,776	86.94%	24	36	-33.33%	\$205,217	\$109,776	86.94%
Battle Creek Area Association of REALTORS*	64	70	-8.57%	\$77,724	\$68,551	13.38%	64	70	-8.57%	\$77,724	\$68,551	13.38%
Bay County REALTOR® Association	67	68	-1.47%	\$54,920	\$45,749	20.05%	67	68	-1.47%	\$54,920	\$45,749	20.05%
Branch County Association of REALTORS®	30	25	20.00%	\$63,757	\$79,932	-20.24%	30	25	20.00%	\$63,757	\$79,932	-20.24%
Central Michigan Association of REALTORS®	48	42	14.29%	\$74,464	\$77,905	-4.42%	48	42	14.29%	\$74,464	\$77,905	-4.42%
Clare-Gladwin Board of REALTORS®	22	27	-18.52%	\$83,714	\$51,930	61.21%	22	27	-18.52%	\$83,714	\$51,930	61.21%
Dearborn Board of REALTORS®	164	192	-14.58%	\$62,102	\$83,560	-25.68%	164	192	-14.58%	\$62,102	\$83,560	-25.68%
Detroit Board of REALTORS®	473	1007	-53.03%	\$18,057	\$13,638	32.41%	473	1,007	-53.03%	\$18,057	\$13,638	32.41%
Down River Association of REALTORS®	83	131	-36.64%	\$66,766	\$56,948	17.24%	83	131	-36.64%	\$66,766	\$56,948	17.24%
Eastern Thumb Association of REALTORS®	108	107	0.93%	\$85,964	\$82,301	4.45%	108	107	0.93%	\$85,964	\$82,301	4.45%
Eastern U.P. Board of REALTORS®	12	20	-40.00%	\$106,325	\$86,602	22.77%	12	20	-40.00%	\$106,325	\$86,602	22.77%
Emmet Association of REALTORS®	24	20	20.00%	\$177,874	\$147,623	20.49%	24	20	20.00%	\$177,874	\$147,623	20.49%
Flint Area Association of REALTORS®	436	369	18.16%	\$68,149	\$65,922	3.38%	436	369	18.16%	\$68,149	\$65,922	3.38%
Grand Rapids Association of REALTORS®	801	740	8.24%	\$105,714	\$95,010	11.27%	801	740	8.24%	\$105,714	\$95,010	11.27%
Greater Kalamazoo Association of REALTORS®	189	169	11.83%	\$108,570	\$112,633	-3.61%	189	169	11.83%	\$108,570	\$112,633	-3.61%
Greater Lansing Association of REALTORS®	342	317	7.89%	\$94,136	\$85,717	9.82%	342	317	7.89%	\$94,136	\$85,717	9.82%
Hillsdale County Board of REALTORS®	20	21	-4.76%	\$59,420	\$47,419	25.31%	20	21	-4.76%	\$59,420	\$47,419	25.31%
Jackson Area Association of REALTORS®	114	93	22.58%	\$76,467	\$49,987	52.97%	114	93	22.58%	\$76,467	\$49,987	52.97%
Lapeer & Upper Thumb Association of REALTORS®	96	84	14.29%	\$80,125	\$87,431	-8.36%	96	84	14.29%	\$80,125	\$87,431	-8.36%
Lenawee County Association of REALTORS®	85	94	-9.57%	\$89,928	\$71,009	26.64%	85	94	-9.57%	\$89,928	\$71,009	26.64%
Livingston County Association of REALTORS®	160	124	29.03%	\$142,167	\$151,182	-5.96%	160	124	29.03%	\$142,167	\$151,182	-5.96%
Oakland	488	405	20.49%	\$125,524	\$101,063	24.20%	488	405	20.49%	\$125,524	\$101,063	24.20%
Macomb	470	475	-1.05%	\$99,844	\$89,078	12.09%	470	475	-1.05%	\$99,844	\$89,078	12.09%
Mason-Oceana-Manistee Board of REALTORS®	36	27	33.33%	\$98,111	\$91,235	7.54%	36	27	33.33%	\$98,111	\$91,235	7.54%
Midland Board of REALTORS®	49	25	96.00%	\$139,450	\$115,090	21.17%	49	25	96.00%	\$139,450	\$115,090	21.17%
Monroe County Association of REALTORS®	73	59	23.73%	\$118,753	\$100,814	17.80%	73	59	23.73%	\$118,753	\$100,814	17.80%
North Oakland County Board of REALTORS®	294	259	13.51%	\$123,137	\$105,744	16.45%	294	259	13.51%	\$123,137	\$105,744	16.45%
Northeastern Michigan Board of REALTORS®	27	17	58.82%	\$74,209	\$59,771	24.16%	27	17	58.82%	\$74,209	\$59,771	24.16%
Paul Bunyan Board of REALTORS®	56	53	5.66%	\$77,489	\$61,460	26.08%	56	53	5.66%	\$77,489	\$61,460	26.08%
Saginaw Board of REALTORS®	109	103	5.83%	\$73,575	\$62,767	17.22%	109	103	5.83%	\$73,575	\$62,767	17.22%
Shiawassee Regional Board of REALTORS®	33	45	-26.67%	\$64,039	\$65,227	-1.82%	33	45	-26.67%	\$64,039	\$65,227	-1.82%
Southwestern Michigan Association of REALTORS®	121	120	0.83%	\$120,278	\$94,564	27.19%	121	120	0.83%	\$120,278	\$94,564	27.19%
St. Joseph County Association of REALTORS®	36	32	12.50%	\$83,991	\$77,263	8.71%	36	32	12.50%	\$83,991	\$77,263	8.71%
Traverse Area Association of REALTORS®	93	115	-19.13%	\$174,917	\$136,058	28.56%	93	115	-19.13%	\$174,917	\$136,058	28.56%
Upper Peninsula Association of REALTORS® *	80	60	33.33%	\$84,959	\$79,010	7.53%	80	60	33.33%	\$84,959	\$79,010	7.53%
Water Wonderland Board of REALTORS®	90	61	47.54%	\$82,358	\$66,090	24.61%	90	61	47.54%	\$82,358	\$66,090	24.61%
West Central Association of REALTORS®	53	49	8.16%	\$84,052	\$82,880	1.41%	53	49	8.16%	\$84,052	\$82,880	1.41%
West Michigan Lakeshore Association of REALTORS®	219	172	27.33%	\$176,437	\$94,768	86.18%	219	172	27.33%	\$176,437	\$94,768	86.18%
Western Wayne Oakland County Association of REALTORS®	689	616	11.85%	\$127,668	\$116,220	9.85%	689	616	11.85%	\$127,668	\$116,220	9.85%
<b>TOTALS</b>	<b>6,542</b>	<b>6,601</b>	<b>-0.89%</b>	<b>\$99,905</b>	<b>\$85,585</b>	<b>16.73%</b>	<b>6,542</b>	<b>6,601</b>	<b>-0.89%</b>	<b>\$99,905</b>	<b>\$85,585</b>	<b>16.73%</b>

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

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# Title Companies Must Take Condominium Escrow Agent Role Seriously

*By: Randy Schipper, Attorney, Cunningham Dalman, PC*

Bad economic times sometimes reveal past sloppiness. When there is too little money to go around, people, and their attorneys, look for ways to get more money into the pot. Title companies sometimes end up in the crosshairs. Title companies generally do a very thorough job, both in the conduct of real estate closings and in erecting defenses to potential claims. They also have close relationships with Realtors and developers. This combination, and some human frailties, such as sloppiness, lack of training, or a desire to help a client in a pinch, seem to have led some title companies to make a basic mistake when dealing with closings on the sales of condominium units from the



developer to the first homeowner: failing to retain sales proceeds in an escrow account to pay for the “Must Be Built” items.

The Michigan Condominium Act requires the developer to establish an escrow arrangement through which the proceeds of sales of condominium units from the developer to a buyer are held in escrow until the developer assures completion of "Must Be Built" items. This assurance can be met by providing an engineer's certificate that the "Must Be Built" items have been substantially completed, alternative funding (e.g., a bond) in an amount the engineer certifies as sufficient to complete them, or an engineer's certificate that the cost to complete the "Must Be Built" items is less than the amount already in escrow. The

Act requires a condominium developer to establish an escrow account with a qualified escrow agent. While various entities, such as banks, can serve as the escrow agent, that role is most often filled by a title insurance underwriter, directly or through an agency. If the title company handling the closings has not entered into an escrow agreement with the developer, it should request a copy to identify who the escrow agent is.

Developers have flexibility in designating what items “Must Be Built”. The Act requires that “Must Be Built” items be identified in the condominium master deed, the condominium subdivision plan that is an exhibit to the master deed, or both. The developer can identify as “Must Be Built” only items needed to serve the first few units initially, build those things with its construction loan and then, as those units sell, obtain the sales proceeds and use them to extend infrastructure (e.g., utilities and drives) as units go under contract. However, few give much thought to the issue, identifying all infrastructure as “Must Be Built”, and fewer are willing to turn away a buyer who wants to buy a unit not yet reached by infrastructure—rather than do that, they may try to close on the sale of the unit and take the proceeds to extend infrastructure. When the project continues on track, no one notices the improper release of the escrow funds. But when things go bad and the developer goes under with the “Must Be Built” items not completed, the search for ways to put more money into the pot begins, and the most obvious place to look is the “Must Be Built” escrow. It is money that, by law, should be available. If it is not, the escrow agent may not have a defense to liability and is perceived as having deep pockets.



It is quite easy, from a legal perspective, to avoid such liability: a title company agreeing to serve as an escrow agent pursuant to the condominium act need only refuse to release the sales proceeds until the developer has met its obligations. From a business perspective, maybe it makes sense to keep the developer happy by releasing funds to the developer early.

But bear in mind that the developer making such a request is the one most likely to become insolvent, leaving the complicit escrow agent in the crosshairs. A better response for the escrow agent when such a request is made would be to tell the developer to work with its lender and to amend the master deed to reduce the “Must Be Built” items that must be completed. 

*For more information, contact Randy Schipper of Cunningham Dalman, PC, of Holland at schipper@holland-law.com. He specializes in real property law, including condominium development. The foregoing is intended as general information and not legal advice. You should consult a real estate attorney for specific legal advice if faced with a question about compliance with a condominium escrow agreement and the condominium act.*



# Summary of 2009 Amendment to the non-Judicial Foreclosure Statute (a.k.a. Foreclosure by Advertisement)

by H. Douglas Shepherd IV, attorney, Brandt, Fisher, Alward & Roy, P.C.



House Bills No. 4453, 4454, and 4455 were passed by the House and Senate and were signed by Governor Jennifer Granholm on May 20, 2009. This Amendment substantially modifies the Foreclosure by Advertisement Statute (MCL 600.3201 et. seq.). In its simplest terms, the Amendment created new, previous non-existent, requirements that a lender contact the borrower, prior to commencement of the foreclosure, to allow the borrower an opportunity to meet discuss a mortgage modification. Of course, as is often the case with newly created statutory law, there is much more to the amendment and the devil is in the details.

## What Mortgages are affected?

All Mortgages encumbering primary residences, specifically property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, MCL 211.7cc.

## When did the Amendment take effect?

July 5, 2009. The Amendment has a sunset provision set for July 5, 2011; however, it could always be extended.

## What is required?

The lender or servicer for the lender must send a Notice to borrower prior to commencing the foreclosure.

## What if the borrower is deceased or in bankruptcy?

Great question, but unfortunately there is no statutory exception to the pre-foreclosure procedure made for a deceased borrower or a borrower post bankruptcy. Interestingly, previous versions of the Amendment contained an exception making the pre-foreclosure procedure unnecessary in the case of a deceased borrower; however, for some reason the enacted version removed that exception, at least suggesting some form of modified letter is necessary in the case of a deceased borrower. In practice, a modified Notice is often used for a borrower post bankruptcy.

## What is the Notice required to state?

1. The reason the Mortgage is in default.
2. The amount due and owing under the Mortgage.
3. The name, address and telephone numbers of the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or mortgage servicers.
4. Designation of a contact person ("Modification Agent") that has the authority to make loan modification agreements (as discussed more fully below).
5. The Notice must enclose a list of housing counselors prepared by the Michigan state housing development authority ("MSHDA").
6. That within 14 days of the date the Notice is mailed that borrower may contact the Modification Agent to request a meeting to attempt to negotiate a modification of the mortgage.
7. That the housing counselor can attend the meeting.
8. That if borrower requests a meeting, foreclosure proceedings will not commence until 90 days after the date the Notice was mailed. Although possibly subject to interpretation, the author's opinion is that if the meeting is requested by the borrower, regardless of whether the meeting ever occurs (i.e. the borrower refuses to meet or provide necessary information) or whether any modification is reached, the lender must wait 90 days from the date the Notice was mailed.

9. That if borrower and the Modification Agent reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if borrower abides by the terms of the modification.

10. That if borrower and the Modification Agent are unable to reach an agreement, but borrower meets certain criteria for modification (discussed further below), the foreclosure by advertisement is not permitted, but instead if the lender must proceed with a judicial foreclosure. Judicial foreclosures are typically more expensive and time consuming, as well as subjecting lenders to any discretionary or equitable powers of circuit court judges, who many consider increasingly debtor friendly during our current economic crisis.

11. That borrower has the right to contact an attorney and include the telephone number of the state bar of Michigan's lawyer service and local legal aide offices serving the area where the property is located.

## How is the Notice delivered?

The Notice is must be mailed regular and certified mail/return receipt/delivery restricted to borrowers, to the last known address of borrower.

## Is there any other Notice Required?

Yes, within 7 days of mailing the Notice, a slightly modified Notice ("Newspaper Notice") must be published one (1) time in the newspaper in the county the subject property is located.

## What is the Newspaper Notice required to state?

1. Borrower's name and property address
2. That borrower has the right to request a meeting with the Mortgagee or servicer.
3. The name of the Modification Agent.
4. That borrower may contact a housing counselor by visiting the MSHDA website or calling the MSHDA, along with providing the website and phone number.
5. That if borrower requests a meeting, foreclosure proceedings will not commence until 90 days after the date the Notice was mailed.
6. That if borrower and the Modification Agent reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if borrower abides by the terms of the agreement.
7. That borrower has the right to contact an attorney and the telephone number of the state bar of Michigan's lawyer service and local legal aide offices serving the area where the property is located.

## What happens if the Notice and Newspaper Notice is not served?

Borrower can bring an action in circuit court to enjoin the foreclosure. Practically speaking, a lender's that does not properly serve the Notice and Newspaper Notice is that the subsequent foreclosure would not create insurable title following the expiration of the redemption period.

## What if the Mortgagee previously agreed to a Mortgage Modification?

The lender can foreclose by advertisement if within the previous year they have agreed to a modification under the Amendment.

## How much time does the borrower have to request the Modification Meeting?

Simple question with a not-so-simple answer, as the Amendment contains contradictory terms. Section 3204(c) states that borrower has 14 days from the date the Notice is mailed to contact the Modification Agent to request the Modification Meeting. However, Section 3205b(1) states that a borrower who wishes to participate in the negotiations for a loan modification shall contact a housing counselor within 14 days after the Notice is mailed and the housing counselor shall contact the Modification Agent within 10 days after being contacted by borrower. Based upon these two sections, it is not clear whether borrower has 14 days or 24 days to respond, before the lender is permitted to move forward with the foreclosure by advertisement.

## Is the housing counselor mandatory?

Again, this is another contradiction in the Amendment, but in this writer's opinion requiring a housing counselor seems impractical. Section 3205a(1)(d) states that borrower may request a meeting with the Modification Agent and borrower may request the housing counselor be present. However, section 3205b(1) states borrower "shall" contact a housing counselor from the list provided and Section 3205b(3) further states the housing counselor contacted by borrower shall schedule the meeting between borrower and Modification Agent. Therefore, there is at least the suggestion



that there will be a housing counselor involved. In practice, most borrowers are not contacting housing counselors.

#### What happens when borrower (or the housing counselor) requests a meeting?

When the meeting is requested, the Modification Agent may require that borrower provide any documents that are necessary to determine whether borrower is eligible for a modification. Borrower shall give the Modification Agent copies of any documents requested. Those documents would include pay stubs, tax returns, personal financial statement, homeowner's insurance receipts, property tax receipts and proof of Homeowner's Association fees. The Amendment gives no guidance as to when the documents must be returned.

#### Where does the meeting take place?

The meeting and any later meetings must be held at a time and place that is convenient for all parties, or in the county the property is situated. This writer's interpretation of this section is that the borrower can dictate the meeting is held in the county the property is located. In practice, many lenders are scheduling only telephonic meetings if no objected to by the borrower. This may in fact be adverse to the statutory intent that modification is more likely with face-to-face meetings.

#### What happens at the meeting?

The parties attempt to reach mutually agreeable loan modification terms.

#### What happens if mutually agreeable loan modification terms are not reached?

It depends on whether borrower meets the loan modification threshold under the Amendment.

#### What is the loan modification threshold?

If the ratio of the borrower's monthly housing related

debt to the borrower's gross monthly income ("Housing/Income Ratio") is greater than 38%, borrower exceeds the loan modification threshold. If the borrower's Housing/Income Ratio is 38% or less they do not exceed the loan modification threshold. The Amendment contains no guidance as to how the monthly gross income is to be computed (i.e. previous month's pay stubs, previous year's tax returns) or who's monthly gross income is to be used (i.e. what if the borrower is husband only, but the real estate is owned by husband, wife and father).

#### What happens if the borrower does not exceed the loan modification threshold?

The lender can proceed with foreclosure by advertisement. Basically, if the borrowers Housing/Income Ratio is less than 38% the reason the borrower has failed to pay their mortgage is not the result of excessively high housing costs.

#### What happens if borrower meets the loan modification threshold?

The Modification Agent must use any or all of the following "Modification Techniques", set forth in the Amendment, to modify the loan in an attempt to bring the Housing/Income Ratio to the target of 38% or less:

1. Interest Rate reduction to a floor of 3%.
2. An extension of the Amortization period for the loan term to 40 years or less from the date of the loan modification.
3. Deferral of some portion of the amount of unpaid principal balance of 20% or less, until maturity, refinance or sale.
4. Reduction or elimination of late fees.

#### What comprises the borrower's housing related debt?

Housing related debt includes mortgage principal, interest, property taxes, insurance and homeowner's fees. A common question, which is not clear in the statute, is whether other mortgage debt, for example home equity lines-of-credit are included in housing related debt.

(continued on next page)

Mortgage Modification Scenarios						
General Conditions			Initial Housing Related Debt			
Loan Date			Principal and Interest			
Loan Amount			\$1,537.83			
Interest Rate			Taxes			
\$200,000			\$210.00			
8.50%			Insurance			
\$200,000			\$100.00			
Current Balance			HOA Fees			
			\$25.00			
			<b>Total Housing Debt</b>			
			<b>\$1,872.83</b>			
		Scenario A	Scenario B	Scenario C	Scenario D	
Yearly Household Income		\$60,000.00	\$50,000.00	\$30,000.00	\$24,000.00	
Gross Monthly Income		\$5,000.00	\$4,166.67	\$2,500.00	\$2,000.00	
Household/Income Ratio		<b>37.46%</b>	<b>44.95%</b>	<b>74.91%</b>	<b>93.64%</b>	
<b>MODIFICATION TECHNIQUES</b>						
<b>Technique #1:</b> Lower Interest rate		<i>NO MODIFICATION REQUIRED</i>	6.00%	3.00%	3.00%	
<b>New Total Housing Related Debt</b>			\$1,534.10	\$1,178.21	\$1,178.21	
New Household/Income Ratio			<b>36.82%</b>	47.13%	58.91%	
<b>Technique #2:</b> 40 Year Amortization and Lower Interest Rate			42.04%	\$1,050.97	\$1,050.97	
<b>New Total Housing Related Debt</b>		<i>NO FURTHER MOD. REQUIRED</i>		52.55%		
New Household/Income Ratio				\$1,050.97		
<b>Technique #3:</b> 40 Year Amortization, Lower Interest Rate and Waive/Defer' Late Fees				\$1,015.32	\$1,015.32	
<b>New Total Housing Related Debt</b>				40.61%	50.77%	
New Household/Income Ratio						
<b>Technique #4:</b> 40 Year Amortization, Lower Interest Rate, Waive/Defer' Late Fees, and Deferral of up to 20% of Principal		<i>NO MODIFICATION REQUIRED</i>		\$879.26	\$879.26	
<b>New Total Housing Related Debt</b>						
New Household/Income Ratio						

**SUMMARY:** In **Scenario A**, the Borrower's Housing/Income Ratio is 38% or less, and therefore no modification is required. Lender may Foreclose by Advertisement. In **Scenario B**, Borrower's initial Housing/Income Ratio is greater than 38%. However, Using Technique #1, the Housing/Income Ratio is 38% or less and therefore must either modify or Foreclosure Judicially, if a meeting is requested. In **Scenario C**, Borrower's initial Housing/Income Ratio is greater than 38%, however using Technique #1, #2, and #3 and #4 brings the Housing/Income Ratio to 38% or less. Therefore must either modify or Foreclosure Judicially, if a meeting is requested. In **Scenario D**, same as Scenario C, except even using all 4 Techniques the Housing/Income Ratio is still greater than 38%. Lender is not required to Modify and may Foreclose by Advertisement, even if a meeting is requested.

What if borrower exceeds the loan modification threshold, but even after applying the Modification Techniques the ratio is still greater than 38%?

If after applying all of the Modification Techniques the Housing/Income Ratio is still greater than 38%, the lender can proceed with foreclosure by advertisement. Basically, in this case the borrower's housing related debt is so disproportionate to their income that even a mortgage modification wouldn't bring the payment to within the threshold Housing/Income Ratio. This is typically the case when a borrowers income has changed substantially, or when there is no income as a result of job loss.

**Are there exceptions to the Loan Modification programs and Modification Techniques that must be used?**

Yes, if the loan is pooled for sale to an investor that is a governmental entity or is sold to a governmental-sponsored entity, the Modification Agent shall follow the modification guidelines dictated by that governmental agency.

**May the borrower obtain the calculations used to determine if they exceeded the threshold and whether they qualify for a "required" loan modification?**

Yes, the Modification Agent must provide a copy of any calculations used to determine if the borrower qualifies, and upon request, must provide a copy of the program, process and guidelines under which the determination of whether borrower qualified.

**What if borrower doesn't execute the loan modification documents?**

The Mortgagee is authorized to proceed with foreclosure by advertisement if the Modification Agent has in good faith offered borrower a loan modification prepared in accordance with the Amendment and within 14 days of borrower receiving the loan modification they have not executed and returned the agreement. This is the only exception found to the rule that the lender must wait 90 days to start the foreclosure if the meeting is requested.

**What happens if the borrower exceeds the loan modification threshold, and qualifies for a loan modification (e.g. Modification Techniques bring the ratio to 38% or less), but the lender is not willing to agree to the modification?**

The Mortgage must be foreclosed judicially.

**So, how will this change the actual foreclosure process?**

Once the pre-foreclosure procedure has been followed, the foreclosure by advertisement procedure is identical. Except that from a Title Underwriting standpoint, prudent title companies are requiring the an Affidavit attached to the Sheriff's Deed setting forth that the lender complied with the Amendment, along with specific details of which exception the lender is utilizing in order to proceed with the foreclosure by advertisement. For example:

- a. An Affidavit Stating the property is not a primary residence.
- b. An Affidavit stating the Notice and Newspaper Notice was sent to borrower, along with the return receipt and Affidavit of Publication of the Newspaper Notice, and that borrower has not contacted the Modification Agent in 24 (or 14?) days.

An Affidavit that the meeting did not result in a loan modification and borrower did not qualify for a required modification.

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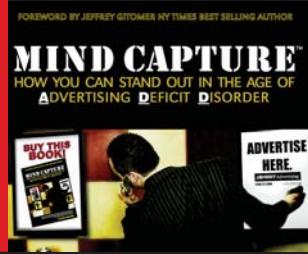
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# MIND CAPTURE MARKETING:

## 10 Smart Ways to Engage and 'Capture' More Customers in 2010

by Tony Rubleski - President, Mind Capture Group



With 2010 in full swing I felt that it would be valuable to assemble a handy checklist of smart ways to not just engage, but capture more customers during the rest of 2010. Yes, it will require continued hustle, innovation, and doing some unconventional things in a tight economy, but the payoffs can be enormous to your bottom line when implemented.

**#1. Stay in better touch with them.** Once a month at a minimum your customers and key prospects should be hearing from you in some capacity. In the age of Facebook, LinkedIn, blogs, and Twitter, weekly communication is recommended and easier than ever to pull off. Put up a barbed wire fence around your customers and stay on their radar. The lifetime value of a good customer warrants frequent contact and a relationship mentality.

**#2. Stay relevant.** Stay updated on the trends and issues impacting your top clients. Read their trade mags, blogs, attend their conferences, and ask them directly what challenges and opportunities they see in the coming year. Use this information to build a better bond and new offers to better serve them and the referrals they can bring you in the upcoming year.

**#3. Communicate optimism.** People like to do business with people they like and trust. A positive attitude is something only you can control. It does have a major impact on your business and people are attracted to happy, upbeat people. Make sure your staff understands the impact it has on the business and their paycheck. I've always believed that in most sales and customer service roles, that you hire for attitude (positive) and train for skills. There's a lot of good talent available these days and to accept negative people or employees is not a wise strategy when sales must now be earned and nurtured with greater care.

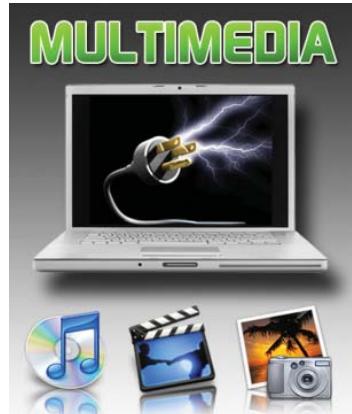
**#4. Educate, educate, educate.** People are buried in information. The Internet makes it daunting these days to sort out what's real and relevant versus fiction and time traps. Make sure that you continually remind people of the benefits you provide and the degree of skill, training, knowledge, and support you provide. Customers aren't mind readers and we must engage, remind and educate them within our communications as to the unique value we provide versus the competition.

**#5. Use multiple media.** Always remember that you are not your customer. The reason to use multiple forms of media is that people prefer messages and content delivered in multiple formats that best suit their busy schedule and lifestyle. For example, some people love mail, many never read it. Others prefer email, while others would prefer a brief text message. Continually work on making it easy to communicate and do business with your customers, prospects and referral partners. It's stunning how many businesses that make prospects jump through hoops or go through multiple steps to do business with them. They're losing sales, repeat business and referrals and it's their own fault.

**#6. Use event marketing.** People like to meet, have fun and gather with others. We are social creatures. Events are a great way to thank, reward, and inform your best customers. By promoting or hosting an event(s) throughout the year you gain many benefits. With face-to-face time at a premium these days, it's also a great way to meet new people that your customers bring as guests, many of whom are often great prospects for your product or service.

**#7. Pile on value.** People always want to feel like they got a great deal. With competition being fierce and many firms lowering prices and profits to try and stay alive, you must continue to seek out ways to make and position your company's products and services as the best option. Get creative and brainstorm new product bundles, bonuses and special perks to help you clearly differentiate from competitors that may be cutting corners or offering diminished levels of service and support. Continually remind your best customers of the old adage that 'you get what you pay for'.

**#8. Seek out input and feedback.** Customer feedback is the breakfast of champions. Encourage it, welcome it, act on it and share it with others. In the age of social media and instant access, a happy customer can promote you to thousands of people in ten seconds online or go on a rant and damage credibility based on a problem that may be real or overblown. Monitor your name, company, and seek feedback each day in both online and offline interactions. The simplest way to do this is by setting a 'Google Alert' up on your name and company to pick off online conversations and comments being posted. Tracking and managing your online reputation is a non-negotiable and should be done on a daily basis.



**#9. Employ humor in your marketing.** I'm amazed at how boring most companies are these days. They often seem like zombies that have little emotion, concern, or passion for what they do and provide to their customers. If you can't engage people quickly, you're in big trouble. When you sprinkle in humor to your communications, not only do people appreciate it, but they remember and talk about you. Isn't this one of the primary goals in marketing? Simple advice, yet few people and firms employ it on a consistent basis to reap the main rewards of positive word of mouth, increased sales and referrals.

**#10. Implement with speed.** We live in the age of digital. Ready, fire, aim is often what growing firms employ to test new ideas and stay ahead of the competition. I'm not advocating being sloppy here, but simply testing new ideas and promotions under defined deadlines so you can gain instant feedback and keep momentum working in your favor. There are millions of great ideas created each day, and very few that actually get implemented. What a tragedy. Speed is your friend in marketing, and taking action sooner, rather than later, is often the best approach versus waiting for the ideal, perfect conditions to magically appear.

There you have it! Ten smart ways to engage and 'capture' more customers in 2010 and beyond. ☺

*Tony Rubleski is the president of Mind Capture Group based in Spring Lake, MI. He will release his third book in the bestselling 'Mind Capture' series in the spring of 2010. For comments or to receive his free marketing letter he can be reached at: [Tony@MindCaptureGroup.com](mailto:Tony@MindCaptureGroup.com).*



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## MLTA Upcoming Events

April 21 Spring Education Seminar  
*Mt. Pleasant, MI*

May 11 Spring Education Seminar  
*Livonia, MI*

July 18-20 MLTA Summer Conference  
*Bay Harbor Resort & Marina*  
*Bay Harbor, MI*

October 13 Fall Education Seminar  
*Mt. Pleasant, MI*

November 9 Fall Education Seminar  
*Livonia, MI*

## ALTA Events

Oct. 13-16 ALTA Annual Convention  
*Manchester Grand Hyatt*  
*San Diego, CA*



### MLTA 2010 Summer Convention July 18-20

Mark your calendars for the 2010 Summer Convention! The Convention Committee is putting the finishing touches on the agenda for the 2010 MLTA Summer Convention. This year's convention will be held at the Bay Harbor Village Hotel and Conference Center and will feature some excellent speakers and lots of fun for the entire family. There will even be a concert featuring a band of MLTA members. They have not come up with a name yet but a few suggestions have been, "Creditors Rights" and "Blackacre". Make sure to get the convention dates on your calendar now—you will not want to miss it!

### Sponsorship Opportunities and Vendor Booths Available Now!

2010 MLTA Summer Convention  
Bay Harbor Resort and Marina - July 18th - 20th

Planning for the MLTA Annual Summer Convention has already begun!



Don't let your company be left out in the cold. Secure your sponsorship or vendor booth today. This is a great way to showcase your company!

Call Marcy Welburn at **517-318-4390**  
[www.MiLTA.org](http://www.MiLTA.org)

