



THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

WINTER 2008

New Final RESPA Rule Significant Victory For Title Industry

by Edward C. Miller, Chief Counsel & Vice President of Public Policy, American Land Title Association

HAPPY HOLIDAYS
from the MLTA
Title Examiner Staff!

**See back cover for
information on
Legislative Day in
Lansing!**

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The Department of Housing and Urban Development (HUD) released its final rule on the Real Estate Settlement Procedures Act (RESPA) on November 12, 2008. The final rule and accompanying commentary is 341 pages long. HUD accepted many of the recommendations made by ALTA in its comments, testimony before Congress, and many meetings with the agency. Significantly, HUD has shortened the GFE and HUD 1/1A, dropped the closing script, volume discounts, and the "optional" reference to owners' title insurance, extended average cost pricing to all settlement service providers; and provided a right to cure for amounts in excess of tolerances and for HUD 1/1A errors. On the negative side, the rule retains disclosure of the agent/underwriter premium split on the HUD 1/1A. ALTA made strong arguments that this is a private contractual agreement between commercial entities that should remain private, and that disclosure will have anti-competitive repercussions that could result in higher prices for consumers. But HUD determined that consumer disclosure of this split is more important. It is interesting to note that these disclosures have been required in Massachusetts for several years now. Also, historically, real estate practitioners have had to disclose their commission splits. House Financial Services Committee Chairman Barney Frank also strongly favors this disclosure. This requirement will give agents the opportunity to explain all the services performed to complete the closing and issue the title policy. ALTA is working on messaging documents that will help its members with this explanation and help distinguish the significant efforts expended by title agents versus the straight "commission" other insurance agents receive for the sale of their insurance products.



Most of the new rules' requirements will become effective immediately. But the new GFE and HUD 1/1A won't be required until January 1, 2010, although they may be used anytime before then. If the new forms are used, all requirements of the rule must also be followed, such as tolerances and the agent/underwriter split disclosure.

This document will summarize how HUD finalized the rule in areas of concern to the title industry. More detailed analysis and informational material will be made available as completed. References to appropriate pages in the rule explanation are contained in parentheses.

- The Closing Script has been dropped from the final rule. The HUD 1/1A will contain a new third page that includes much of the comparison chart that the closing script contained. Originators are required to provide all information needed to complete the comparison chart and loan terms disclosure. It is expected that lenders will provide a copy of the GFE with the closing instructions. Although this will result in some increased preparation time for closing agents, there will be no reading and explanation of a closing script. (106)

(Continued on page 2)

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(Victory for Title Industry - Continued from front)

• The explicit volume or negotiated discount language has been removed from the final rule. HUD explained that although they believe these discounts are not currently a violation of RESPA as long as they are passed on to the consumer, they will continue to explore methods to lower consumer costs outside of this rule making. (117) The term "optional" has been removed from the description of owners' title insurance on both the GFE and HUD 1/1A. It explains that "You may purchase an owner's title insurance policy to protect your interest in the property." (24 and 104)

• The final rule will allow all settlement service providers to utilize average costs for services excluding any service that is based on the value of the property or loan. This includes any type of insurance. But fees for services such as credit reports, courier fees, etc. can be average priced. There is a three year record keeping requirement and the total average costs over the utilized time period must not exceed the total paid for those services. (125)

• Tolerances remain in the final rule. Origination and lender costs are subject to a zero tolerance. They may not increase. Settlement services recommended by the lender are subjected to a ten percent tolerance between the GFE and closing. Title charges are subject to this tolerance if the lender recommended title company is chosen by the borrower. The tolerance applies to the sum of all the included settlement services. Individual services may exceed the tolerance as long as the total remains under ten percent. Recording fees are now part of the ten percent category while transfer taxes remain in the zero tolerance category. (63)

• Right to cure is available to lenders if they repay the consumer any charges that exceed tolerances on settlement services estimates on the GFE. Otherwise, the overages will be considered a violation of RESPA. The onus is on the lender for repayment and they have 30 days after closing to discover and repay the overages. Closing agents also have 30 days to cure any errors or omissions on the HUD 1/1A. (75)

• The GFE and HUD 1/1A have been amended. The GFE has been shortened to three pages from four. The HUD 1/1A now has references on each line to the corresponding area of the GFE for easier consumer comparison. The HUD 1/1A has a new third page that includes a chart comparing the amounts listed for particular settlement costs on the GFE with the total costs listed for those charges on the HUD-1. (104)

• The HUD 1/1A continues to require disclosure of the agent/underwriter split, even after strong arguments made by ALTA and others against it. HUD determined "that this breakdown will help consumers better understand their title charges. (104)

• Instructions for completing the HUD 1/1A and GFE begin on page 163.

The new rule will result in additional burdens on the title insurance industry and its real impact will need to be judged as it is put into practical use by the industry. But it is significantly improved over the original proposed rule. ALTA will continue to work with other industry and consumer representatives to ensure that the transition to this new rule is fair and as cost efficient as possible for our members and consumers.

To review the rule, new forms and economic analysis please follow this link:

http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm 

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

MLTA Member Spotlight

Daniel L. Grimshaw

Owner/Examiner

Mid-State Title Services, Inc.

Tuscola, Saginaw and Bay counties

MLTA Involvement: I have attended nearly all MLTA seminars since 1986. I was a speaker at the 2007 seminar on Manufactured Housing.



Personal Interests: I have been traveling and singing Southern Gospel music all across the Midwest since 1972. Currently I sing with one of my six brothers and one of my eight sisters in "The Grimshaws". As a Christian, I firmly believe we must we must let our faith control how we do business and even with whom.

Something About You: As the newly elected Register of Deeds for Tuscola County. I plan to make the office more friendly and stop the extra-legal rules for recording currently being used. My hope is this is only the first step in the political arena.

Judy Sasfy

Co-founder and Co-Manager

TiTAN Referrals

National, Based out of Michigan



MLTA Involvement: Member of the convention committee. Have attended several of the past seminars and conventions. Conventions are a great place to network.

Personal Interests: My husband Cliff and I enjoy golfing.

Something About You: I won the "Title All-Star's Title Sales and marketing Person of the Year" in 2007.

Welcome New Members

Diversified National Title Agency, LLC (*East Lansing*)
 Brent Warner

The Closing Office Title Agency, LLC (*Grand Rapids*)
 Wesley Parkinson

Kathleen Kitchen

President/Owner

Antrim County Title, Inc.

Antrim County



MLTA Involvement: I have attended MLTA seminars since 1994.

Personal Interests: Family, boating, snowmobiling and reading.

Something About You: Antrim County Title, Inc. will celebrate our 10th anniversary on March 1, 2009 and my husband Mel & I will celebrate 11 years on May 15, 2009.

Bob Wuerfel

President

Lighthouse Title Group

Ottawa County - Holland



MLTA Involvement: Currently, I serve on the Board of Directors for the MLTA. Also, I Chair the Communications Committee, which includes the responsibility of the MLTA Title Examiner, of which I am also Editor. In the past I was also Co-Chair of the Education Committee, was a Presenter at a MLTA Spring seminar a few years back and have participated in the Agent/Abstractor Committee. In addition, I enjoy contributing articles and information to the Title Examiner.

Personal Interests: During the summer, I enjoy camping with the family, something that we've done for the past several years and look forward to a few more while the kids still enjoy it ☺. I am also a fan of NASCAR where my two favorite drivers won 2008 championships in their respective divisions - Jimmie Johnson in Sprint Cup and Johnny Benson in Craftsman Truck Series. Besides camping and NASCAR, I am an avid Train enthusiast of both the real and hobby varieties. Also just spending time with the family is key and attending the kids various music, academic and sporting events throughout the year.

Something About You: I've been in the Title Industry over 20 years, and was hired out of Hope College by Ed Marsilje of the Title Office (at the time). Hope College is a small college in Holland, but there are many graduates from Hope that are in the Title Field, some are names that you may know and find familiar: Ed Marsilje; Jerome Jelinek; Kevin Kossen; Michael Goyne, Jeff Beyer and myself. Must be something in the Hope College "Chain Of Title" that draws us into this industry. ☺

ON THE MOVE...

TiTAN is proud to announce and welcome Eric Wetherington

as Director of Sales and Marketing. In this role, Mr. Wetherington will be responsible for contributing to the aggressive growth of the company on a nationwide scale. He joins TiTAN with over 12 years of experience in title insurance, sales, and marketing, having worked with independent agents and underwriters. 

*If your firm would like to share information in this section
email jsmalldon@lighthousegroup.net.*

HOW TO PREPARE

for the Market in 2009

by Judy Sasfy, Co-founder and Co-Manager, TITAN Referrals

- Who are the customers for title work now?
- What types of orders will they be placing?
- What types of product will they need from me?

Let's take a minute and try to answer some of these questions.

Lenders

If your customers are lenders, you will be seeing orders for foreclosures, refinances, and various out of state orders. The foreclosure orders generally begin as searches and then grow into closings down the road. There are still some people refinancing today because they have been unable to sell their homes and move. In Michigan, there seems to be a large opportunity for out of state orders. Many of these orders are for second homes in the Sun belt states. There are still thousands of people who enjoy the beautiful Michigan summers, but are no longer willing to put up with the long, cold winters. Often these folks want to work with a local Michigan lender to handle the purchase or refinance of their second homes. Is your agency prepared to handle these orders in a profitable manner?

REALTORS

Today's REALTORS are desperately in need of help on the short sales in their market area. In too many cases the loan balance is higher than the value of the property right now and the seller is unable to come to closing with a check. REALTORS may need to rely on their title agents to supply them with lien holder information so that they can try to negotiate a short sale.

Builders and Developers

Many builders are sitting on land right now, waiting to build until the economy takes a turn for the better. The days of dozens of spec homes being built are gone for the time being. Builders and Developers are leaving their normal trade areas and looking for regions with stronger growth where they can continue to build. This may require you to expand your coverage area in order to maintain relationships with key customers.

The Aging Market

With the stock market taking the hit that it has, many of our elder citizens have lost a great deal of the value in their retirement accounts. They are turning to the equity in their homes to keep them afloat. Title agents need to become experts on handling Reverse Mortgages so that these transactions can proceed as smoothly and quickly as possible.

Buyers and Sellers Relocating

Many people are losing their jobs in our state and are being forced to relocate to other states that are not experiencing the steep economic downturn that we are. Texas is a prime example where the real estate market has remained flat while other states have experienced declines of over 35% in the last year. Will your agency be able to close a back to back deal for someone selling in Michigan and buying in Texas? If you can save a buyer or seller the cost of a plane ticket just to attend a closing in another state wouldn't that be a great service to offer?

In conclusion, as a title agent in today's market, you need to diversify your business to offer more services to your customers. You can start by identifying what is required for each customer segment and then figure out how to provide what the customer needs and wants. Everyone knows that the title industry is changing. We now have to become experts in the Short Sale and Reverse Mortgage. Challenging markets like the one that we are experiencing now are often hard to navigate through. This type of market generally brings a drop in the number of agents and the development of new business practices that prove to be of great benefit to the consumer are going to be the agents that survive. Stay focused on your customers needs, don't be afraid to try something new and hang on for the ride.

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the web at www.softprocorp.com**

Views from the Top

by Lester Sam Hill

Well, ain't this a fine pickle we find ourselves in; would the last one to leave Michigan please turn out the lights?

Me and my partner Gordie Gillespie are happy campers that we have our law shingle hanging out over the door. If the ole' title insurance business gets any slower, me and Gordie are gonna take turns examin' titles that we don't even have orders on so we'll be ready when the business comes back. I am 62 but Gordie is only 51 so we are figurin' there is a good chance he may see the turnaround.

Thank goodness the dang election is over. Most important, me and Gordie lost our bid to have Darin Dornpopper elected Drain Commissioner (see the last View). Seems the incumbent took exception to the way we were handling the write in campaign and got Judge Gobberding to agree. Oh well. Hey, speaking of the campaign, bet you folks didn't know we can almost see Alaska from our office! Makes me and Gordie neighbors to Moscow the way we see it.

How about the mergers of those underwriters? Just when me and Gordie were gettin' ready to report the three policies we wrote last month, we gotta wonder where the heck we are gonna send the premium and report.

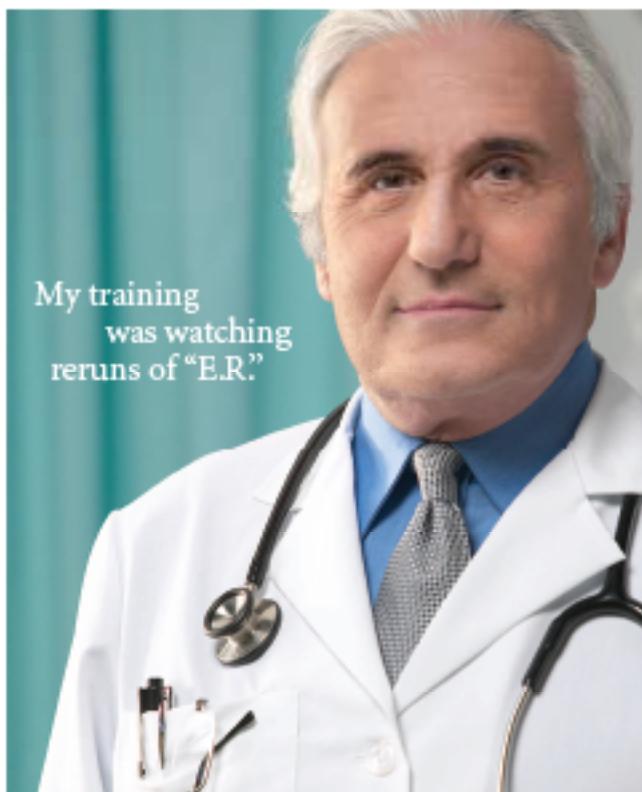
Maybe we will just hang on to it like the old days until somebody comes callin' for it. Naw, better send it straight away. I think they may need the money more than we do.

Me and Gordie are thinking that this state association of ours ought to be writin; a letter or two to the new Prez, to see if we can get in on all this money flying around from Washington. We see our Guv is on some committee or another for the new Prez so I am thinking it ain't what you know, it's who, so maybe we can cash in. Gordie and me would be happy to volunteer for this letter writin' if your likin' our style.



Well, anyway, I will be talking to you again soon, 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



Some things are not what they seem. Don't assume that every title information provider has the skills and resources to get the job done - the right way. In today's challenging marketplace, Kasparnet continues to grow and excel in delivering automated search and traditional title products. Our industry-leading quality insurance process gets you to the closing table with fewer hassles. At Kasparnet we have earned our 20-year reputation of delivering accurate and innovative products.

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LEGISLATIVE COMMITTEE

MLTA Legislative Day - February 11, 2009

The MLTA Conference Committee felt that the time was right to make a change to the format of the Mid-Winter Convention. The Committee also believes that the MLTA must remain focused on our legislative priorities if the title industry is to remain viable in the political process. The chance to meet with your legislators face-to-face is a great benefit and great opportunity for the land title industry.

Therefore, the Mid-Winter Convention has become the MLTA Legislative Day, a one-day event held right at the Michigan State Capitol.



This free event to members will begin at 9:00 a.m. at the Michigan State Capitol. The MLTA Legislative Committee will be mailing you a "Talking Points" bulletin explaining the important issues facing our business. MLTA will hold a legislative briefing prior to breaking up into groups to visit the offices of our State Representatives.

Lunch will be served inside the Capitol and all legislators and their staff are invited to attend. Following lunch, the groups will then visit Senators in their offices.

MLTA can not stress enough the importance of interacting with your legislators. This is a free event to members, with everyone encouraged to attend. Watch the MLTA website for registration information available soon.

Those attendees that would like to stay over night, please contact the Lansing Sheraton directly by calling 517-323-7100. The Sheraton is located at 925 South Creys Rd, Lansing, 48917. We will have a small cocktail reception at the Sheraton on February 10, 2009.

EDUCATION COMMITTEE

by Allan G. Dick, COO, Best Homes Title

How about that Ed Rybczynski, our feature speaker at the Fall Educational Seminar in Mt. Pleasant? He certainly entertained us with his heart-felt observations and personal experiences. And Doug Smith revisiting Short Sales was most appreciated, as was Lynn Sagar's explanation of Closing Protection Letters (CPLs) a/k/a Insured Closing Letters. The last minute arrival of our Bankruptcy presentation, courtesy of Rick Sundquist, ran long to allow for Q&A, squeezing out a "Trust" section to be presented by yours truly and Gregg Nathanson, including a discussion on Land Trusts – sorry. But, with limited time, I did not feel that we would do the trust related topics justice, especially anticipating a number of questions. (I guess we over-booked.)

But, not to worry, we have moved that segment into the morning agenda of the 2009 Spring Educational Seminar with ample time for discussion and Q&A. Other topics expected to be covered include former railroad properties and the entire afternoon devoted to foreclosures, REO sales and related topics. As always, co-chairs Dawn Patterson and Sarah Sutton-Maddox, and board liaison Allan Dick welcome your suggestions for subjects to be covered. See you in April.

STANDARDS COMMITTEE

The Michigan Land Title Standards committee has completed its work on the 6th Edition of the Michigan Land Title Standards. The 6th edition includes 29 Chapters, 261 Standards and a comprehensive index. The 6th edition project began in 1998. Every existing standard, and the case law and statutory authority for each standard, and the problems were reviewed. Many new standards were also added. The Real Property Section of the State Bar of Michigan decided to make the 6th Edition available to everyone. The 6th edition is now on line!

Here is the link:

<http://www.michbar.org/real/property/LTS6/Preface.pdf>

Anyone can also Google: Michigan Land Title Standards and hit the link for the 6th Edition. Hard copies of the Michigan Land Title Standards are also available through the State Bar of Michigan. The cost of a hard copy with binder is \$122.64. Here is the link to order a hard copy: <http://www.michbar.org/realproperty/landtitle.cfm>

MEMBERSHIP COMMITTEE

We are writing to summarize the results of our Membership Committee meeting in Mt. Pleasant last month.

1. The Board approved the Membership Committee's proposal for soliciting new members.
2. Kindsvatter's office is in the process of obtaining records from the State of all licensed title agents. From there, it can be determined which agents are members and which are not yet members. Once the list is whittled down, we can target the licensed non-member agents by implementing the 3-prong contact proposal. This will be your opportunity to send emails and follow up with telephone calls to recruit potential new members.
3. Each new member will be appointed a "mentor". The mentor will be responsible for making the new member feel "at home" in the MLTA, explaining benefits and encouraging the new member to take advantage of opportunities for committee involvement, publications and the like. When a company applies for membership, they need a current member as their sponsor. Each new member's sponsor will be the new member's mentor, too.
4. The MLTA Board has asked our committee to develop a packet of welcoming information. We discussed the existing membership benefits brochure and a one page summary of member benefits. We should consider what else to include in the welcome package.
5. The MLTA Board has asked our committee to develop a "procedure" for welcoming new members. The idea is to develop not just a welcome packet, but

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

a checklist, and possible timeline to provide all mentors of new members. The mentor would then know what they need to communicate to the new member they are mentoring, and when. This would include encouraging the new member to join one or more committees, write an article for The Title Examiner, donate to the Pac, attend seminars, and the like.

6. MLTA is forging ahead with the offer of 1/2 year membership with the payment of 1/2 year dues. For anyone who signs up before December 31, they receive the additional benefit of membership for the rest of 2008 "for free".
7. Chris Kindsvatter updated us on the status of delinquent members.
8. There was a conversation on spending more time and energy retaining existing members, and less time and energy recruiting new members.
9. There was a conversation about what rate to charge members and non-members, respectively, for education seminars.
10. There was discussion concerning the Ohio and Indiana LTAs. Each has mandatory continuing education and charges significantly more than the Michigan LTA for its education seminars. The key word is "mandatory".
11. We discussed webinars and how those might fit in, without unduly limiting attendance and networking at physical meetings, and limiting the amount of people in one office who might stealthily participate.
12. Finally, there was a discussion of the MLTA website and how members could make greater use of it. One idea was to somehow link the website and The Title Examiner so that you could access one while viewing the other. As always, your comments and participation are enjoyed. ☺

County Historical Society Names Historic Village after Allegan's John Pahl

By Walt Kaechele, Allegan News, Senior correspondent

Resident Allegan County Historian John Pahl, (and retired MLTA member), was honored by the Allegan County Historical Society Thursday, November 20, 2008 for his years of dedication to preserving the history and heritage of Allegan County. In a celebration featuring cake and a talk by another recognized historian Larry Massie, the historical society officially announced the renaming of the Historical, (or Pioneer) Village housed on the grounds of the Allegan County Fair to be the John Pahl Historical Village.

When Pahl was asked what he thought of the new name he said, "It is very humbling. I never expected anything like this. I know I got old and things like this happen, but it was quite a surprise. I've always been interested in history. As a kid I loved to find arrowheads and things like that, so I've always had this interest in history."

Pahl said his 57 years of working in the abstract and title industry for Allegan County gave him a vast background into the people who owned property in Allegan. It also must have led him to some of the most historic buildings in Allegan County and the need to preserve them.

He said, "Joe Armstrong and I got the idea of preserving historic buildings in 1961. We could see some of those grand old buildings around the county becoming rundown and destroyed and thought we should do something about it. We felt the idea of moving them to the fairgrounds and preserving them in an open history area at the fair would work. Well, the fair wasn't very keen on the idea at first, but they had an exhibit in a tent of some ox-drawn farm equipment and they had a person with a counter in there and they counted all the people that came into the tent. When the fair ended, they had counted 35,000 people who came through the tent and the fair board then thought it was a pretty good thing."

Historical society president Brad Fisher, president of the county historical society said, "This whole village name situation started early this year at a board meeting. I believe that I brought up the question as to the official name of the village.



Allen Philley (left) with historian and retired MLTA member John Pahl celebrating the renaming of the village on the fairgrounds as the John Pahl Historical Village.
(Photo by Walt Kaechele)

There were some signs that said the village name was the Pioneer Village and we always referred to it as the Historical Village.

"Allen Philley said something to the effect that John Pahl always wanted to have the village recognized with an official name like Walnut Grove or Riverbend. So we decided to have a 'Name the Village Contest.' We made little contest sheets and them filled out at the museum and the fair. After the fair, we compiled a list of names and narrowed it down to five choices—Allegan Remembrance Village, John Pahl Historical Village, Pioneer Village, River Grove Village and Somewhere in Time Village."

"At our Oct. 16 general meeting, the members voted and selected the name 'John Pahl Historical Village.'"

The society announced the new official name at last month's society meeting where Pahl was the featured speaker and, according to Fisher, Pahl was humble in accepting the honor, and felt he had not done anything to deserve the honor.

The public will be invited to an official ribbon-cutting for the new name next spring. Reprinted with permission from Allegan News. ☺



Traversing the Law – The Boundary Surveyor as Judge & Jury

by Jeffery N. Lucas, PLS, Esq.

As we have discussed many times in the past, there is a line of thinking in the surveying community that the surveyor cannot play judge and jury over the location of a boundary line—that only the judge can determine what the boundary line is and where it is located.

The problem with this line of thinking as once again demonstrated by our case-in-chief, *Jackson v. Bownas*,¹ is that the general public is under the impression (and rightly so) that the land surveyor establishes boundary lines and also identifies boundary lines that have already been established. If these people were aware that this is the furthest thing from the minds of many surveyors performing boundary surveys, then they might not commission a survey of their property in the first place. They certainly would not rely on the results of the survey as establishing anything except, maybe, one possible location of a legal description.

Another problem with this line of thinking is that once the land surveyor blazes the lines, sets (or recovers) the monuments and produces a map (or report) of the results of the survey, property owners think that their boundaries have been established and/or recovered. In other words, the property owners have just had their day in court and an adjudication of the true boundary between them. In many instances, they act on the results of the survey to either their benefit or detriment. The surveyor, whether intending to or not, has just been judge and jury over the boundary line in question and the associated rights of the parties. In the vast majority of cases, there is little or no controversy, but those aren't the cases we hear about. The ones we hear about are where controversy arises as a result of the survey, and the surveyor, wittingly or unwittingly, played judge and jury over the location of the boundary between the landowners.

Facts in the Case

As with all cases that reach the reporters (usually an appellate court opinion), the facts as established at the trial court level are the facts in the case. Once established by the trial court, the facts are the facts and then the court (and the appellate court on review) looks to see how to apply the law to those facts.

This is what makes reading court cases so instructive. We are given a set of facts and the court tells us the applicable law. The courts write these opinions and publish them in bound volumes to instruct and to educate both lawyers and other professionals, as well as the general public, on what the law is and how to apply it under a given set of circumstances. After somewhere in the neighborhood of 1,500 years of English common law and another 200 years of American common law, certain themes and general principles have emerged, especially in the realm of property and boundary law. That is what this column is about and we will continue to “traverse” this law until we have explored every corner of property and boundary law, and other related subjects.

In our case-in-chief, we have two neighbors (adjoining lot owners) living in two separate subdivisions in Blount County, Tenn. The two subdivisions were created out of what used to be two adjoining farms, the “Francis Farm” and the “McGill Farm”; the controversy surrounds the common line between them. Before the farms were developed into subdivisions, the common line between the two farms was marked by an old fence, although the fence was not called out in either of the respective deeds. At the time when the controversy arose between the two neighbors (Mrs. Jackson and Mr. Bownas), the fence (or parts of it) was still in existence and had been for the preceding 60 years.

In addition, locals were still around who had knowledge of the boundary line between the two old farms. The son of the prior owner of the McGill farm testified at trial that his family had owned the farm for 50 years and that he had personal knowledge that the fence had always been the boundary between the two farms. Another witness, who at various times held an ownership interest in both farms, testified concerning the fence and identified it as marking the boundary between the two farms. Mrs. Jackson's late husband, Robert Jackson, was one of the developers who bought part of the Francis Farm to create the subdivision in which she still resides. Mrs. Jackson herself had firsthand knowledge of the location of the fence and that it had always stood as the boundary between the old Francis and McGill farms.

Surveys were conducted over the years as the property was developed and as lots were bought and sold. Many of these surveys were introduced into evidence at trial. An examination of these surveys revealed, to the court at least, that as time marched along the various calls and monuments marking the common boundary changed, with the exception of the fence. And the surveyed common boundary moved away from the fence, over time, until it finally ended up at Mrs. Jackson's back door.

Bownas Orders a Survey

In 2002, Mr. Bownas hired E.H. Pitts to survey his lot, which was developed out of the old McGill Farm property. The Bownas lot adjoins the Jackson lot, which was developed out of the old Francis Farm property. The results of the Pitts survey placed the common boundary between the two lots, literally, at Mrs. Jackson's back door. Subsequently, Mrs. Jackson found Mr. Bownas in her backyard, "trying to determine the property line." She explained to Bownas at that time that the old fence was the boundary line between their respective properties. Not satisfied with her explanation, Bownas ran a string line along the surveyed boundary line and told Mrs. Jackson that he planned to erect a fence.

On hearing this, Mrs. Jackson hired an attorney who wrote to Bownas on April 12, 2002, "advising him that the property line was the old fence line and if he continued to trespass or build a fence on Mrs. Jackson's property, she would ask the court to order removal of the fence and award money damages."²

Armed with the 2002 Pitts survey, without further notice to Mrs. Jackson, Mr. Bownas erected a fence on July 1, 2002, across what heretofore had been Mrs. Jackson's backyard. In the process, Mrs. Jackson's wildflower garden and landscaping were damaged. While installing the new chain link fence, the crew hired by Mr. Bownas cut Mrs. Jackson's telephone lines and electric lines. On the day that happened, Mrs. Jackson asked Mr. Bownas if he knew he had cut the telephone line, to which he replied "So I know it now." Mr. Bownas placed a "Posted: Keep Out, No Trespassing" sign on the fence eight feet in front of Mrs. Jackson's sunroom. The new fence was eleven (11) inches from the rear entrance to her home.³

Surveys Reveal Latent Ambiguity

As we have discussed on many occasions, the results of surveying activity often reveal latent ambiguities in the written documents of conveyance. This case is another example of the principles involved. When the written documents of conveyance (e.g., deeds along with survey plats), contain a latent ambiguity, the court has no choice but to dump the documents and look to extrinsic and parol evidence in order to determine intent.

Pitts missed this fact during the course of his survey and testified that the monuments along the disputed line had remained consistent over the years.

According to Mr. Pitts, while the calls for the boundary line in dispute may vary among the surveys and plats due to use of different bearings systems, the monumentation on the ground i.e., iron pins and concrete monuments, have remained constant. Therefore, according to Mr. Pitts, there is no real disagreement or inconsistency among them.⁴

Both the trial court and the appellate court on review disagreed.

The Court further finds that many surveys of the various property (even by the same surveyor) are totally inconsistent with one another and that pursuant to applicable Tennessee law, it is the Court's obligation and duty to look to the long established boundary line between these parties as being their true, correct and accurate property line.⁵

The appellate court reviewed the surveys that were admitted into evidence and, beginning in 1964 up to the 2002 survey by Pitts, noted inconsistency after inconsistency. In summation the appellate court added:

Clearly, the beginning monument designation has changed throughout the surveys including a post oak, black oak, and iron pins. The monumentation marking the end of the disputed line has also changed. Many of the surveys and plats are successively depicting smaller pieces of property so that is one reason new monuments are added to designate new end points. In addition, it is important to note that new monumentation also had to be added since existing monuments had been removed. Interestingly, the 2002 survey by Mr. Pitts shows a new pin marking the corner of the disputed line.⁶

This is when extrinsic evidence and testimony of locals as to the location of the true boundary between the coterminous landowners becomes crucial. The trial court made, among others, the following findings:

Based on the testimony of the parties, their witnesses and the entire record in this case, the Court is of the opinion and finds that by clear and convincing evidence, Plaintiff has established that the common boundary line in dispute as between these parties has been the fence separating the "Francis Farm" as the "Magill Farm"⁷ since at least 1937.



The Court further finds that the subsequent owners of both the “Magill Farm” and the “Francis Farm” recognized the farm fence as the boundary lines, as have their successors in title for many years.

The Court further finds that on September 11, 1964, the Plaintiff and her now deceased husband obtained title to and took possession of the land upon which her residence is now situated; that for almost forty (40) years Plaintiff, has openly, notoriously and continuously owned, had exclusive possession of and controlled said property, until Defendants erected a new fence on July 1, 2002.⁸

Judge and Jury

As far as Mr. Bownas was concerned, Pitts was both judge and jury when he marked the boundary between Bownas and Jackson. I have no doubt that this was the furthest thought in Pitts’ mind when he conducted his survey of the boundary between Bownas and Jackson. Like so many other surveyors, Pitts didn’t perform a boundary survey; he staked a legal description on the ground and set his irons in, apparently, one of many possible locations. How did Bownas benefit from the survey he commissioned? For

that matter, how did Mrs. Jackson benefit? The simple answer is nobody benefited.

The Bownases also challenge the basis and amount of the damage award of one hundred dollars (\$100) for each day the fence was in Mrs. Jackson’s backyard. The fence was in Mrs.

Jackson’s backyard 698 days for a total monetary judgment of \$69,800. The basis for the monetary award according to the trial court is confiscation of property or trespassing.

Mrs. Jackson was clear with Mr. Bownas from the beginning that her property stretched to the old fence line. By letter from her counsel, Mrs. Jackson let him know that she would seek monetary damages if he erected a fence on her property. Mr. Bownas built the fence in spite of the objections of Mrs. Jackson. While Mr. Bownas obtained a survey, he chose to rely on its accuracy to the clear detriment of Mrs. Jackson. Erecting the fence was not Mr. Bownas’s only option. He could have filed an action to establish the line.⁹

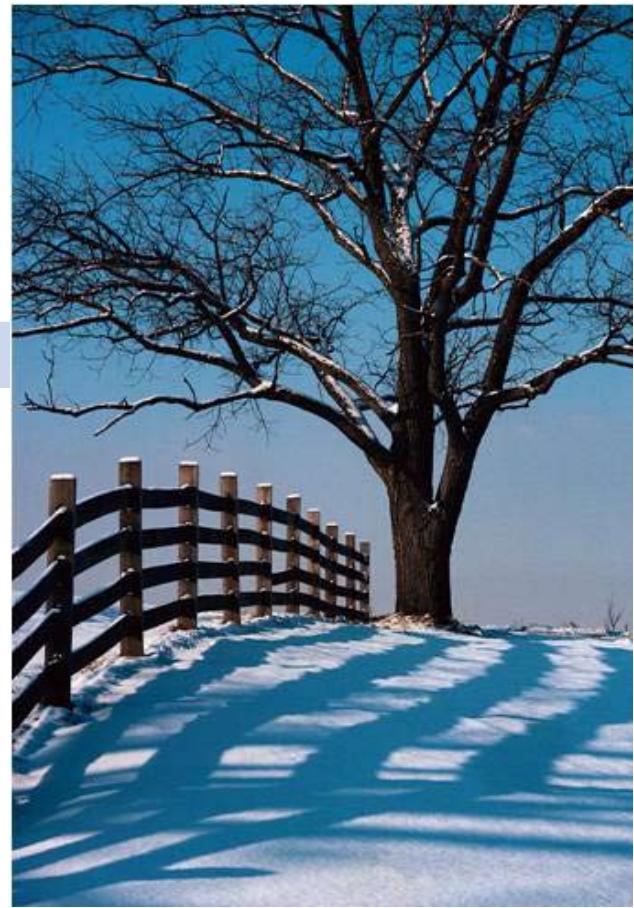
I want to be clear on this point: Surveyors possess no judicial authority to establish boundaries between coterminous landowners. Every boundary between coterminous landowners has already been established by law (the law of the *situs* state) and the location is simply a question of fact. The surveyor, however, possesses all the authority he or she needs to understand the law of boundaries and to apply it in everyday practice. This is why the cases are published to begin with: to instruct and educate. In addition, the surveyor is free to gather the evidence necessary to establish the fact of where the boundary is located. The surveyor in this case became *de facto* judge and jury over the boundary between Bownas and Jackson. Unfortunately for both of these parties, the correct law was not applied and critical evidence was overlooked that would have put the surveyor on the true boundary line, the result being unnecessary litigation and damages to the landowners.

References

1. *Jackson v. Bownas*, 2005 Tenn. App. LEXIS 356 (Tenn. App. 2005).
- 2 *Id.* at 8.
- 3 *Id.* at 8, 9.
- 4 *Id.* at 10, 11.
- 5 *Id.* at 14.
- 6 *Id.* at 6, footnote 2, wrote of the two spellings of the farm: “The actual family name is ‘Magill,’ but the record and deeds refer to it as ‘McGill’ and we retain that designation.”
- 7 *Id.* at 12, 13.
- 8 *Id.* at 13, 14.
- 9 *Id.* at 21, 25, 26.

Neither the author nor POB intends 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.

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ABSTRACTIONS

by Allan Dick, COO, Best Homes Title

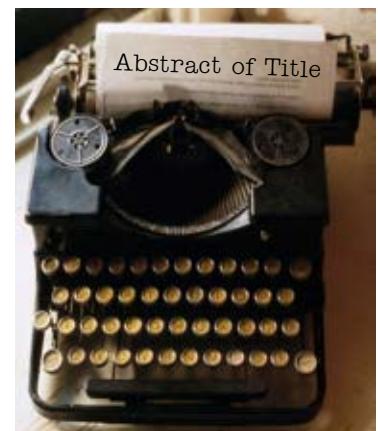
The bad news: HUD's new RESPA rules have been finalized and released. **The good news:** HUD accepted many of the recommendations made by the ALTA limiting some of the possible changes. **The bad news:** There will be forms and procedure changes, especially to the HUD-1. **The good news:** The new forms won't be required to be used until January 1, 2010, giving us plenty of time to adjust – AND the much dreaded “closing script” has been eliminated!

With the election in the rear view mirror, all eyes are still on Washington these days, particularly focused on two key issues – the floundering domestic auto industry and the housing and mortgage industries. Needless to say, Michigan – Southeast Michigan in particular – is holding its breath regarding the possible federal assistance to the Big 3. So much has been written and discussed, recollecting the successful federal Chrysler rescue of 1979. Hope this follows suit.

Meanwhile, in the recent Inforum Economic Outlook 2009, held in Birmingham (the largest business group for women in Michigan), [Richard Dugas](#), the CEO for Bloomfield-based Pulte Homes, Inc., shared his ideas for a meaningful stimulus program for homebuyers. The stimulus plan tax credit of \$7,500 approved by Congress this summer was clearly not enough, according to Dugas. He proposes a \$20,000 tax credit (with no repayment provisions, unlike the terms of the \$7,500 plan), coupled with low interest (3% or 4%) 30-year mortgages, similar to a plan implemented in 1975 by then President Gerald Ford. Dugas noted that housing problems are the root of the nation's financial crisis. “It's where the auto industry problems and the lack of consumer confidence stem from.” Interesting.

Also interesting – two recent reports: October sales in Metro Detroit increased 28% from last October (although largely due to REO sales). And, Michigan foreclosures were down 15% from last October (although still up 8% from this September). The Michigan real estate market may finally be bottoming out, according to University of Michigan economist, [Don Grimes](#), but the precarious auto industry holds the key. “If not for the auto industry, I'd be optimistic”

Good news of a sort - Michigan has fallen to 7th nationally in foreclosures with one out of every 396 households in some stage of the foreclosure process. The national average is one in every 452 households. Nationwide, foreclosures jumped 70% in the third quarter of 2008. And, as a result, home prices continue to slide. Former Federal Reserve Chairman Alan Greenspan noted that for the financial crisis to end, home prices must stabilize. But, that is not likely to occur for many months into the future.



Fun fact: The old Bee Gees song, “Stayin’ Alive” just might live up to its title. A University of Illinois, College of Medicine, study found that doctors and students, who performed CPR while listening to the 1977 disco hit, were able to maintain the recommended 100-per-minute chest compressions. As a result the American Heart Association and the American Red Cross suggest keeping the song's beat in your head to help maintain the correct rhythm, if you are performing hands-only CPR (without breaths) ... ah, ah, ah, ah, stayin' alive.

Finally, with all the election hoopla, we might take a look back to 1835 and Michigan's first gubernatorial election and approval of the state's first constitution, two years before President Andrew Jackson actually signed the bill that made Michigan the 26th state. The “boy governor” 24 year old [Stevens T. Mason](#) was elected in a landslide with over 7,000 votes. His nearest competitor received just 814. Along those lines – while not quite that young – congratulations to [Dan Grimshaw](#) of Midstate Title Services in Vassar, the new Tuscola County Register of Deeds.

CASE BRIEF: PURCHASERS' CLAIMS AGAINST AGENT AND UNDERWRITER DISMISSED

by Adam B. Kutinsky, Kitch Drutbas Wagner Valitutti & Sherbrook



In a recent case, the Federal District Court for the Eastern District of Michigan (Rankin v Dault, 2008 WL 4404266 (ED MI) (not yet released for publication)) confirmed that an individual must show something more than merely taking part in a closing transaction to successfully sue a title agent or underwriter. Two individuals brought suit against a title agent and underwriter arising out of an unsuccessful closing in which the individuals sought to purchase a home. The plaintiffs and sellers never reduced their purchase agreement to writing before the closing. Several lawsuits arose out of the unsuccessful transaction, including a lawsuit filed by the subsequently bankrupt purchasers against the title agent and underwriter. The plaintiffs' claims all related to the failure to secure transfer of the subject property from the sellers which, according to the plaintiffs, was the fault of the title agent.

The purchasers brought numerous claims, including breach of fiduciary duty, breach of contract, negligence, misrepresentation and fraud. However, each claim was summarily dismissed by the Court for the failure to assert “any viable theory of recovery against the Title Defendants.”

Examining the relationship between the parties, the Court found that the agent and underwriter were brought into the transaction by the plaintiffs' mortgage broker. Specifically, the title defendants were asked to provide a lender's commitment and not an owner's commitment. Additionally, the title agent contacted a closer for the lender in accordance with the lender's closing instructions. Significantly, the plaintiffs executed a “disclaimer” acknowledging that the agent owed no obligation to them.

As for the underwriter, the Court found that the commitment issued to the lender controlled the duties and obligations of the parties. Without a contract identifying the plaintiffs as insureds, the underwriter held no duty of care to them. Additionally, the commitment created no rights in the individual plaintiffs as third parties to the transaction.

The Court's finding of no legal duty disposed of several claims, including breach of fiduciary duty, breach of contract and third-party beneficiary. Similarly, the Court dismissed the negligence claim citing the disclaimer signed by the plaintiffs. The final claims of fraud and misrepresentation were also dismissed for the failure of the plaintiffs to successfully plead anything beyond conclusory statements without any substantive evidence in support.

2008 MLTA FALL EDUCATION SEMINAR

by Bob Wuerfel, President, Lighthouse Title Group

Over One Hundred and fifteen MLTA members trekked to Mt. Pleasant for the Fall Educational Seminar on October 15, 2008. Many came to hear the featured speaker [Ed Rybczynski](#), sponsored by Fidelity National Title Group. While others came to find out more on Short Sales, Bankruptcy and Closing Protection information.

[Allan Dick](#), MLTA Board Member and Liason to the Education Committee, launched the morning session and also made a special point of welcoming the new MLTA Members or members who were in attendance for the first time, of which there were several.

After Allan's opening remarks, [Fritz Benson](#) of Michigan Legislative Consultants gave us a brief Legislative Update on Tim Ward's behalf. Fritz mentioned that the Entry Book Legislation had passed in the Senate and was now in the House. He also mentioned that the House of Representatives was up for election in Fall of 2008 (while the Senate in 2010). There will be 45-50 new House Representatives to be elected, so visiting and networking as part of the MLTA Legislative Day (February 11th, 2009 in Lansing) is vital.



[Doug Smith](#), Sr. Assoc. Regional Counsel for LandAmerica Financial Group, opened up the educational portion of the morning a discussion about Short Sales. Doug mentioned that Short Sales are on the rise and will continue to be a part of the transactional landscape for awhile with the current economic factors being what they are. Short Sales by definition are transactions wherein an underlying lender(s) agrees to accept a reduced payoff amount rather than the actual value of the indebtedness to enable their borrower (the distressed seller) to sell the subject property.

There are two types of Short Sales: Two-Party and Third-Party

- Two Party Transactions are more acceptable to the Underwriters. These take place directly between the Property Owners and the Lender. Amongst other things, the Lender will stipulate that their borrower/distressed seller is NOT to receive any proceeds of the sale AND there is indeed zero or negative equity.

- Third Party Transactions may be legitimate, but fraud becomes a bigger factor in some of these. Consult your underwriter on Third-Party Short Sales just to cover all the bases. In a Third-Party procedure a Negotiator often controls the transaction on behalf of the borrower and may have the owner/borrower deed to the Negotiator's Trust. Sale will ultimately occur from Trust to purchaser. Be careful and watch for "equity skimming" or "flipping" on these procedures AND remember to contact your underwriter.

Doug wrapped up by stating that Short Sales, especially Third-Party, can be difficult transactions which are very labor intensive, and therefore could easily justify a higher closing fee.

After a brief mid-morning break, [Sarah Maddox-Sutton](#) of the Fidelity National Title Group and Sponsor of our nationally recognized speaker and mortgage fraud expert, introduced [Ed Rybczynski](#). From 1988 - 2003, Ed Rybczynski was the owner and president of a Baltimore, Maryland based title agency. While he was an owner, Ed told us that it was some careless mistakes, oversights and lack of procedures in his office that resulted in his imprisonment. His goal was to share with us his mistakes so we didn't fall into the same situation.



The beginning of the end of his title career involved 14 properties that were a mere 9 Blocks from Camden Yards in an area that consisted of a lot of urban blight. His title agency handled the transactions with a real estate broker he trusted and whom he did a lot of business with. The Broker was being targeted by the FBI for a property flipping scheme and part of the investigation included the 14 properties that closed at Ed's offices.

Secret Service Agents visited Ed's title agency and proceeded to pull all of his closed files and records as part of the investigation.

After months of an exhaustive investigation of Ed's title agency, he was found guilty amongst other things of Notary Abuse as he notarized all documents at his firm and had lax recording procedures. He notarized the property flipping transactions even though he was not involved with their closings. He was also, found guilty of splitting the proceeds checks upon sellers' request. Some of these were used on the flipping schemes, but it was not uncommon to have the sellers request a split of proceeds in their market.



Bottom line, Ed received 10 months at Lewisburg Federal Prison Camp in November of 2003. A similar sentence to the Broker who spearheaded the property flipping scheme - the Federal Investigators told Ed that the Title Agent has a Fiduciary responsibility, defined as one who obligates himself to act on behalf of another and assumes a duty to act in good faith and with care, candor, and loyalty in fulfilling the obligations. We, as the title agent, have an obligation of loyalty to the buyer and the source of funds.

Lessons Learned from Investigation:

- Licensed title agent held to the same standard of professional behavior as a doctor or lawyer
- Disclose material facts in writing
- Maintain a closing registry
- Include detailed notes in every file
- Expect to explain minor details of a transaction long after file has been closed

Ed's "5" Greatest Regrets:

- Made bad choices when selecting sources of business
- Invited realtors, loan officers and investors into my private life
- Ignored warning signs
- Frightened to use the word "no"
- Took professional responsibilities for granted

Bankruptcy Basics launched the afternoon portion of the Education Seminar, presented by [Richard Sundquist](#) of Clark Hill. In the various bankruptcy chapters, Richard pointed out that following a "Best Practices" guideline is essential. Check PACER to determine if Seller has filed for bankruptcy (www.pacer.psc.uscourts.gov) Title Search may reveal a notice of interest of Bankruptcy Trustee. If bankruptcy is part of a short sale, consider requiring an order lifting automatic stay. Avoid giving legal advice on alternative bankruptcy strategies.



With Bankruptcy being such a broad topic, answering various MLTA member questions and reviewing several exhibits caused the Trusts, Trust Certificates and Land Trusts portion of the seminar to be postponed. This much requested topic will be included in the Spring 2009 MLTA Education seminar.



The Session was wrapped up by [Lynn Sagar](#) of Metropolitan Title discussing Closing Protection Letters (CPL's). The CPL's evolved because the lenders wanted the underwriters to assume liability resulting from mishandling of funds by agent or attorney. Lynn described what the CPL's covered and what they excluded as well. She also covered the 2008 ALTA Closing Protection Letter that was adopted in October of 2007. The new ALTA CPL's replace the 1998 forms and the new forms clarify the liability of the title insurer.

Overall, plenty was packed into the 2008 Fall Seminar. Thank you again to all the speakers, the many members who attended, and a special thanks to Fidelity National for their sponsorship of our national speaker, Ed Rybczynski.

2008 ELECTION SUMMARY

Tim Ward, Lobbyist, Michigan Legislative Consultants

This November election was a hands-down Democratic victory, pushing majority even further out of the Republican grasp. Not only did the Dems pick up nine additional House seats, they also succeeded in unseating two GOP incumbents, taking the majority in the Michigan Congressional race. The Democrats picked up nine new seats in this November's election, giving them a total of 67 seats in House, and leaving the Republicans in the minority with 43 seats. The Republican seats lost were districts 1 (Gaffney), 21 (LaJoy), 24 (Brandenburg), 32 (Acciavatti), 39 (D. Law), 62 (Nofs), 70 (Emmons), 101 (Palsrok), and 108 (Casperon). Neither the Democrats nor the Republicans lost an incumbent in the General Election. Speaker Andy Dillon, on the ballot for both a recall and a new two year term, defeated the recall and easily won re-election. All of Michigan's 15 congressional seats were up for reelection; all incumbents won reelection except incumbents Joe Knollenburg (R) and Tim Walberg (R), who lost to their respective Democrat challengers, Gary Peters and State Senate Minority Leader Mark Schauer. This turns a GOP majority of 9-6 into a Democrat majority of 8-7. There were also two ballot issues on the ticket in Michigan this election, one to legalize medical marijuana and the other to allow for embryonic stem cell research. Both were adopted.



The following are the election results for the House of Representatives by district:

District	Candidates	District	Candidates	District	Candidates	District	Candidates
1.	TIMOTHY BLEDSOE (D) 57% Mary Treder Lang (R) - 43%	29.	TIM MELTON (D) - 81% Scott Sampeer (R) - 19%	56.	KATE EBLI (D) - 63% Jean Marie Dahm (R) - 34%	83.	JOHN ESPINOZA (D) - 65% Steve Kearns (R) - 35%
2.	LEMAR LEMMONS JR. (D) 96% Edith Floyd (R) - 4%	30.	Grant Hughes (D) - 40% TORY ROCCA (R) - 60%	57.	DUDLEY SPADE (D) - 68% Emma Jenkins (R) - 32%	84.	TERRY BROWN (D) - 65% Anna Kabot (R) - 35%
3.	BETTIE COOK SCOTT (D) - 97%	31.	FRED MILLER (D) - 66% Daniel Tollis (R) - 31%	58.	Jean Kennedy-Winds (D) - 67% KENNETH KURTZ (R) - 33%	85.	Judy Ford (D) - 44% DICK BALL (R) - 53%
4.	COLEMAN YOUNG II (D) - UNCONTESTED	32.	JENNIFER HAASE (D) - 50% John Accavitti (R) - 47%	59.	Carol Higgins (D) - 40% MATT LORI (R) - 60%	86.	Melissa Casalina (D) - 33% DAVID HILDENBRAND (R) - 65%
5.	BERT JOHNSON (D) - UNCONTESTED	33.	Andrew Paslowski (D) - 41% KIM MELTZER (R) - 59%	60.	ROBERT JONES (D) - 74% Charles Ybema (R) - 26%	87.	Greg Grieves (D) - 31% BRIAN CALLEY (R) - 64%
6.	FRED DURHAL JR. (D) - UNCONTESTED	34.	WOODROW STANLEY (D) 84% Adam Ford (R) - 16%	61.	LARRY DESHAZOR (R) - 51% KATE SEGAL (D) - 62%	88.	Tom Clark (D) - 38% BOB GENETSKI (R) - 62%
7.	JIMMY WOMACK (D) - 96%	35.	VINCENT GREGORY (D) - 88% Katie Kopin (R) - 11%	62.	Gregory Moore (R) - 38% Phyllis Smith (D) - 43%	89.	Timothy Winslow (D) - 35% ARLAN MEEKHOF (R) - 61%
8.	GEORGE CUSHINGBERRY (D) - 97%	36.	PETER LUND (R) - 61% VICKI BARNETT (D) - 60%	63.	JASE BOLGER (R) - 57% MARTIN GRIFFIN (D) - 63%	90.	Clay Stauffer (D) - 28% JOSEPH HAVEMAN (R) - 72%
9.	SHANELLE JACKSON (D) - UNCONTESTED	37.	Paul Welsay (R) - 40% Chuck Tindall (D) - 42%	64.	Leland Prebble (R) - 37% MIKE SIMPSON (D) - 63%	91.	MARY VALENTINE (D) - 54% Holly Hughes (R) - 46%
10.	GABE LELAND (D) - 95% Bryan Sylvester (R) - 5%	38.	HUGH CRAWFORD (R) - 58% LISA BROWN (D) - 52%	65.	Ray Snell (R) - 37% Donna Anderson (D) - 36%	92.	DOUG BENNETT (D) - 74% James McCormick (R) - 26%
11.	DAVID NATHAN (D) - 97% Leonard Mier (R) - 3%	39.	Amy Peterman (R) - 46% Julie Candler (D) - 38%	66.	BILL ROGERS (R) - 60% BARB BYRUM (D) - 63%	93.	Ron McComb (D) - 39% PAUL OPSOMMER (R) - 58%
12.	RASHIDA TLAIB (D) - 90% Darren Daigle (R) - 10%	40.	CHUCK MOSS (R) - 60% Evan Treharne (D) - 42%	67.	Mike Herter (R) - 34% JOAN BAUER (D) - 78%	94.	Bob Blaine (D) - 42% KEN HORN (R) - 58%
13.	ANDREW KANDREVAS (D) - 66% Timothy Kachinski (R) - 34%	41.	MARTY KNOLLENBERG (R) 58% HAROLD HAUGH (D) - 70%	68.	David Irons (R) - 20% MARK MEADOWS (D) - 69%	95.	ANDY COULOURIS (D) - 86% Ted Rosingana (R) - 14%
14.	ED CLEMENTE (D) - 76% Patrick O'Connell (R) - 24%	42.	Greg Fleming (R) - 25% Scott Hudson (D) - 47%	69.	Frank Lambert (R) - 31% MIKE HUCKLEBERRY (D) - 54%	96.	JEFF MAYES (D) - 70% Rick Rau (R) - 30%
15.	GINO POLIDORI (D) - 78% Scott Saionz (R) - 22%	43.	GAIL HAINES (R) - 49% Mark Venie (D) - 33%	70.	Thomas Ginster (R) - 36% Mark Eagle (D) - 42%	97.	Kathy Wilton (D) - 39% TIM MOORE (R) - 61%
16.	BOB CONSTAN (D) - 76% Mario Fundarski (R) - 24%	44.	EILEEN KOWALL (R) - 67% Randy Young (D) - 43%	71.	RICK JONES (R) - 58% Albert Abbasse (D) - 35%	98.	Garnet Lewis (D) - 42% JIM STAMAS (R) - 58%
17.	ANDY DILLON (D) - 66% Sandra Eggers (R) - 34%	45.	TOM MCMILLIN (R) - 57% Katherine Houston (D) - 39%	72.	JUSTIN AMASH (R) - 62% Bruce Hawley (D) - 38%	99.	Nancy White (D) - 43% BILL CAUL (R) - 54%
18.	RICHARD LEBLANC (D) - 88% Steve King (D) - 40%	46.	JIM MARLEAU (R) - 61% Scott Lucas (D) - 36%	73.	TOM PEARCE (R) - 59% Leon Chase (D) - 26%	100.	Bill Richards (D) - 41% GOEFF HANSEN (R) - 56%
19.	JOHN WALSH (R) - 60% MARC CORRIVEAU (D) - 59%	47.	CINDY DENBY (R) - 59% RICHARD HAMMEL (D) -	74.	DAVID AGEMA (R) - 70% ROBERT DEAN (D) - 58%	101.	DAN SCRIPPS (D) - 60% Ray Franz (R) - 40%
20.	Jerry Vorva (R) - 41% DIAN SLAVENS (D) - 52%	48.	Ralph Burger (R) - 33% LEE GONZALES (D) -	75.	Dan Tietema (R) - 40% ROY SCHMIDT (D) - 71%	102.	Nate Heffron (D) - 37% DARWIN BOOHER (R) - 60%
21.	Todd LaJoy (R) - 45% DOUG GEISS (D) - 71%	49.	UNCONTESTED	76.	Marc Tonnemacher (R) - 21% Charles Gearlings (D) - 35%	104.	JOEL SHELTON (D) - 67% Dave Ryan (R) - 33%
22.	Darrell McNeil (R) - 19%	50.	JIM SLEZAK (D) - 73% Douglas O'Neal (R) - 27%	77.	KEVIN GREEN (R) - 62% Judy Truesdell (D) - 48%	105.	Roman Gruce (D) - 43% WAYNE SCHMIDT (R) - 53%
23.	DEB KENNEDY (D) - 59% Neil DeBlois (R) - 41%	51.	Michael Thorp (D) - 47% PAUL SCOTT (R) - 53%	78.	SHARON TYLER (R) - 52% Jim Hahn (D) - 43%	106.	Connie Saltonstall (D) - 37% KEVIN ELSENHEIMER (R) - 61%
24.	SARAH ROBERTS (D) - 49% Bryan Brandenburg (R) - 47%	52.	PAM BYRNES (D) - 63% Eric Lielbriedis (R) - 34%	79.	JOHN PROOS (R) - 57% Jessie Olson (D) - 39%	107.	ANDY NEUMANN (D) - 53% Peter Pettalia (R) - 44%
25.	JON SWITALSKI (D) - 63% Michael Wiecek (R) - 33%	53.	REBEKAH WARREN (D) - 78%	80.	TONYA SCHUITMAKER (R) - 61%	108.	GARY McDOWELL (D) - 65% Alex Strobehn (R) - 35%
26.	MARIE DONIGAN (D) - 62% Michael Goodman (R) - 34%	54.	Christina Brewton (R) - 17% ALMA SMITH (D) - 71%	81.	Dan Donnellon (D) - 36% PHIL PAVLOV (R) - 64%	109.	JUDY NERAT (D) - 56% Mike Falcon (R) - 44%
27.	ELLEN COGAN LIPTON (D) - 71% David Nicola (R) - 23%	55.	Tom Banks (R) - 26% KATHY ANGERER (D) - 66%	82.	Bill Marquardt (D) - 43% KEVIN DALEY (R) - 57%	110.	STEVEN LINDBERG (D) - 64% Doreen Takalo (R) - 30%
28.	LESIA LISS (D) - 70% Jason Balaska (R) - 30%		Frank Mornihan (R) - 34%			111.	MIKE LAHTI (D) - 70% John Larson (R) - 30%

WHO MUST EXECUTE THE DEED?

by Gerry Pylman, Vice President, Lighthouse Title Group

(Author's Note: References to the Michigan Land Title Standards are from the Sixth Edition. Not all situations are addressed here and you should consult the Michigan Land Title Standards or your underwriting counsel for more complete answers.)

There may be no simple answer to this question. What follows is an attempt to assist you.

If real estate is titled to a man and woman as tenants by the entirety, or simply as husband and wife, who must execute the deed? Tenants by the entirety can only be a husband and his wife. Technically, neither individual has an interest, but together they own 100% of the interest. To properly convey title to Michigan real estate held as tenants by the entirety title must be conveyed by both the husband and the wife, if both are living. In entireties property, the ownership passes to the surviving spouse upon the death of one of the spouses. Title can be conveyed by the surviving widow, if proof of the death of the husband accompanies the conveying deed.

If the husband is the surviving spouse of an entireties property, he can, as a single man, properly convey the title to Michigan real estate; but if he has remarried, his new wife must join in the execution of the deed, unless she has contractually barred her dower interest. A recordable copy of the Waiver of Dower or Prenuptial Agreement must be delivered to the company prior to or at the time of closing for review and approval. See Michigan Title Standard 4.9 for an explanation of the contractual waiver of dower.

Entireties property can be conveyed by one of the spouses if the grantee is the other spouse AND if the deed identifies the grantor as the wife or husband of the grantee AND if the deed identifies the grantee as the wife or husband of the grantor.

A husband or a wife may execute a deed on behalf of the other by virtue of a valid Power of Attorney. The Power of Attorney must be reviewed prior to relying on it. A Power of Attorney IS NOT VALID if the grantor of the Power is deceased!

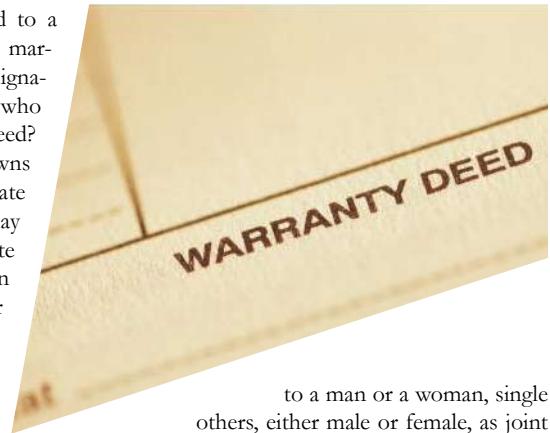
If the real estate was titled to a husband and wife and both of them are deceased, who can convey the property? It is not a "given" that one of the children of the couple may convey the property. First, the order of death must be ascertained. A copy of each death certificate will accomplish this requirement. Once it has been determined which of the spouses was the last to pass away, an estate in Probate Court for that individual must be opened. If an estate in Probate Court has already been opened, the Personal Representative, having been appointed by the Probate Court, must execute the required deed. The Personal Representative must deliver valid certified Letters of Authority to the Closing Officer as proof of his/her qualification to act on behalf of the estate of the decedent.

If real estate is titled to a man, either single or married or without designation of marital status, who must execute the deed? A single man, who owns Michigan real estate in his own right, may convey the real estate alone, as a single man. A married man, who owns Michigan real estate in his own right, MUST have his wife join in the execution of the deed of conveyance EXCEPT under special circumstances. (See Chapter 4, Michigan Title Standards 6th Edition, for circumstances where a wife might not be required to sign.)

When a man owns Michigan real estate and the vesting deed makes no reference to his marital status, the rules for conveyances by a married man should be followed. There are, however, some circumstances where the wife of a married man need not join in the execution of the deed. Those circumstances are set out in the Chapter 4, Michigan Title Standards 6th Edition. If the vesting deed makes no reference to the marital status of a male grantee, the rules for a single man are applicable if the grantee is proven to be unmarried on the date of the conveyance.

If real estate is titled to a man "doing business as" (i.e. Joe Doe, doing business as "Joe the plumber"), who must execute the deed? In this case, since a DBA is not an entity that can hold title, the rules for conveyance by a married man must be followed and his spouse must join in executing the deed.

If real estate is titled to a woman, either single, married, or without designation of marital status who must execute the deed? A woman who owns Michigan real estate in her own right may convey that real estate alone and in her own right regardless of her marital status.



If real estate is titled to a man or a woman, single others, either male or female, as joint tenants with rights of survivorship, who must execute the deed? If a man is the sole survivor of the joint tenants or sole survivor of the joint tenants with rights of survivorship, his wife must join in the deed of conveyance. As long as two or more of the joint tenants or joint tenants with rights of survivorship survive, only the surviving joint tenants or joint tenants with rights of survivorship need to execute the deed of conveyance.

If a woman is the sole surviving joint tenant or joint tenant with rights of survivorship, she may in her own right convey that real estate alone, regardless of her marital status.

A deed from one of two or more joint tenants to a third party severs the joint tenancy as to the interest of the grantor and creates a tenancy in common between the grantee and the remaining joint tenants. (See Michigan Title Standard 6.3 for clarification.)

A deed from one of two or more joint tenants with rights of survivorship severs the joint tenancy with rights of survivorship and creates a joint life estate in all of the grantees with remainder in fee to the survivor. The interest of the grantee from a joint tenant with rights of survivorship is contingent on the survival of that grantee's grantor. Title to the property will be vested in the sole surviving joint tenant with rights of survivorship or his/her grantee. The grantee of a joint tenant with rights of survivorship who was not the sole surviving joint tenant with rights of survivorship is left without an interest in the property. (See Michigan Title Standard 6.4 for clarification.)

What are some of the circumstances when the wife of a married man would not have to sign a deed of conveyance? If at all times while the husband held title to the real estate his interest was subject to a valid land contract, dower does not attach and his wife would not be required to sign a deed (see Michigan Title Standard 4.2). If at all times while the husband held an interest in the real estate, his interest was that of a land contract vendee, dower does not attach (see Michigan Title Standard 4.3). If at all times the husband held title to the real estate the wife voluntarily resided outside of the State of Michigan, whether the husband was a resident of Michigan or not, dower does not attach (see Michigan title Standard 4.7).

This is the last of 3 segments on this topic that were in the previous 2 editions of the Title Examiner.

Leasehold Interests

Assignments of Leases, Rents & Profits

An assignment of rents and leases is exactly what the name implies: the transfer of an owner's rights to receive rents due and otherwise enjoy the benefits of having leased one's properties.

In a typical real estate transaction, the lender loans money to the borrower for the purchase/refinance/improvement of the property. In return, the borrower signs a promissory note, evidencing his promise to repay the money, and a deed of trust or mortgage that encumbers the property. Although the lender relies more upon the value of the real estate owned by the borrower as collateral for the repayment of the monies loaned rather than the borrower's promise to repay, the lender does not want to own the property, especially in the commercial context.

Consequently, the lender for commercial or income-producing real estate really prefers to secure the loan with the right to collect the rents a tenant will pay for space in the shopping center, for an apartment in the apartment building, or office space in the office building. Thus, the lender will require the borrower to grant an assignment of his rights to rents, leases and profits relative to the real estate being used as collateral for the loan.

Depending upon state law, an assignment of rents, leases and profits will be deemed to be a security interest in real estate, personal property, or both. In states where an assignment of rents, leases and profits is deemed to be a security interest in real property rights, or in both real property and personal property rights, it is appropriate to list an assignment of rents, leases and profits as an additional insured instrument under Schedule A on a mortgagee policy. Please note, however, that title must be searched and certified through the date and time of recording of the assignment of rents, leases and profits in order for it to be shown as an additional insured instrument under Schedule A in the mortgagee policy.

In states where an assignment of rents, leases and profits is deemed to be purely a personal property interest, this additional collateral instrument should be shown as a "note" after Schedule B, Part II of the mortgagee policy.

Of course, a title company is always willing to show an assignment of rents, leases, and profits as an exception on a mortgagee policy if requested to do so. If the assignment of rents, leases and profits is recorded on or before the effective date of any owner's policy, it should be shown as an exception.

Conclusion

By providing the title insurance underwriter with a better understanding of the entire transaction, the attorney can frequently bolster the coverage obtained at no additional charge to the client. Take advantage of all the information obtained in a title examination and get the most bang for your client's title insurance buck. 

Savvy Investors Can Now Avoid Paying Tax When Exchanging Vacation Property

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

Good news from the IRS. The IRS recently adopted a "loophole" that permits savvy investors to exchange one vacation property for another, and avoid paying any tax on the gain. Section 1031 of the Internal Revenue Code permits a taxpayer to exchange one property held for productive use in a trade or business, or for an investment (relinquished property) for another property of like kind, also held for productive use in a trade or business or for investment (replacement property). A taxpayer does not have to recognize gain or loss on the exchange, as long as it is structured properly.



For years, the IRS has maintained that a "personal residence" is not property "held for productive use in a trade or business or for investment." Therefore, it could not qualify for Section 1031 tax deferred exchange treatment. The taxpayer would have to pay tax on any gain, even if they used the proceeds to buy another vacation, or investment property.

The IRS recently enacted Revenue Procedure 2008-16. This provides taxpayers with a safe harbor under which a second home or vacation property will qualify as a Section 1031 investment property, even though the taxpayer occasionally uses the property for personal purposes.

How is this possible? The IRS established use standards for both the "relinquished property" and the "replacement property". The property must be owned by the taxpayer for at least 24 months immediately before the exchange, for "relinquished property", and for at least 24 months immediately after the exchange, for "replacement property". Also, in each of the two 12 month periods immediately before and after the exchange, (a) the taxpayer must rent the property to another person at "fair rental" for at least 14 days and (b) the taxpayer's personal use of the property can not exceed the greater of 14 days or 10% of the number of days during the prior year that the property is rented. In other words, the taxpayer can use the property for personal use but, the amount of personal use is limited and, the property must be rented out for a minimum period of time. The definition of what constitutes "personal use" is pretty broad, and includes use by the taxpayer and their family members. Fair rental is determined based upon all the facts and circumstances that exist when the rental agreement is entered into. A taxpayer utilizing this new safe harbor must satisfy all other requirements for a Section 1031 like kind exchange.

A word of caution: property "held primarily for sale" to customers may not qualify as investment property under Section 1031. For example, a builder may be deemed a "dealer" engaged in the sale of real estate to customers in the ordinary course of its business. Whether or not Section 1031 tax deferred treatment is available, depends on the facts of each case. In sum, that appreciated vacation home can now be "exchanged" for a more expensive property, without paying tax on the gain, if the taxpayer can dock at the IRS Revenue Procedure 2008-16 safe harbor. 

MIND CAPTURE MARKETING:

WHY WRITING GOOD COPY IS CRITICAL TO YOUR SUCCESS

by Tony Rubleski - President, Mind Capture Group

FORWARD BY JEFFREY GOLDBERG, NY TIMES BEST-SELLING AUTHOR

MIND CAPTURE

HOW YOU CAN STAND OUT IN THE AGE OF ADVERTISING, MARKETING, AND SELLING



We're a nation buried in information and marketing messages.

Check this out:

- The average North American is hit with 4-5000 marketing messages per day
- Information online is doubling approximately every 18-months
- You've got 1-2 seconds, if your message is targeted properly to, to get someone's attention or Mind Capture

Here are the big three things you must be aware of when writing copy in the digital age of overload and distraction within all of your marketing messages:

1. Attention – Mind Capture

2. Time

3. Credibility

It doesn't matter if it's your website, sales letters, blogs, brochures, online/offline ads, you must keep these three things in mind as you update and create sales copy for your product, service or organization. The ability to write good copy is a learned skill. The best in the business didn't wake up one day and become the best in the world. They studied and practiced the craft from books, seminars, newsletters and writing.

Writing good copy helps you stand out, grow, get attention and win new and repeat business regardless of economic conditions. If I assembled a book of copy blunders it would weigh hundreds of pounds and be full of the same mistakes repeating time and time again. To simplify the process, I've pulled five things that continue to pop up over and over with most messages that you should avoid at all costs. Grab a yellow highlighter and let's begin.

Five Things You MUST Avoid To Immediately Improve Your Marketing Offers And Messages

1. Not using a headline. As I peruse through business magazines, newspapers, direct mail, websites, ad critiques or billboards, I'm continually amazed at why companies are so hell bent on putting their logo on the top of their messages. I'm baffled as to why businesses continue to buy into this unwise and expensive practice because it kills off most response and does nothing to advance your marketing message or proposition.

The goal is to get people's attention, not have them glance right over your marketing message. Unless you enjoy wasting marketing dollars - stop this now! I urge you to use a well written, targeted headline instead. It will increase your odds of getting attention and results.

2. Not targeting the best prospects. I feel silly reminding businesses of all kinds that this is vital to increase your chances of response or the number of people noticing your message. I have a trick marketing question I ask audiences that throws most of them. Who's your customer? Many times I hear the standard reply such as "Any business looking to..." or "Everyone's a possible candidate for what we offer." Newsflash: Unless you have millions of dollars, incredible patience, and your product or service is truly geared to the mass market (rare), this is an incredibly naïve and dangerous answer to a very important question related to target marketing. While you can never eliminate all waste in your marketing, you can take aggressive steps to minimize it by doing research via examination of your best customers and determining who are similar type prospects and how can you best find and reach more of them.

3. Not customizing the message. In the age of digital, there's an amazing thing still occurring in offline marketing that most people never catch. The more personalized or customized a message is to a prospect the higher the chance of it getting looked at by the target. This is something direct marketing pros understand, but 99.9% of the market never really grasps.

Dead giveaways that I often see are:

- General salutations in marketing letters, versus specific matching names
- Labels on mailings versus hand-written, personalized looking correspondence
- Using meter mail versus a "live" stamp
- Using white envelopes like everyone else with poorly written teaser copy and/or messages typed on the front of the envelope
- A toll-free reply number or general website address to direct leads and responses to call or send an email inquiry

This is why I love using targeted mailings. My favorite technique is using targeted grabber mailing and follow up campaigns to tightly defined and well matched prospect groups. One of my favorite strategies to crack through the mail sorting process, jump the line, get immediate Mind Capture and quickly move to the top of the attention pile is to use targeted grabber mailings.

4. Not putting in an offer or call to action. Congratulations! Your marketing message got attention, and the targeted prospect has allowed you Mind Capture and permission to take up their valuable time. Wait. There's one big problem. They don't know what to do next. There's nothing compelling enough to have them pick up the phone, visit your website, or email you for more information.

The best visual I can give you is a football team working hard, executing on all cylinders and driving the ball down the field to the one-yard line. They now have four chances to move the ball 36 inches to achieve success in the form of a touchdown. In the next series of events, the quarterback who controls the ball decides to throw the ball four consecutive times out of bounds where no one is remotely around to even catch the ball. No, I'm not talking about my beloved Detroit Lions of the NFL. This is a scenario that many businesses do with their marketing by not including an offer or call to action. They work hard to get attention and then leave the prospect or customer with no compelling reason to respond or take action. They've worked hard up to this point, but they miss the chance to score a lead, set an appointment or win a new order because they fail to finish the job by using a weak offer or none at all.

5. No third party proof or evidence. You must continually prove yourself in the market. Very, very few small to mid-size companies are national brands nor can they afford to spend hundreds of thousands of dollars on marketing. Branding locally or by specific vertical market can be done but that's a whole other book.

To keep it simple, affordable and effective, here's a quick checklist of tools you can add to your marketing arsenal to build proof or evidence for your company, product or service.

- **Testimonial letters or comments from happy customers**
- **Articles you've written or been featured in**
- **Press releases pertaining to your product, service, industry or staff**
- **Positive industry articles or trade reviews**
- **Number of clients or specific industries you serve**
- **Key designations, certifications or awards you've received**
- **Compelling guarantee or service claims**
- **Lists of key clients or references**
- **Write papers, books and newsletters you've written or offer to clients and prospects.** 

**Residential Sales Statistics
October 2008**

Local Association	2008 Oct sales	2008 YTD Oct # Sales	2007 YTD Oct # Sales	08-07 YTD % Change	2008 YTD Oct Ave Price	2007 YTD Oct Ave Price	08-07 YTD % Change
Alpena, Alcona, Presque Isle Board of REALTORS®	30	255	308	-17.21%	\$97,808	\$114,888	-14.72%
Ann Arbor Area Board of REALTORS®	249	2,646	2,840	-0.23%	\$216,960	\$252,073	-13.83%
Armen Chatzidakis Kalamazoo Association of REALTORS®	48	382	398	-1.04%	\$174,019	\$217,744	-20.08%
Battle Creek Area Association of REALTORS®	116	1,067	1,015	5.12%	\$98,014	\$119,723	-18.13%
Bay County REALTORS® Association	124	1,110	1,221	-9.09%	\$77,625	\$94,030	-17.97%
Branch County Association of REALTORS®	40	384	374	2.67%	\$92,138	\$98,365	-6.32%
Central Michigan Association of REALTORS®	28	794	827	-3.99%	\$87,121	\$96,104	-11.20%
Clare-Gladwin Board of REALTORS®	67	520	527	-1.33%	\$74,222	\$86,078	-13.77%
Coshocton Board of REALTORS®	172	1,603	1,498	7.01%	\$98,576	\$136,030	-27.78%
Detroit Board of REALTORS®	1128	9,420	8,411	10.93%	\$18,513	\$40,011	-53.73%
Dowagiac Area Association of REALTORS®	219	2,448	2,888	-14.84%	\$93,893	\$123,364	-23.91%
Eastern Thumb Association of REALTORS®	156	1,180	1,137	3.76%	\$111,284	\$130,537	-16.25%
Eastern U.P. Board of REALTORS®	25	251	250	3.00%	\$99,913	\$98,260	1.87%
Emmet Association of REALTORS®	61	453	473	-4.23%	\$276,122	\$288,912	-4.43%
Flint Area Association of REALTORS®	588	4,782	4,828	-0.95%	\$84,763	\$108,265	-22.42%
Grand Rapids Association of REALTORS®	828	7,940	9,208	-13.77%	\$123,160	\$148,482	-17.05%
Greater Kalamazoo Association of REALTORS®	329	3,151	3,391	-7.08%	\$138,726	\$154,189	-10.03%
Greater Lansing Association of REALTORS®	465	4,459	4,346	2.60%	\$112,633	\$145,816	-22.70%
Hillsdale County Board of REALTORS®	45	410	412	-0.49%	\$82,654	\$80,805	17.27%
Jackson Area Association of REALTORS®	141	1,263	1,303	-3.07%	\$86,879	\$115,916	-25.06%
Lapeer & Upper Thumb Association of REALTORS®	53	445	507	-12.23%	\$120,956	\$133,207	-9.20%
Lansing County Association of REALTORS®	129	1,000	951	5.15%	\$108,789	\$132,778	-18.07%
Livingston County Association of REALTORS®	200	1,707	1,697	0.59%	\$184,563	\$207,930	-11.24%
Oakland	526	5,039	4,749	8.11%	\$153,695	\$207,872	-26.06%
Macomb	363	5,462	4,880	11.79%	\$119,349	\$153,060	-22.33%
Mason-Oceana-Manistee Board of REALTORS®	81	766	737	3.83%	\$114,851	\$120,879	-5.48%
Midland Board of REALTORS®	58	634	660	-18.93%	\$153,365	\$157,025	-2.70%
Monroe County Association of REALTORS®	119	979	1,002	-2.30%	\$134,890	\$185,919	-18.70%
North Oakland County Board of REALTORS®	360	3,305	2,749	20.23%	\$154,377	\$186,080	-16.80%
Northeastern Michigan Board of REALTORS®	49	433	587	-23.63%	\$86,553	\$101,808	-14.80%
Paul Bunyan Board of REALTORS®	111	898	947	-5.17%	\$87,593	\$108,036	-17.39%
Saginaw Board of REALTORS®	168	1,410	1,601	-11.83%	\$84,466	\$87,383	-13.00%
Shiawassee Regional Board of REALTORS®	54	509	563	-9.50%	\$82,844	\$86,524	-14.17%
Southwestern Michigan Association of REALTORS®	210	2,148	2,597	-17.29%	\$185,581	\$186,072	-0.31%
St. Joseph County Association of REALTORS®	64	503	648	-22.36%	\$110,694	\$122,300	-9.53%
Traverse Area Association of REALTORS®	161	1,575	1,780	-12.01%	\$201,206	\$207,042	-2.82%
Upper Peninsula Association of REALTORS®	153	1,770	2,071	-14.53%	\$100,526	\$112,365	-10.54%
Water Wonderland Board of REALTORS®	122	843	1,003	-15.95%	\$113,438	\$132,815	-14.85%
West Central Association of REALTORS®	89	891	868	2.65%	\$89,218	\$108,571	-18.28%
West Michigan Lakeshore Association of REALTORS®	375	3,311	3,805	-12.85%	\$138,765	\$156,272	-12.85%
Western Wayne Calumet County Association of REALTORS®	821	7,932	7,294	9.50%	\$166,196	\$208,146	-19.38%
TOTALS	9422	86,138	85,270	1.02%	\$120,418	\$141,681	-15.01%

*Baraga, Iron Mountain, Keweenaw, Western Upper Peninsula, and North Central Upper Peninsula

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Manufacturing Construction Still Strong in West Michigan

Industrial Construction is Surging in Parts of West Michigan

by Lynn Stevens, Writer, Business Review Western Michigan

You read that right.

Despite the housing and automotive markets' slides, some manufacturers are very busy and they're adding to and remodeling their spaces. The majority of those that are building planned their expansions and put financing in place well before the financial markets dived, builders say.

Despite its diverse background, the large majority of the workload this year for third generation, family owned DVK Construction Inc. in Caledonia has been manufacturing construction, said co-owner Dan Van Kalker. "We are working with a number of companies, some of which are niche," Van Kalker said. "Loans are difficult to get, but these companies have all been well capitalized. They've been able to spend when others are trying to maintain. They're financially strong companies."

Among them are Aggressive Tool & Die in Coopersville, which added 20,000 square feet, and Flow-Rite Controls in Byron Center, which added 50,000, Van Kalker said. "They're not in a unique niche, they're just successful people running a successful business that needed more space to incorporate production," he said. "They create the equipment that forms the steel for more fuel-efficient vehicles. They're a supplier to a whole host of stamping plants." Flow-Rite more than doubled its size with the expansion, according to Dan Campau, president and founder.

The company has grown 20 percent each year for the past eight years. "As it stands right now, our customers are looking forward to continue using our products at a rate that will allow us to continue to grow," Campau said. "Gaining space to make new products will enable Flow-Rite to enter new industries," he said. Financing the expansion wasn't difficult, although Flow-Rite moved into the original Byron Center building less than three years ago. Flow-Rite's owners have committed to reinvesting in the company, and the company has what Campau called a good relationship with its bank.

Comparing the past decade of manufacturing construction to 2008, Project Manager Chris Nye sees this year as slower for Wolverine Construction, a member of Wolverine Building Group, although the company has done several projects. "In the last few years we've slowed, but there are a few little bright spots where people are able to pick up significant new work and they need to expand," he said. As industry sectors are hit, the market-dominant

companies seem to be feeling most of the pain, Nye suggested. The small and medium-sized manufacturers are picking up pieces of what business remains, and they're running with it, he said. "Obviously if an organization has new business to back up growth and expansion, they're

going to find a way to finance it," Nye said. Dan Vos Construction Co. in Ada isn't seeing any drop in manufacturing work. It's 55 percent of this year's dollar volume and based on what's in the pipeline, it could reach 60 percent next year. "We have a real good backlog," vice president Dan T.

Vos said. The company recently started three major projects that will continue into 2009, and Vos expects the whole of 2009 to be busy. He attributes most of the work to repeat customers -- the company boasts a 96 percent repeat-business rate. One project for 2009, for example, is a \$25 million expansion for Perrigo Co. [Nasdaq: PRGO] in Allegan. It is a 62,000-square-foot addition to boost the

generic and store-brand pharmaceutical company's manufacturing capacity by at least 10 percent, Vos said. Construction entails adding to two buildings. The Ada construction company also is transforming part of a former factory building into Bissell Inc.'s new \$7.4 million Innovation Center. Although manufacturing may be done around the world, R&D and design engineering are concentrated in Grand Rapids (see Business Review's Oct. 9-15 edition).

Boar's Head Provisions in Holland was evaluating relocating to another state. Because the Holland plant was the most productive of the multi state food processor's plants, it chose to expand instead, Vos said. Construction will begin in December on an \$18.5 million, 30,000 square-foot expansion. It just finished a new 120,000-square-foot facility in Hudsonville for Manufacturers Supply, and it's wrapping a \$1 million revamp of the Request Foods frozen-dinner plant in Holland, Vos added. Amid the good news, there are signs manufacturing construction will be slowing. "By no means is it growing," Van Kalker said. "I have a number of projects that have said, 'We're waiting for a bid here.'" While some have increased business so they're "bursting at the seams," Van Kalker said concern over the financial markets and the future of the auto industry have put many companies' plans on hold.

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MLTA Upcoming Events 2009

February 11 **Legislative Day,
at the Michigan State Capitol**

July 19 -21 **Summer Convention
Amway Grand Plaza Hotel,
Grand Rapids**

REGISTER NOW

and Join Fellow MLTA Members
for a Day of Grassroots Lobbying.

Michigan Land Title Legislative Day is an event where our industry needs to make the state legislature aware of the value, benefits and roles that Land Title Professionals play in our state. The day begins with time for members to visit with legislators and staff over lunch inside our State Capitol. From there, MLTA members visit legislative offices to introduce the Land Title industry to our elected leaders and explain Land Title issues of importance. Your participation is essential for the MLTA industry to make a difference and show the importance of the Land Title Industry within Michigan.

Schedule for February 11, 2009

9:00 – 9:30 a.m.: Registration at the Capitol

9:30 – 10:00 a.m.: Issues Briefing at the Capitol

MLTA lobbyists will explain the legislative issues the land title industry faces, the importance of the issues, and how to communicate them to our elected leaders.

10:00 – 11:15 a.m.: Visit to the Representatives

Your chance to make a difference! Visit your elected Representative and explain the importance of the land title industry.

11:30 am – 1:00 p.m.: Lobby Day Luncheon in the Capitol

A catered lunch with plenty of opportunities to share information about the land title industry with key elected leaders and staff.

1:00 – 3:00 p.m.: Visit to the Senate

After lunch, visit your elected Senator and explain the importance of the land title industry and the issues affecting the profession.

Go to www.MiLTA.org to register today!

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