

The Title Examiner

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SUMMER 2011



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FORECLOSURE CLIMATE ACCENTUATES IMPORTANCE OF TITLE INSURANCE

Timothy J. McDonnell, President, Michigan Land Title Association

Lawsuits claiming homeowners were improperly foreclosed upon are popping up across the country with a major theme focused on chain of title issues. In one landmark case earlier this year, U.S. Bank v. Ibanez, the Massachusetts Supreme Judicial Court upheld a 2009 ruling invalidating some foreclosures because the lender could not prove it held the mortgage. In another case in Massachusetts, a court held the plaintiff possessed no interest in the property when he purchased the land at foreclosure sale because the foreclosure was improper under Ibanez.

The Michigan Court of Appeals recently issued a ruling in Residential Funding v. Saurman & BofA v. Messner that challenges the validity of foreclosures by advertisement done in the name of MERS. The case ruled that MERS does not have standing to institute foreclosure proceedings in Michigan because it is neither an owner of the indebtedness nor a servicing agent. As such, the court held that the foreclosure was void from the beginning.

Several underwriters in Michigan issued bulletins indicating that properties where the foreclosure was done by and in the name of MERS are uninsurable at this time. If a property has already been sold out of REO and an owner's policy of title insurance was purchased by the REO buyer, generally the underwriters will continue to insure the property unless there is knowledge of a pending challenge to the foreclosure of the subject property.

Title agents are urged to work closely with their underwriter when handling a transaction involving MERS. Involving the underwriter early on will ultimately better serve the customer because the requirements to insure a particular property can be communicated as much in advance as possible. Communication with all parties involved is also essential since the deal may not be able to proceed or the closing may be delayed until the property is re-foreclosed.

As the news of the MCOA ruling spreads, anyone who purchased an REO property in the last several years may become concerned that the title to their land may be in jeopardy. I have heard reports from title agents that they are receiving calls from clients that have purchased REO properties in recent years. They want to know if MERS was the foreclosing entity on the REO property and what will happen if somebody challenges their ownership. If MERS was the foreclosing entity, title agents should remind the client about the value of the owner's title insurance policy they purchased at closing.

"It clearly demonstrates the value of title insurance in protecting the American Dream of Home Ownership."

Generally a property owner has nothing to worry about unless someone steps forward to challenge his or her title, provided that an owner's policy was procured and that policy did not except from coverage claims or loss predicated upon issues surrounding the conduct of the foreclosure proceeding and sale. In the event that their title is challenged, the property owner should file a claim on their policy with the underwriter. The property owner should also be reminded that in this type of claim situation the title insurance underwriter will defend their ownership and handle the legal defense if necessary.

This is a significant point that validates the importance of the work that ALL members of the MLTA do on a daily basis. It clearly demonstrates the value of title insurance in protecting the American dream of home ownership. I urge you to share this important message with all of your customers.

This article will also appear nationally in an upcoming ALTA NEWS publication of the American Land Title Assn.

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Dear HUD: You Make Me Happy When Skies are Gray

by Howard A. Lax, Lipson, Neilson, Cole, Seltzer & Garin, P.C.

HUD sometimes issues amazing FHA Mortgagee Letters. Like manna from heaven, these letters revive our smiles and our spirits. It seems appropriate at this time of year that HUD should offer us FHA Mortgagee Letter 2011-17, "Use of HUD/FHA Logo, Name and Acronym in Advertising." This guidance is intended to do exactly as the title says, but the wording of the letter is the source of our mirth. Pursuant to Mortgagee Letter 2011-17:

"Device" constitutes a channel or instrument for soliciting, promoting or advertising FHA products or programs.'

The HUD-1 Settlement Statement form is an instrument that promotes FHA loans. Hence, the HUD-1 is a "Device" subject to this guidance. The Mortgagee Letter continues:

"FHA-approved mortgagees, non FHA-approved mortgagees and Third Party Originators are not permitted to display the official HUD seal (Exhibit B) or any other insignia that imitates an official Federal seal on any Device."

This is one of those times when a picture is worth a thousand words.

This picture is at the top of the HUD-1:

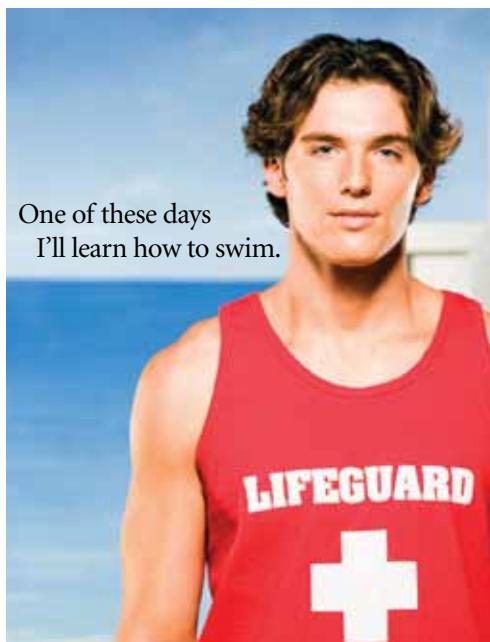


A. Settlement Statement (HUD-1)

This picture is the seal that is prohibited for use in any "Device":



The seal on the HUD-1 looks exactly the same as the prohibited seal!!!! Regulation X prohibits any changes to the HUD-1. So, are we finished using the HUD-1 form???? Be still my heart!!! Smile! HUD has many more Mortgagee Letters to issue!



Some things are not what they seem.

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*Old Republic National Title Insurance Company

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

MLTA Member Spotlight

Name: Mark R. Maddox

Position: Underwriting Counsel

Company: Fidelity National Title Insurance Group

MLTA Involvement: I've been a member for many years. I am on the Legislative Committee and have served on panels as a speaker at MLTA Education Seminars.



Something about you to share with the MLTA Members: I have been with Fidelity for 6 years. I have been a practicing attorney in Michigan for 36 years, with a private practice concentration in the areas of real property, real estate development and small business organization/operation. I co-owned Bliss Abstract and Title, with my wife Sarah Sutton. I was also the co-owner/operator of a stock car racetrack and restaurant for a short time, from which endeavors I learned that I was better suited for the practice of law and the title business.

Personal Interests/Hobbies: I am an avid outdoorsman and a member of Trout Unlimited, Ducks Unlimited, The Wild Turkey Federation and Pheasants Forever. Sarah and I are also morel hunting fanatics. I enjoy woodworking, and have done the interior finishing work, including construction on all of the kitchen and bathroom cabinets for our log home on the Manistee River.

On the Move



After 31 years in the title industry, **Douglas D. McFarlane** retired from Corporate Title Agency effective June 1, 2011. Doug began his title career at Isabella County Abstract Company in 1980. He became a partner in that business and continued until 1998 when the business was restructured into IBT Title. Doug continued as President of IBT Title until 2008 when the business merged with Corporate Title Agency. Doug served as Executive Vice President at Corporate Title Agency until his retirement.

After six years on its board of directors, Doug became President of the Michigan Land Title Association in 2009. He served with distinction significantly advancing communication with and understanding of our industry by the Office of Financial and Insurance Regulation. He also founded a state-wide program organizing MLTA members to assist Habitat for Humanity. In 2010, Doug received MLTA's most prestigious award, the Mary Feindt Award, recognizing lifetime achievement in the Michigan title insurance industry. Doug continues to reside in Mt. Pleasant with his wife of 43 years, Melanie.



Lighthouse Title Group celebrated their 10 year anniversary on May 31, 2011.

Bob Wuerfel, President, **Jeff Beyer**, Vice President and **Renee Rycenga**, Vice President, (pictured above) shared their celebration at the May WMLAR General Membership Meeting in Grand Haven.

While the real estate market has indeed been challenging, Lighthouse Title is an agency that celebrates the decade that they've had and look forward to adapting and changing to provide many more decades of service to their clients!

*If your firm would like to share information in this section
email LauraVDesigns@gmail.com*

Welcome New Members

Century Title Agency Services
Troy, Michigan

Red eDocs, *Troy, Michigan*



ABSTRACTIONS

by Allan Dick, Best Homes Title Agency, LLC

Ah! Eighty degrees and sunshine – what a concept! Kinda makes you think about summer, especially now that Memorial Day is in the rear view mirror. And summer means the MLTA Summer Convention is just around the corner (July 17-19 at Crystal Mountain). If you haven't received the mailer, go to the website (milta.org) or call the MLTA office. We have some excellent speakers and great entertainment planned at a lovely location.

Included, as you know, will be the PAC FUNdraiser "I'm Just a Singer in a Rock 'N Roll Band" with six great contestants to choose from: **Connie Curio** (Lighthouse Title), **Jim Dondero** (First American Title), **Jennifer Lawrence**, soon to be **Latch** (Stewart Title), **Phil Savich** (Old Republic Title), **Cy Tope** (Corporate Title) and **Meredith Weingarden** (Fidelity Group). So, please vote with your donations and pledges to see your favorite at the microphone. Should be a hoot! And do join us at the convention for an informative and fun time!



Well, Michigan has certainly attracted some attention (not the best kind) due to our recent MERS ruling. Seems like everyone has an opinion regarding this matter – some of them even informed. Wasn't it serendipitous that the Spring Education Seminar had a section on Foreclosure FAQs? Of course, when John Bommarito was preparing his materials, he didn't know the bombshell was about to hit. But, he covered those questions as well in his usual fashion. The good news (well, as close as we are going to get) is that the foreclosed lenders appear to have finally developed their game plans for re-foreclosing and the ball will finally start rolling again. But, it will still take quite some time to get title cleared for those properties. We'll see where it goes from here.

According to Housing Wire, despite the economy and continually declining home values, the number of Americans keeping current on their mortgages is actually rising. The first quarter delinquency rate fell to 6.19% nationally, so reports the TransUnion credit reporting agency. That is a 3.4% drop from the 2010 4th quarter, and an 8.6% decline from a year ago. And, they predicted further improvement based on an improving economy and tighter lending standards. Fannie Mae is also reporting that their delinquencies have declined steadily for the past year.

DS News, on the other hand, reports that 27% of those underwater homeowners think it is acceptable to just walk away – the so-called strategic default – nearly double from last year. They justify this by asserting that the accounting lies with the lenders and financial institutions, which were responsible for deceptive lending practices. This sort of reminds me of the lady in the Detroit Free Press article, whose home was a MERS foreclosure 4 years ago. She doesn't want to try and get the house back. But, she "would like some kind of compensation for everything I have gone through." What that is, I am not exactly sure.

Hey, you may have heard me explain this at one of our seminars – or someone else speaking about legal descriptions - but, Michigan, as part of the Northwest Territory, was surveyed back in 1815, resulting in the townships and sections we are all so familiar with, when searching titles. The grid for each state's numbering was based on a north-south meridian and an east-west "base line". This "base line" is known as Base Line Road through some parts of the southern part of the state (8 Mile Road in the Detroit Area), and runs from the Wayne County-Macomb County dividing line west all the way to the division between Van Buren and Allegan Counties on the Lake Michigan shore, just north of South Haven. But, it doesn't stop there, of course. Being the latitude line 42 degrees, 26 minutes, 30 seconds North, it extends across Lake Michigan to become the state line between Illinois and Wisconsin.

MLTA-PAC NEEDS YOUR HELP!!!

by Steve Frank, Attorneys Title



One of the PAC fundraisers for this year's Summer Convention will be a silent auction and we need your help! The MLTA-PAC is seeking donated items for the auction - some of the items that have been given in the past have included iPods, sports memorabilia, sporting event tickets, spa certificates and food or wine baskets. We are looking for a good variety of items so that we have something for everyone.

If you would like to donate an item, please contact **Steve Frank** at sfrank@atatitle.com and provide him with the item description and value. We would like to thank everyone in advance for their support and participation in the PAC and helping to make this year's Summer Convention a **HUGE** Success !!!

Views from the Top



Greetings from the North to all my land title buddies. Well spring is in full bloom and the gray skies of winter have moved on. Can summer be far behind? The ole' order count is even starting to breathe again so me and my law partner Gordie Gillespie are smiling bigger than ever. We still can't tell when things are going to pop like the old days but you just know those days are around the corner. Am I soundin' a little nostalgic? Well, it has come time for this descendent of Sam Hill to ride off into the sunset. Yup, this old boy is retiring from the rigors of the title business. Do I have any regrets? Naw, Will Rogers said it for me: "Some people try to turn back their odometers. Not me, I want people to know why I look this way. I've traveled a long way and some of the roads weren't paved." That's me.

A few days ago I was commiserating with my daughter about how tough these past few years have been what with all the layoffs and tryin' to rub two nickels together to make a quarter and danged if she didn't put it all in perspective. She said "Pops, look back at the good times in the office, the fun, the kids who worked for you and the lives you have touched. It wasn't always like this." That's a bull's-eye if I ever heard tell of one. Don't you hate it when one of the young un's put it in perspective for you? I gotta quote Will Rogers again 'cause he hit the mark on this too. He said "One must wait until the evening to see how splendid the day has been" and you know what? All told it has been a beautiful day at that. The title business has been good to me and I thank y'all for letting me

into your office from time to time the past few years. It has been an honor for me, I can tell you that!

Now don't think for a minute that I am leaving all ya high and dry. I am trying to recruit...are you ready for this?...Sam Hill, Jr. to pick up the reins for me and keep writing this article to amuse, abuse and defuse you going forward. Yup, Sam Jr., The son of Sam, so to speak. Actually in the family we call him the Deuce cause he looks, walks and talks like his old man. He's an attorney just like Sam Sr., too, so he will

no doubt have lots to say...using too many words like me for sure. So I leave you with a smile on my face heading into retirement. I will see you at the water hole when we next get there.

And indeed, that's the way I see it and this is the view from the North so you can see from the country what it looks like from here to there from time to time. And it is a beautiful sight to boot.

Regards and Adieu,
Lester Sam Hill



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Careless Whispers

by Lisa A. Tyler, Fidelity National Title

Kishona Brown, a closer with Chicago Title's Skokie, Ill. office, was conducting a signing without the buyer or seller in the room. To set the stage, the signing ceremony was being conducted with both the buyer and seller's attorneys and real estate agents.



The attorneys were actively reviewing the documents and signing on behalf of their principals, when all of a sudden the signing came to a screeching halt. The attorneys started whispering and Kishona strained to hear what they were discussing. Apparently neither one of them wanted to sign the short sale lender's document entitled Affidavit of Arm's Length Transaction. They instead were insisting the real estate agents sign the form for their clients. This is what the affidavit said in part:

Affidavit of Arm's Length Transaction

The purchase and sale transaction reflected in the agreement is an "Arm's Length Transaction" ... the transaction has been negotiated by unrelated parties, each of whom is acting in his or her own self-interest, and that the sale price is based on the fair market value of the property with respect to those persons signing this affidavit as an agent for either Seller(s), Buyer(s), or both, those agents are acting in the best interest of their respective principal(s).

No buyer or agent of the buyer is a family member or business associate of the seller or the borrower or the mortgagee.

The real estate agents didn't want to sign the Affidavit either. And through the quiet bickering between the attorneys and agents Kishona learned the seller and buyer were actually married to one another! They did not share the same last name, so Kishona would never have suspected had it not been for the careless whispers among the attorneys and real estate agents.

Kishona promptly excused herself from the signing and escalated the situation to her head title underwriter who told her to halt the closing. She did so and excused the parties from the signing. The seller's attorney quipped to Kishona before he left, "Better luck next time!"

The buyer then called Kishona the next day yelling and screaming at her for stopping the closing and demanded her money back. Thank goodness Kishona halted the transaction! If the short pay lender had later discovered the relationship between the buyer and seller, they may have elected to rescind their short pay agreement and keep their lien in full force and effect. Luckily, the only policy our Company was issuing in the transaction was an owner's policy to the wife/buyer. The policy would not have afforded her protection against the lender's lien rights, if her attorney followed through with the signing of the Affidavit – since he would have perjured himself on her behalf. The Company would have been stuck with the money and forced to participate in unwinding the transaction, which would have cost our offices more time, money and complete frustration!

For Kishona's keen sense of hearing and for having the guts to escalate what she knew was clearly wrong, she received a monetary award as well as a letter of recognition from the company.





Legislative Update

by Cami Pendell,
Michigan Legislative
Consultants

LEGISLATION PROHIBITING PRIVATE TRANSFER FEES

One of the MLTA's legislative priorities is now on its way to the governor's desk for his signature. House Bills 4227 (Opsommer) and 4228 (Rendon) initially passed the House by a unanimous vote on March 23, 2011 and recently passed the Senate also by a unanimous vote on May 17, 2011. These bills prohibit the use of private transfer fees. The use of these fees are a new and controversial financial scheme which some developers use in an attempt to make additional money. They add language to home purchase contracts requiring that a percentage of the sales price be paid to the original corporate owner of the property every time the property is sold. The fee language is usually applicable for up to 99 years.

Prohibiting such covenants was a top priority of the Michigan Land Title Association and promoting HBs 4227 and 4228 was a part of our Legislative Day lobbying efforts. Additionally, MLTA worked as a member of a coalition with the Michigan Association of Realtors, Michigan Association of Home Builders, Michigan Credit Union League and the Michigan Bankers Association to see these bills successfully advance through the legislature. All of this hard work has paid off and soon these bills will be presented to the governor for his signature so they can become law.

GOVERNOR'S TAX PROPOSAL NARROWLY PASSES

A slightly modified version of the governor's original tax proposal was narrowly passed by the legislature. The final vote in the State Senate came to a 19-19 tie, therefore Lt. Governor Calley had to cast the deciding "yes" vote in order for HB 4361 to pass.

The legislation creates a 6% income tax on C-corporations. S-corporations, limited liability companies, partnerships and other business entities that do not sell stock have a different tax structure where instead of the 6%, they instead will pay tax on their profits through the personal income tax.

In addition to business tax provisions, there are also pension tax and personal income tax changes as well. For those born in 1946 and after, their total exemption of pension income from public-sector jobs will be eliminated and the existing \$45,120 exemption (\$90,240 for married couples) for pension income from private sector jobs will end as well. Those born before 1946 would see no change. Those born between 1946 and 1952 could claim an exemption of \$20,000 (\$40,000 for married couples) on their

pension income unless their total household income exceeded \$75,000 (\$150,000 for married couples). And those born after 1952 would only get the \$20,000/\$40,000 exemption once they turn 67 unless household income topped \$75,000/\$150,000. The income tax rate will remain at 4.35 percent through 2012 and then drop to 4.25 percent on January 1, 2013, where it would remain. The rate had been scheduled to fall by 0.1 percentage point a year starting October 1 until it reached 3.9 percent.

The \$3,700 personal exemption will begin phasing out for those with incomes of \$75,000 or more (\$150,000 or more for married couples). The \$2,300 special exemption for seniors and those receiving unemployment compensation will end. The \$600 per child credit for child care expenses will be eliminated too. Finally, the Homestead Property Tax Credit will be significantly decreased.

There are other changes as well, but the above referenced provisions were the items that received the most discussion through the legislative process. Additionally, all of these tax changes are going to take place beginning in January 2012. The entire tax package has now been presented to the Governor and his signature on the bills is expected to take place before June.

NEW OFIR COMMISSIONER

With a new governmental Administration comes new appointments to various leadership posts within state government. Such an action recently took place in the Office of the Financial and Insurance Regulation when Governor Snyder appointed Kevin Clinton to be the Commissioner. As commissioner, Mr. Clinton is responsible for the regulation of the Michigan financial service industries, including insurance, banking and securities. The commissioner administers 29 public acts and regulates a variety of individual licensees and entities, including Blue Cross Blue Shield, 25 HMOs, 114 banks, 171 domestic insurance companies, 202 credit unions, 1,458 foreign insurance companies, 1,778 investment advisors, 1,969 securities broker-dealers, 194,835 insurance agents, 131,194 securities agents, 9,214 investment advisor representatives, 3,958 mortgage licensees and registrants, 656 deferred presentment companies and 2,387 other consumer finance-related entities.

Before being appointed commissioner, Mr. Clinton served for more than six years as president and CEO of American Physicians Capital, Inc. (APCapital), a publicly traded medical professional liability insurance provider based in East Lansing, MI. Before becoming president

and CEO, Clinton worked as the company's vice president and chief operating officer.

Prior to joining APCapital in 2001, Mr. Clinton served for nearly five years as president and CEO of MEEMIC Insurance Company, a publicly traded property and casualty insurance holding company based in Auburn Hills, MI. Mr. Clinton was also chief financial officer at ProNational Insurance Company.

Mr. Clinton's extensive experience in the insurance industry also includes actuarial positions in the private sector as well as serving as chief actuary for the Michigan Insurance Bureau in the 1980s. He holds Bachelors of Business Administration and Masters of Actuarial Science degrees from the University of Michigan.

MEMBER SPOTLIGHT

In the last Title Examiner, the spotlight was on the Rep. Ouimet who chairs the House Local, Intergovernmental and Regional Affairs Committee. This quarter, the spotlight is focused on his Senate chairman counterpart, *Sen. Dave Robertson* who chairs the Senate Local Government & Elections Committee.



Senator Dave Robertson has been at the forefront of many of the issues that have defined Michigan in more than 20 years of public service. He was first elected to the legislature in 1990 and was an early advocate of property tax relief, having participated in the legislative battles culminating in the passage of Proposal A. He returned to the Michigan House after the 2002 election and served until 2008.

Dave has been a consistent and passionate advocate for lower taxes, smaller government, and pro-growth policies. He believes that the key to growing Michigan's economy is in cutting excessive regulations, standing up for property rights, and harnessing the power of our entrepreneurial spirit.

Sen. Robertson serves on multiple committees in the State Senate. In addition to serving as the chair of the Local Government & Elections Committee, he also serves as Vice-Chair of the Health Policy Committee. In addition to those roles, he has been appointed to following committees: Finance; Insurance; and, Reforms, Restructuring & Reinventing. Robertson is a lifelong resident of Genesee County.

ALTA UPDATE

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from ALTA

ALTA Reports Title Premiums Up 8.7% in First Quarter

The American Land Title Association (ALTA) reported title insurance premiums written during the first quarter of 2011 increased 8.7 percent when compared to the first quarter of 2010.

According to ALTA's preliminary 2011 First-Quarter Market Share Analysis, the title insurance industry generated \$2.25 billion in title insurance premiums during the first three months of 2011. This is up from \$2.07 billion in title insurance premiums written during the same period a year ago.

The states generating the most title insurance premiums during the first quarter of 2011 were California (\$307 million, up 2 percent compared to the first quarter of 2010), Texas (\$246 million, up 22.2 percent), New York (\$165 million, up 17.7 percent), Florida (\$159 million, up 6 percent) and Pennsylvania (\$110 million, up 25.3 percent). Overall, 41 states and the District of Columbia reported increases in title insurance premiums written during the first three months of 2011 when compared to the same period

in 2010. Alaska, Kansas and West Virginia all experienced more than a 30 percent jump in title insurance premiums written during the first quarter of 2011 versus the first quarter of 2010.



In terms of market share, the Fidelity Family of title insurance underwriters captured 33.7 percent of the market during the first quarter of 2011, while the First American Family garnered 27.7 percent, the Old Republic Family recorded 13.5 percent and the Stewart Family had 12.5 percent. Meanwhile, regional underwriters picked up 12.6 percent of the market during the first quarter of 2011, up from 10.7 percent market share during the same period a year ago.

ALTA expects to release its second-quarter 2011 Market Share Analysis around September 1st.

Industry Stats

Indicator	Release Date	Latest Release	Change from Previous Release	Next Release
30 Year Fixed Mortgage Rates	5/05/11	4.63%	-0.08	5/12/11
15 Year Fixed Mortgage Rates	5/05/11	3.82%	-0.07	5/12/11
10 Year Treasury Rate	4/18/11	3.12%	-0.03	5/19/11
Existing Home Sales (in millions)	4/21/11	5.10	+3.7%	5/19/11
New Home Sales	4/25/10	250,000	+11.1%	5/24/11
Supply of Housing Inventory	3/23/10	7.3 months	-1.6 months	5/25/11

Commercial Real Estate Markets Stabilizing, But Prices Decline to Post-Crash Low

While prices for commercial properties reached a post-recession low, the improving economy and job creation mean growing demand for commercial real estate, according to the National Association of Realtors.

Lawrence Yun, NAR chief economist, said job creation will be the biggest factor moving forward. "Job growth creates demand for commercial space, and the economy should be adding between 1.5 million and 2 million jobs annually both this year and in 2012, with the unemployment rate falling to 8.0 percent by the end of next year," he said. "Given the minimal new supply in recent years, the rising demand means vacancy rates will be trending down in the commercial real estate sectors. Individual markets are now stabilizing and in some cases rising."

From the second quarter of this year to the second quarter of 2012, NAR forecasts vacancy rates to decline 1.0 percentage point in the office sector, 0.9 point in industrial real estate, 0.5 point in the retail sector and 1.1 percentage points in the multifamily rental market.

The Society of Industrial and Office Realtors®, in its SIOR Commercial Real Estate Index, an attitudinal survey of more than 360 local market experts, shows a firming up of market fundamentals.

The SIOR index, measuring the impact of 10 variables, rose 6.8 percentage points to 57.5 in the first quarter, the highest since the fall of 2008. The Northeast and South drove improvements in market conditions. Vacancy rates are improving, but concessions continue to make it a tenant's market.

Although the SIOR index remains notably lower than a level of 100 that represents a balanced marketplace, this is the sixth consecutive quarterly improvement after almost three years of decline. The last time the index was at 100 was in the third quarter of 2007.

Meanwhile, U.S. commercial property prices fell to a post-recession low in March as sales of financially distressed assets weighed on the market, according to Moody's Investors Service. The Moody's/REAL Commercial Property Price Index dropped 4.2 percent from February and is now 47 percent below the peak of October 2007,

Moody's said in a statement today.

The national index has fallen for four straight months as sales of distressed properties hurt real estate values. Investor demand is strongest for well-leased buildings in such major markets as New York and Washington as vacancy rates decline and the economy grows.

The index "continues to bounce along the bottom as a large share of distressed transactions preclude a meaningful recovery of overall market prices," Tad Philipp, Moody's director of commercial real estate research, said in the statement. "Indeed, the post-peak low in price has been reached in the same period as a post-peak high in distressed transactions has been recorded."

A separate NAR commercial lending survey shows 65 percent of Realtors report lending conditions have tightened thus far in 2011, and six out of 10 failed to complete a transaction this year due to financing problems. Regional banks provide the majority of commercial loans,



followed by private investors. National banks are a distant third.

"Just as in the residential sector, lending problems are the biggest issue impacting commercial real estate," Yun noted.

The multifamily sector is the only area that has clearly turned the corner, resulting in consistently falling vacancy rates and rising rents. "Solid rises in apartment rents will force some renters to consider home ownership," Yun said.

NAR's latest Commercial Real Estate Outlook offers projections for four major commercial sectors and analyzes quarterly data in the office, industrial, retail and multifamily markets. Historic data were provided by CBRE Econometric Advisors.

Office Markets

Vacancy rates in the office sector are expected to fall from 16.3 percent in the second quarter of this year to 15.3 percent in the second quarter of 2012. The markets with the lowest office vacancy rates currently are Honolulu and New York City, each with vacancies below 9 percent.

Office rents are projected to rise 0.3 percent this year and another 4.3 percent in 2012. In 57 markets tracked, net absorption of office space, which includes the leasing of new space coming on the market as well as space in existing properties, is likely to be 26.6 million square feet in 2011.

Industrial Markets

Industrial vacancy rates are expected to decline from 13.9 percent in the current quarter to 13.0 percent in the second quarter of 2012. At present, the areas with the lowest industrial vacancy rates are Los Angeles and Salt Lake City, with vacancies in the 7 to 8 percent range.

Annual industrial rent should decline 1.5 percent in 2011 before rising 2.0 percent next year. Net absorption of industrial space in 58 markets tracked is seen at 126.1 million square feet in 2011.

Retail Markets

Retail vacancy rates are forecast to decline from 13.1 percent in the second quarter of this year to 12.6 percent in the second quarter of 2012. Markets with the lowest retail vacancy rates currently include Honolulu; Long Island, N.Y.; and San Jose, Calif., all with vacancies below 8 percent.

Average retail rent is expected to decline 1.4 percent in 2011, and then rise 0.7 percent next year. Net absorption of retail space in 53 tracked markets is projected to be 5.4 million square feet in 2011.

Multifamily Markets

The apartment rental market – multifamily housing – is continuing to tighten as household formation grows. Multifamily vacancy rates should drop from 5.8 percent in the current quarter to 4.7 percent in the second quarter of 2012. Areas with the lowest multifamily vacancy rates presently are Pittsburgh; San Jose, Calif.; and Portland, Ore., with vacancies below 3 percent.

Average apartment rent is likely to rise 3.4 percent this year and another 4.3 percent in 2012. Multifamily net absorption is forecast at 250,800 units in 59 tracked metro areas in 2011.



Summer Convention

July 17-19, 2011 • Crystal Mountain Resort

Agenda

Sunday, July 17th

3:30 – 8:00 p.m.	Registration
4:00 p.m.	Hotel Check-In
6:00 – 7:00 p.m.	Icebreaker Reception
7:00 – 9:00 p.m.	Welcome Dinner
6:00 - 10:00 p.m.	PAC “I’m Just a Singer in a Rock and Roll Band” Fundraiser
9:30 – 11:00 p.m.	MLTA’s <i>Unreal Property Band</i> Performance

Monday, July 18th

7:30 – 8:45 a.m.	MLTA Committee Meetings
7:30 – 9:00 a.m.	KEGS Breakfast
7:30 a.m. – 9:30 p.m.	PAC Silent Auction
8:45 – 9:15 a.m.	Opening Business Session
9:15 – 10:00 a.m.	ALTA Representative – <i>Rob Chapman</i> , Executive V.P. and CIO for Old Republic National Title Insurance Company and ALTA Governing Board, Chair of Underwriter Section
10:00 – 11:30 a.m.	<i>John Gallagher</i> – “Reimagining our Cities”
12:45 p.m.	Day at the Spa (optional)
1:00 – 5:00 p.m.	Annual MLTA Habitat for Humanity Golf Scramble (optional)
5:45 – 7:00 p.m.	President’s Reception
7:30 – 9:30 p.m.	Annual Banquet

Tuesday, July 19th

7:30 – 9:00 a.m.	Continental Breakfast
7:30 – 11:00 a.m.	PAC Silent Auction
9:00 – 9:15 a.m.	Closing Business Session
9:15 – 9:30 a.m.	Legislative Report
9:30 – 11:00 a.m.	“East Meets West” - <i>Nolan Finley & Carole Valade with Moderator, Mary Kramer</i>
11:00 – 11:15 a.m.	Golf Awards
	Silent Auction Distribution

The MLTA 2011 Annual Summer Convention will be held in July at the beautiful Crystal Mountain Resort. We would love to see you and your company get involved in one of the many sponsorship opportunities. Being a sponsor is a great way to get your name out among the top title producers in the State of Michigan.

If you would prefer, your company can opt to have an exhibitor's booth at the convention. All exhibitors receive one free registration

to all of the convention events in addition to the booth they use to exhibit their product and services.

For more information call *Marcy Lay* at the MLTA office 517-374-2728 or *Marcy Welburn* at Transnation Title Agency, 517-318-4390.

Below is a list of all the great companies you will see at the convention. We would love to add you to the list!

MLTA Summer Convention

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This year's summer MLTA-PAC fundraiser should be a great time for participants and viewers alike. One lucky contestant will be stepping up to the microphone to sing with the legendary band, **"Unreal Property"**!

The fundraiser will be similar to years past: the contestant with the most contributions will sing with the band during the second set of the evening on Sunday night at the Summer Convention.

All check donations must be in the form of a personal check and made payable to "MLTA-PAC".

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Education Committee

by Allan Dick, Best Homes Title Agency, LLC

LIONS, TIGERS AND BEARS - OH MY! A SPRING EDUCATION SEMINAR OF PERIL

Okay make that – Liens, Foreclosures and Bankruptcy. But, you get the idea. The topics addressed in the MLTA Spring Education Seminar certainly had an ominous tone. Fortunately, while these topics might have seemed rather negative in nature, the presentations provided were very constructive, with considerable amounts of useful information, due, in great part, to the efforts of *Dawn Patterson*, chairperson of the MLTA Education Committee.

Presented in both Mt. Pleasant (April 13) and Livonia (May 4), each session began with welcoming remarks from MLTA President, *Tim McDonnell* (who, by the way, is doing a terrific job as our fearless leader). After laying the groundwork and sharing some MLTA Board of Directors perspective, Tim introduced *Cami Pendell*, who is part of our Michigan Legislative Consultants tandem with *Tim Ward*. Cami gave us the Lansing Report, which included observations on the accomplishments of the Rick Snyder machine, including the tax reform, along with some news on a few bits of legislation. Most notably, she was pleased to proclaim the passage of House Bills 4227 and 4228 by the House and Senate, prohibiting Transfer Covenant Fees. As you may know, this legislation was the focal point of our March Legislative Day effort, which was obviously quite successful!

This led us into the meat of the seminar, with yours truly, serving as emcee. Our first speaker in Mt. Pleasant was attorney, *Laura McMahon Lynch*, Esq., who has worked with our industry extensively, and handled many claims, including several relative to condominium issues. This made her an ideal candidate to speak to us on a number of condominium issues, including new construction of condominium projects and the role of “Escrow Agent” under the

Condominium Act. Among other things, she noted that only title underwriters (and banks) are authorized to act as Escrow Agents under the Act, and that agency contracts did not delegate that authority (talk with your underwriter about this).

Her other topics focused on issues of changing descriptions during construction and the need to revise Notices of Commencement to avoid needless complications, and Avoiding Condominium Assessment Liens, the bane of REO closings these days. Laura’s presentation was very practical, resulting from her consultation with Dawn Patterson as to the pertinent issues the attendees were dealing with. Good to have an underwriter’s views. Laura was out of the country for the May (Livonia) presentation. But, MLTA veteran (and Past President) *Michael Hagerty*, a close friend of Laura’s, agreed to pinch hit with Laura’s materials. He didn’t skip a beat.

Next up was another attorney, invited to share his experience and insight regarding Bankruptcy Proceedings and Orders, and their affects on Real Estate Transactions. *Rodney Glusac*, Esq., from the firm of Bernardi, Ronayne and Glusac, likewise communicated with Dawn, who offered Rod some possible questions that would be topical and helpful for those in attendance. His presentation, and his answers to numerous follow up questions, made for perhaps the strongest bankruptcy section I can recall at an MLTA Seminar. (We do revisit this subject from time to time.)

Mr. Glusac covered a lot of ground, from the Trustee abandoning real estate issues to the need for orders lifting the automatic stay to the complications involving deeds in lieu of foreclosure, when there is an open bankruptcy case, and much, much more. In May, Rod was stuck in court in the morning, and rotated to the late afternoon shift, switching places with *John Bommarito*. The question and answer format of Mr. Glusac’s presentation was very useful, a great source of learning.

After lunch, we had some brief MLTA committee presentations, most notably the PAC presentation by chairman *Steve Frank*, introducing the six candidates for the Summer Convention FUNdraiser, “I’m Just a Singer

in a Rock ‘N Roll Band”. This should be very amusing (and hopefully help our PAC efforts). Then, it was back to learning with *Gregg Nathanson*, Esq. from Couzens, Lansky, Fealk, Ellis, Roeder & Lazar. Gregg has entertained and educated us many times in the past.

This time his topic was Michigan’s Commercial Real Estate Broker Lien Act, a newly implemented statute, whose paint hasn’t fully dried (from a practical point of view – Ed.) Gregg walked us through the particulars of the Act, pointing out what we should know. Obviously, if a lien is recorded prior to the closing, it is much like any other lien – pay it and get it released. But, there are procedures to be followed in order to avoid any such lien, when nothing is as yet recorded, but might be entitled to be recorded post closing and have retroactive repercussions. It is all very new (of course), and the questions outnumber the answers. But, Gregg put us on guard as to the possible pitfalls. Now, if we could only get some more commercial transactions, so we’d have more of this to worry about.

The final speaker of the day (except in May, where he switched places with Rod Glusac), was a crowd favorite, John Bommarito from Attorneys Title, speaking about Mortgage Foreclosure FAQs and providing a Foreclosure Update. A practical presentation, John covered a lot of ground and fielded questions deftly. He touched on the basic requirements for foreclosure, addressed the media hysteria regarding foreclosures, and spoke about Deeds in Lieu of Foreclosure, as well as possible types of challenges to foreclosures.

Talk about being timely! Between the April and May presentations, the MERS Appeals Court ruling hit the fan. So, John (and others) spent time discussing that in Livonia. All in all, these were most informative, very well attended seminars, another feather in the cap of the Education Committee. Thanks to all who planned, participated and attended. Maybe the Lions, Tigers and Bears were just pussy cats and teddy bears after all. We can only hope.



Spring Seminar

Photos courtesy of Connie Curio



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Locating the Core of the Community Called Michigan

Michigan Land History

by LeRoy Barnett, Freelance Writer

Nearly everyone is familiar with maps showing the migrating center of U.S. population. These cartographic expressions are based on the decennial censuses of America, and they show the human center of gravity for our homeland shifting over nearly 200 years of time from the Atlantic seaboard to a point today near mid-Missouri.

The concept behind these maps is to imagine every U.S. citizen weighing the same at the day and place they were counted. If these millions of individuals were fixed in their respective locations on an imaginary flat and rigid surface, the point at which the supporting platform balanced on the head of a pin would be the center of our country's population.

When examining one of these national maps recently, I wondered what a similar depiction would look like for just the state of Michigan. In other words, how has the mid-point of settlement across our two peninsulas moved through the ensuing decades?

For the most part, all attempts to identify this ever-shifting spot have come from the U.S. Census Bureau. Over time and on various occasions, this federal fact-finding office has portrayed our state's wandering hub of humanity back to 1880. By using a formula

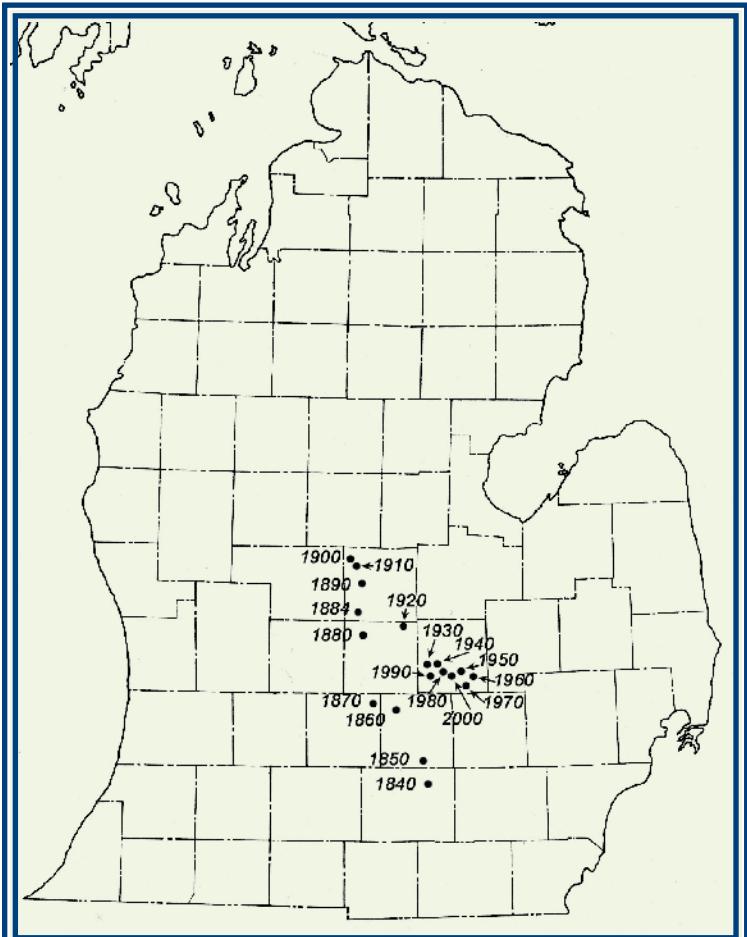
devised decades ago by the Michigan Secretary of State, I have calculated the centers of population for those years not covered by official government records. Granted, some of this shift of human

Since Michigan joined the Union, homesteaders on our soil have gradually located west and north of the original main locus of settlement around Detroit. This fact is reflected in the earliest pattern of dots progressing northwestward across the accompanying map of our evolving mean population centers.

But in the early twentieth century, the population of Detroit and vicinity exploded as the metropolitan region became a growing center of automobile manufacturing. As the mass to the southeast was due in part to residents in and around Wayne County declining populations in certain northern increased in substantial numbers, the Michigan counties. As the extractive



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industries of lumbering and mining gradually played out in the Upper Peninsula, for instance, a number of workers had to leave the region for other job sites, thus diminishing the pull of this area on our state's residential center of gravity.



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But it was the incredible industrialization brought on by the manufacture of motorcars in towns like Flint, Pontiac, Dearborn, Hamtramck, Highland Park and Detroit that caused the reversal of direction for Michigan's bull's-eye of habitation. Vast numbers of immigrants came to these and other communities to man the automobile factories, temporarily tipping the population scales in favor of our oldest counties and making Detroit the fourth largest city in the nation.

The pull of the southeastern Lower Peninsula on the center of Michigan's population ended with the census of 1970. With the development of the metropolitan expressway network and urban issues in the late 60's, substantial numbers of people began leaving the Motor City for the suburbs.

Also, about this time it became popular for retirees to spend their senior years in homes located amidst the lakes and forests of northern Michigan. These and other trends siphoned off residents from the Wayne County area, causing the middle point of our state's population to start moving to the northwest again.

Though many people left Detroit's municipal limits during the last quarter of the twentieth century, a major percentage of these individuals just relocated to homes in adjacent counties. Because large numbers of former city dwellers remained in the southeastern region, Michigan's center of population did

not shift much when it returned to a northwesterly drift.

In fact, since 1930 the hub of our state's population has stayed in southern Shiawassee County, oscillating about in a zone no more than thirty miles across. Another interesting fact relating to distance is that Michigan's center of humanity has remained for the past seventy years within thirty miles of our Capitol City, a close proximity to the seat of government that occurs in only sixteen other states.

When Lansing was chosen as the state capital in 1847, it received the designation in part because of its central geographical location. The legislators of that period would be pleased to know that the site they picked ultimately came very close to also being the center of population for our two peninsulas.

The author wishes to thank Tony Olkowski and the Michigan Center for Geographic Information, without whose help this map could not have been created.

LeRoy Barnett has been a Contributing Editor of Chronicle, a quarterly published by the Historical Society of Michigan. He retired in 2001 as an archivist with the State of Michigan Archives.



The Michigan Land Title Association is a professional association dedicated to creating an environment which enables its members to provide the public with the highest quality land title evidencing, title assurance and settlement services.

We are an integral part of protecting the "American Dream", home ownership! Whether buying, selling or mortgaging real property, the members of the MLTA are committed that each and every transaction they facilitate is addressed professionally and securely so that all the parties are assured of optimum results.

SURVEYOR'S VIEW POINT:

Traversing the Law: Fear and Loathing in Land Surveying

by Jeffery N. Lucas, PLS, Esq.



Imagine for a moment a totally deregulated land surveying profession. It's not hard to do given some recent events. The Texas Board of Professional Land Surveyors was almost defunded in April and continues to face the prospect of consolidation with other state agencies. In Florida, legislation to totally deregulate land surveying (a.k.a. "surveying and mapping") was only just narrowly averted. Perhaps by the time this goes to press, other states may have followed with similar moves of their own. Why would states want to deregulate land surveying?

The symptoms may vary from state to state, but the underlying cause will be the same. There is no perceived value in land surveying, so why should states spend their precious time and resources on it? Of course, this begs the immediate follow-up question: Why isn't land surveying perceived as valuable? The answer to this question isn't hard to find. I read about it almost daily as I go about my business, and I've been putting out the warning for years although it appears to largely fall on deaf ears. The root problem is two-fold: We don't believe our own foundational principles, and we are addicted to math and measurements to the exclusion of common sense.

The foundational principle of land surveying is that you are either an original surveyor setting out original lines for the very first time, or you are a retracing surveyor "following in the footsteps" of those who have gone before. I have been bringing the cases since 2004 demonstrating how the courts have articulated this principle time and time again, in all jurisdictions, and I have also brought you the cases where the land surveyor routinely ignores this principle in favor of math and measurements based on what can be best characterized as "an erroneous perception of a misguided duty."¹ "The surveyor has mistaken entirely the point to which his attention should have been directed. The question is not how an entirely [precise] survey would locate these lots, but how the original stakes located them."²

Since Texas and Florida are up for discussion, how do their laws weigh in?

When finding the lines of a survey, the cardinal rule is that the footsteps of the original surveyor, if they can be ascertained, should be followed. The primary objective in locating a survey is to "follow the footsteps of the surveyor"; by which is meant to trace on the ground the lines as he actually ran them in making the survey. If the actual lines and corners run by the original surveyor can be found, they are controlling, even if they are inconsistent with the calls and references in that surveyor's field notes. The footsteps of the original surveyor are controlling and prevail over calls for course and distance. When the actual lines run by the surveyor can be found, they constitute the true boundary and cannot be made to yield to course and distance calls. ... Although the original surveyor's marks and calls are generally controlling, when the surveyor's marks have disappeared over time, the lines and corners of the survey may be established using any evidence tending to show their location that is the best evidence of which the case is susceptible. Courts generally consider the "best evidence" to be that evidence which is the more specific and definite as against that which is merely general and indefinite or descriptive.³

While the original surveyor has a right or responsibility to establish new boundaries when he surveys previously unplatte land or subdivides a new tract, the sole duty of all subsequent or following surveyors is to locate the points and lines of the original survey by locating existing boundaries. No following surveyor may establish a new corner or line, or correct erroneous surveys of earlier surveyors, when they track the original survey in locating existing boundaries. This is so because man set monuments as landmarks before he invented paper and still today the true survey is what the original surveyor did on the ground by way of fixing boundaries by setting monuments and by running lines ("metes and bounds"), and the paper "survey" or plat of survey is intended only as a map of what is on the ground. [Emphasis provided.]⁴

Even though the courts in all jurisdictions say basically the same thing, the land surveyor doesn't believe these doctrines of the law. I could spend the rest of this column and several more giving you example after example of these principles being ignored by land surveyors, resulting in landowners going to court for no good reason at all, but I don't have to do that to prove my point. All I have to do is ask one simple question: Why do we have pincushion corners?⁵ If land surveyors truly believe that they are either original surveyors setting out original lines for the very first time or following surveyors whose only duty is to find the marks that are already on the ground, then there would not be one pincushion corner set by a land surveyor. Given that pincushion corners not only exist, but exist in such vast numbers that I expect to find one every time I survey property, the only conclusion to be reached is that land surveyors, on the whole, do not believe in their foundational principles.

Our addiction to math and measurements usually comes at the cost of common sense. When you are jumping over a boundary line that has been established for over 30 years under two previous surveys and driving irons 147 feet inside a property and clouding the landowner's good title because the math told you to do so, common sense is a casualty. Property owners shouldn't have to spend hundreds of hours attending multiple depositions, answering interrogatories and producing documents, nor should they have to spend thousands of dollars in attorney's fees and costs associated with clearing the title to their property, as Karen Nelidov was forced to do in *Buddhist v. Nelidov*.¹



A pincushion corner where three monuments set by land surveyors all ostensibly represent one corner position. What service is being provided here that could not be provided by the cheapest expert measurer?

the discrepancy in acreage on Mr. Shannon's deed and the survey prepared by Leggins was 'hair raising.' The Trial Court said that the surveyor had an absolute duty to do his own surveying and not let someone else show him where the lines were. The Court found that Leggins, knowing there was a problem, had relied on what Shannon had told him.⁶ Not only is common sense out the window in this type of case, but the courts, the legal profession and the surrounding landowners get the idea that a survey of property not only has no value, it's a liability.

When you know that there is a boundary dispute beforehand and that is the reason you were hired in the first place, common sense would dictate that a hands-on approach to the problem is warranted and even an onsite inspection of the premises is in order before rendering an opinion on the property boundaries involved. But when the results of your survey of property are "based in part on calculations (based on the deed) done by the computer"⁷ to the exclusion of the best available evidence in the case because the land surveyor never left the office, common sense was never considered. "We find no cause for concern that the trial court found the testimony of the surveyor troublesome. The surveyor testified as to his results but noted that he had not conducted the actual survey." Id. Why should it be surprising that: "This surveyor's mark was likely the spark that ignited this dispute." Id.

These are not isolated cases. The problem has reached the point where it is common knowledge within the legal profession--at least that part of the profession that deals with real property--that no two surveyors are likely to agree on any given property corner. Landowners who have had any experiences with land surveyors in the past generally feel the same way, especially when they already have three monuments set by surveyors all ostensibly representing one corner (see Figures 1 and 2). Why is a fourth survey needed? It would surely result in a fourth monument. None of this is good for the profession.

We've billed ourselves for decades as expert measurers and finders of problems--only. With the advances that have taken place with technology, especially within the last several years, anyone with the right tools can also be an expert measurer. If land surveyors are only expert measurers, what will separate the land surveyor from the other expert measurers who will certainly enter the market in a deregulated profession? The vast majority of the perceived problems land surveyors find aren't problems at all; they only exist in the land surveyor's mind when the reality on the ground doesn't match the math and measurements in the deed. Measurements are the lowest form of evidence, but the land surveyor elevates them to the highest because the land surveyor is much more comfortable

with measurements than with what the law dictates.

Regulation is a crutch that the land surveying has come to lean upon. If we truly had valuable services to offer the courts, the legal profession and the land owning general public, then we wouldn't need the monopoly that regulation provides. (We also wouldn't be facing the possibility of deregulation in the first place.) Deregulate the medical profession, and people would still seek out the best services available because of the perceived value. The best doctors would not only survive deregulation--they would thrive. Deregulate the legal profession, and people wouldn't hire an attorney who could only tell them what their problems are with no possibility of solving them; they would hire an attorney who is an expert in the law and not only understands the problem but offers viable solutions.

If the only difference between any two given surveys is the price of the survey, then we do not have a valuable service to offer; all we have is a commodity that will go for the lowest price. In that case, deregulation of the profession

A pincushion corner where two monuments, more than 20 feet apart, represent one section corner. The monument in the background (a pipe next to the prism pole) was identified as a property corner when the landowner bought her property in the early 1950s. Then, in the 1980s, a contractor working for the forest service came along and set a "new corner" by proportionate measurement (the monument in the foreground). Again, what valuable service is being offered that cannot be provided by the cheapest expert measurer?



would cause the best surveyors to be run out of business in favor of the cheapest expert measurer. If, on the other hand, we have a valuable service that the market wants, then we have nothing to fear from deregulation.

I'm afraid the land surveying profession, as it is presently practiced, has much to fear.



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

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

References

1. Buddhist v. Nelidov, 2006 Cal.App.Unpub. LEXIS 2766 (Cal.App.2006).
2. Diehl v. Zanger, 1878 Mich. LEXIS 375 (Mich.1878).
3. TH Investments v. Kirby Inland Marine, 218 S.W.3d 173 (Tex.App.2007).
4. McGhee v. Young, 606 So.2d 1215 (Fla.App.1992).
5. "Pincushion corner." Multiple monuments set by land surveyors representing one corner. See Figures 1 and 2.
6. Watts v. Shannon and Leggins, 2005 Tenn.App. LEXIS 403 (Tenn.App.2005). Dowdell v. Cotham, 2007 Tenn.App. LEXIS 470 (Tenn. App.2007).

Michigan Commercial Real Estate Broker's Lien Act



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



For further information, contact Gregg A. Nathanson, Esq., an attorney at the law firm of Cousens, Lansky, 39395 W. 12 Mile Road, Farmington Hills, Michigan 48331, telephone 248-489-8600 or gregg.nathanson@couzens.com

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Commercial Real Estate Broker's Lien Act

I. Act applies only to "commercial" real estate.

- A. Act excludes unimproved land zoned for single family use; land on which 4 or fewer residential units are located; and real estate containing more than 4 residential units, if single-family and sold on unit-by-unit basis.
- B. Only an individual licensed as real estate broker under Article 25 of Michigan Occupational Code, can record Lien. Lien not available to an employee, agent, subagent or independent contractor of licensed real estate broker.

II. Attachment of Lien

- A. Lien attaches to commercial real estate if:
 - (1) Broker has written commission agreement; and
 - (2) Broker is entitled to commission under agreement; and
 - (3) Broker records Claim of Lien before property is conveyed (subject to certain exceptions).
- B. Lien attaches on date Claim of Lien is recorded.

III. Buyer's Agent

If Broker has written agreement with potential Buyer to act as Buyer's Agent, Lien attaches after both Buyer purchases or accepts conveyance of property and Claim of Lien is recorded.

IV. Commission Due in Installments

Claim of Lien must be recorded within 60 days after conveyance, when commission is due in installments, and one or more installments falls due after the conveyance. Lien applies only to those installments owed by Seller and falling due after date of conveyance and after Lien is recorded.

V. Leasing

- A. Broker owed leasing commission may record Claim of Lien any time within 60 days after Lease is signed.
- B. Lien attaches after Claim of Lien is recorded and Lessee takes possession of leased premises.
- C. Lease includes a sublease, assignment of lease or modification of lease.

VI. Lease Extensions and Expansions

If Broker is owed commission in future as result of extension of lease term or expansion of leased premises under existing lease, Lien attaches after Claim of Lien is recorded and modification of existing lease is confirmed in writing. However, Claim of Lien must be recorded within 60 days after original lease is signed.

VII. Notice of Intent to Lease

If Broker personally receives written notice of intent to enter into lease at least 10 days before lease is signed, and notice includes intended signing date, then Broker shall file Claim of Lien before intended signing date (or lose Lien rights).

VIII. Options to Purchase

- A. If Broker is owed commission in future as result of an option to purchase property, then Broker may record Claim of Lien any time after option to purchase is signed and before transfer.
- B. Lien attaches after both Claim of Lien is recorded and property is transferred pursuant to exercise of option.

IX. Claim of Lien – Content and Form

- A. Act sets forth specific requirements for content of Claim of Lien.
- B. Claim of Lien must contain:
 - (1) Broker name and license number
 - (2) Name of property owner
 - (3) Amount of lien
 - (4) Legal description (must attach)
 - (5) Agreement giving rise to lien (must attach)
 - (6) Statement that information in Claim of Lien is true and accurate to knowledge of signer and
 - (7) Notarized signature of Broker or Broker's authorized signatory.
- C. Act contains Claim of Lien form. Recorded Claim of

Lien must substantially follow statutory form.

X. Duty to Notify

- A. Within 10 days of recording a Claim of Lien, Broker shall provide a copy of Claim of Lien to owner of record and to party who signed written commission agreement.
- B. Broker must serve notice of Claim of Lien by registered or certified mail, return receipt requested, to property address of real estate encumbered by Lien, or by personal service.

XI. Get it Right

Claim of Lien not recorded or delivered to proper parties, in full compliance with Act, is void and unenforceable.

XII. Broker Lien vs Mortgage or Construction Lien

- A. Valid prior-recorded lien or mortgage has priority over Broker's Lien.
- B. This includes, for example, a valid construction lien recorded after Broker's Lien that "relates back" to date before Broker's Lien is recorded (i.e., date of first furnishing goods or services, presumably under Michigan Construction Lien Act); and lien securing revolving credit and future advances of construction loans recorded before Broker's Lien (presumably under Michigan's Priority of Mortgages Act dealing with Future Advance Mortgages).

C. Subsequently recorded mortgage has priority over prior recorded Broker's Lien if mortgagee did not have actual or constructive knowledge of Broker's Lien at time mortgagee advanced money under mortgage. However, a lender under subsequently recorded mortgage normally will have constructive notice of prior recorded Broker's Lien.

XIII. Escrow Account

- A. If recorded Broker's Lien would otherwise prevent transaction from closing, parties shall (except as provided in D. below) establish an escrow account from transaction proceeds in an amount sufficient to satisfy Broker's Lien.
- B. Buyer or Seller shall not refuse to close transaction because of requirement to establish escrow account.
- C. Money shall remain in escrow until rights to money have been determined by written agreement, judgment or court order.
- E. Escrow account not required if mutually acceptable alternative procedures are available to allow transaction to close, or transaction proceeds are insufficient to satisfy all (other?) liens.
- E. If amount sufficient to satisfy Broker's Lien is escrowed, Broker's Lien is extinguished and Broker shall release Lien.

XIV. Release of Lien

Act contains Release of Lien form.

XV. Lawsuit

- A. Person claiming Broker's Lien may bring action to enforce (and foreclose) Lien in County Circuit Court where property is located, by filing complaint and affidavit that Lien has been recorded.
- B. Complaint shall name all persons with an interest in the property.
- C. Complaint may include a claim for breach of contract under which Lien arises.

XVI. One Year Requirement

- A. Lawsuit shall be commenced within one year after date Lien attaches.
- B. Failure to commence lawsuit within that period extinguishes Lien.

XVII. Successful Lawsuit

- A. Court may enter Judgment ordering sale of all or part of property.
- B. Court shall establish redemption period not exceeding 4 months.
- C. Order of Foreclosure Sale shall be recorded.
- D. Sale is final, subject to period of redemption, upon entry of Order of Confirmation by Court.
- E. Upon expiration of redemption period, grantee who

Continued on Page

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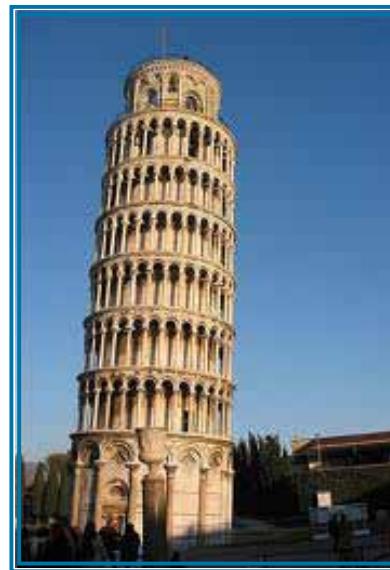
C. Order of Foreclosure Sale shall be recorded.

D. Sale is final, subject to period of redemption, upon entry of Order of Confirmation by Court.

E. Upon expiration of redemption period, grantee who purchased at foreclosure sale owns property.

F. If Court determines sale proceeds are insufficient to satisfy Judgment, Court may enter a deficiency judgment against person who signed written agreement to pay Broker.

G. Court may award costs to prevailing plaintiff, including reasonable attorney's fees, court and litigation costs and prejudgment interest.



H. If Court determines action was frivolous, Court may award costs to defendant.

XVIII. Duty to Start Lawsuit

If property owner demands that Broker who recorded Lien commence lawsuit to enforce Lien, or file answer in pending action between owner and Lien Claimant, and Broker fails to do so within 30 days, then Lien is extinguished.

XIX. Duty to Release Recorded Lien

A. Broker has duty to provide record owner with Release of Lien within 10 days after written demand by owner or owner's agent, if condition occurs that prohibits Broker from receiving compensation under terms of written agreement on which Claim is based.

B. Broker has duty to record Release of Lien and provide copy of recorded Release within 5 days after written demand by owner or owner's agent, if Claim of Lien has been paid, or an action to enforce Lien has not been commenced within required time frame.

XX. Partial Satisfaction

A. If amount due under recorded Claim of Lien has been partially paid, then Broker shall record Partial Release of Lien within five (5) days after written demand.

B. Act includes a form of Partial Satisfaction and Release of Lien, where part payment has been received.

XXI. Effective Date

The law became effective October 5, 2010, and applies to written commission agreements executed into after



Residential Sales Statistics April 2011

Local Association	2011 Apr Sales	2010 Apr Sales	11-10 % Change	2011 Apr Avg Price	2010 Apr Avg Price	11-10 % Change	2011 YTD Apr # Sales	2010 YTD Apr # Sales	11-10 YTD % Change	2011 YTD Apr Avg Price	2010 YTD Apr Avg Price	11-10 YTD % Change
Ann Arbor Area Board of REALTORS®	261	297	-12.12%	\$171,593	\$175,989	-2.50%	848	882	-3.85%	\$171,161	\$171,606	-0.26%
Antrim Charlevoix Kalkaska Association of REALTORS®	40	57	-29.82%	\$140,029	\$174,120	-19.58%	150	158	-5.06%	\$161,937	\$170,075	-4.78%
Battle Creek Area Association of REALTORS®	134	117	14.53%	\$85,468	\$97,722	-12.54%	403	382	5.50%	\$79,818	\$85,707	-6.87%
Bay County REALTOR® Association	135	152	-11.18%	\$64,942	\$72,351	-10.24%	432	439	-1.59%	\$64,126	\$67,043	-4.35%
Branch County Association of REALTORS®	26	36	-27.78%	\$73,224	\$61,975	18.15%	120	116	3.45%	\$76,796	\$65,068	18.02%
Central Michigan Association of REALTORS®	65	101	-35.64%	\$81,382	\$82,808	-1.72%	206	286	-27.97%	\$77,620	\$72,638	6.86%
Clare-Gladwin Board of REALTORS®	48	65	-26.15%	\$58,773	\$63,728	-7.77%	172	180	-4.44%	\$70,708	\$60,725	16.44%
Dearborn Board of REALTORS®	242	294	-17.69%	\$54,904	\$64,748	-15.20%	899	904	-0.55%	\$58,333	\$64,007	-8.86%
Detroit Board of REALTORS®	693	692	0.14%	\$13,141	\$15,586	-15.69%	2,241	2,640	-15.11%	\$13,953	\$15,487	-9.90%
Down River Association of REALTORS®	117	134	-12.69%	\$66,371	\$78,778	-15.75%	396	457	-13.35%	\$66,078	\$75,026	-11.93%
Eastern Thumb Association of REALTORS®	114	151	-24.50%	\$79,947	\$74,953	6.66%	414	484	-14.46%	\$83,076	\$78,260	6.15%
Eastern U.P. Board of REALTORS®	35	26	34.62%	\$76,695	\$93,675	-18.13%	102	82	24.39%	\$79,445	\$85,197	-6.75%
Emmet Association of REALTORS®	28	57	-50.88%	\$135,493	\$175,213	-22.67%	123	154	-20.13%	\$193,415	\$189,674	1.97%
Flint Area Association of REALTORS®	510	620	-17.74%	\$67,916	\$78,105	-13.05%	1,759	2,114	-16.79%	\$67,005	\$73,517	-8.86%
Grand Rapids Association of REALTORS®	1,007	1378	-26.92%	\$119,296	\$129,717	-8.03%	3,762	4,292	-12.35%	\$111,029	\$116,633	-4.80%
Greater Kalamazoo Association of REALTORS®	280	359	-22.01%	\$131,976	\$130,857	0.86%	824	1,033	-20.23%	\$126,972	\$121,158	4.80%
Greater Lansing Association of REALTORS®	412	506	-18.58%	\$96,284	\$98,947	-2.69%	1,382	1,688	-18.13%	\$100,438	\$98,910	1.54%
Hillsdale County Board of REALTORS®	17	36	-52.78%	\$68,555	\$63,121	8.61%	89	126	-29.37%	\$75,750	\$68,558	10.49%
Jackson Area Association of REALTORS®	154	191	-19.37%	\$73,846	\$83,632	-11.70%	550	640	-14.06%	\$68,923	\$76,560	-9.97%
Lapeer & Upper Thumb Association of REALTORS®	105	127	-17.32%	\$87,349	\$84,117	3.84%	380	455	-16.48%	\$89,356	\$85,580	4.41%
Lenawee County Association of REALTORS®	81	100	-19.00%	\$65,275	\$76,537	-14.71%	270	333	-18.92%	\$78,348	\$74,944	4.54%
Livingston County Association of REALTORS®	217	256	-15.23%	\$155,439	\$141,167	10.11%	727	825	-11.88%	\$146,673	\$144,089	1.79%
Oakland	635	708	-10.31%	\$140,745	\$136,023	3.47%	2,219	2,358	-5.89%	\$136,783	\$132,314	3.38%
Macomb	714	799	-10.64%	\$178,837	\$94,487	89.27%	2,567	2,858	-10.18%	\$107,144	\$87,093	23.02%
Mason-Oceana-Manistee Board of REALTORS®	51	97	-47.42%	\$143,433	\$109,622	30.84%	189	249	-24.10%	\$112,655	\$92,800	21.40%
Midland Board of REALTORS®	58	110	-47.27%	\$129,135	\$135,761	-4.88%	232	287	-19.16%	\$139,484	\$132,391	5.36%
Monroe County Association of REALTORS®	100	125	-20.00%	\$104,100	\$106,184	-1.96%	359	379	-5.28%	\$102,273	\$107,325	-4.71%
North Oakland County Board of REALTORS®	386	428	-9.81%	\$128,981	\$129,391	-0.32%	1,431	1,481	-3.38%	\$129,028	\$127,484	1.21%
Northeastern Michigan Board of REALTORS®	52	47	10.64%	\$66,883	\$64,219	4.15%	172	150	14.67%	\$66,911	\$64,671	3.46%
Paul Bunyan Board of REALTORS®	118	122	-3.28%	\$73,002	\$82,550	-11.57%	341	349	-2.29%	\$74,864	\$74,850	0.02%
Saginaw Board of REALTORS®	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Shiawassee Regional Board of REALTORS®	71	90	-21.11%	\$68,739	\$61,384	11.98%	251	268	-6.34%	\$67,751	\$62,510	8.38%
Southwestern Michigan Association of REALTORS®	182	225	-19.11%	\$158,999	\$156,200	1.79%	647	710	-8.87%	\$157,742	\$128,904	22.37%
St. Joseph County Association of REALTORS®	54	72	-25.00%	\$106,540	\$104,156	2.29%	180	217	-17.05%	\$81,065	\$80,575	0.61%
Traverse Area Association of REALTORS®	157	201	-21.89%	\$138,936	\$168,557	-17.57%	549	591	-7.11%	\$150,858	\$159,838	-5.62%
Upper Peninsula Association of REALTORS®*	137	235	-41.70%	\$104,504	\$88,865	17.60%	445	515	-13.59%	\$89,752	\$90,641	-0.98%
Water Wonderland Board of REALTORS®	112	136	-17.65%	\$76,484	\$96,404	-20.66%	412	450	-8.44%	\$80,794	\$89,009	-9.23%
West Central Association of REALTORS®	90	84	7.14%	\$73,721	\$79,965	-5.44%	282	261	8.05%	\$71,345	\$73,189	-2.52%
West Michigan Lakeshore Association of REALTORS®	305	442	-31.00%	\$119,531	\$116,465	2.63%	936	1,278	-26.76%	\$112,422	\$124,148	-9.45%
Western Wayne Oakland County Association of REALTORS®	990	1024	-3.32%	\$127,869	\$132,202	-3.28%	3,377	3,509	-3.76%	\$124,378	\$128,253	-3.02%
TOTALS	8,933	10,697	-16.49%	\$100,214	\$102,007	-1.76%	30,838	34,580	-10.82%	\$99,134	\$97,858	1.30%

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

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