



# THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

SUMMER 2008

## Summer Convention at Frankenmuth

July 20-22, 2008

Details on Page 5

## Bowling for MLTA PAC Dollars

Details on Page 4

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## Proposed RESPA Rule and Impact on the Title Industry

by Charles Cain, Esq., VP/Midwest & Northeast Alliance Business Partner, LandAmerica Financial Group Inc.

On March 14, 2008, HUD published its proposed rule to reform the Real Estate Settlement Procedures Act ("RESPA"). While much of the proposed rule deals with the lending community, there are several points that directly impact settlement and title providers.

### Overview:

Among the proposed changes are significant changes to the Good Faith Estimate ("GFE") which would take the document on a standardized basis from one page to four pages. There would be specific tolerances as to certain fees on the GFE and Yield Spread Premiums would be required to be disclosed on the GFE. The HUD-1 Settlement Statement would also be reformed to more closely follow the GFE so the consumer could more easily compare the two documents. An allowance would be available for "Average Cost Pricing" for certain fees. This may allow some relief for the wave of class actions brought in recent years as to such items as recording fee variations.



The rule also provides for the creation of a Closing Script that would be required to be read aloud to the consumer at closing by the settlement agent. This may be the most troubling aspect of the rule to the title industry.

For a complete reading of the proposed rule, one can go to the HUD website at [www.hud.gov](http://www.hud.gov) which includes both the proposed rule and the Economic Study that is its basis.

### The Closing Script:

The Closing script would be a new addendum to the HUD-1. The settlement agent would be required to prepare and read aloud to the consumer at the closing a mandated script which would explain specific terms of the consumer's loan such as interest rate, monthly payment amount, prepayment penalties, balloon payments and other items. A hard copy of the script will need to be provided and acknowledged. It may run as long as 8 pages depending on the loan program and will include a disclosure to the consumer of any fees on the HUD-1 that exceed the tolerances allowed by the new rule, both as a percentage and actual dollar amount. HUD estimates that the reading of the script will add 45 minutes to the average closing. But the creation of the script with the lack of guidance as to its impact raises many questions for the settlement agent:

- If a specific fee exceeds the allowable tolerance level (most fees are either a 10% or 0% tolerance) there is no guidance as to what happens next. Should a settlement agent shut down a closing on a \$400,000 loan due to an excess of a 10% tolerance on a fee where the actual dollar variance is only \$20? The rule is mute to this question.
- What liabilities may there be for the creation of this form and for the explanations of any inconsistencies between the Script and the GFE? Also if questions are to be answered concerning specific terms does this constitute the practice of law and may it preclude lay people from performing closings as it may be deemed the unauthorized practice of law?
- HUD has always put forward that RESPA and its rules are for the benefit of the consumer, but it acknowledges, besides the additional time required for the reading of the script, that they estimate it will increase the price of closing by an average of \$36. Whether this additional cost can be passed on in the present marketplace is problematical, but there will no doubt be additional costs to settlement providers as to time spent as well as software updates and training.

continued on page 2

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continued from page 1

- The rule is also not clear as to how far a settlement provider must go where the consumer may have a limited understanding of conversational English or may require the use of a translator.


## Recording Fees:

Among the items with a "zero tolerance" from the GFE are recording and transfer tax charges. If the recording fees vary by say \$3 from the GFE, from where will this difference come? Would the lender expect the settlement provider to pay this difference? This raises questions of inducement besides the obvious business concerns. One way out of this may be if recording fees became part of "Average Cost Pricing" allowed under the proposed rule. But this would require some analysis as to such an average cost. It may also lead to competition on that average cost as well as some consumers obviously paying more than their actual recording fees.

## Negotiated Discounts:

The rule also proposes to exclude from the prohibition against the giving of discounts in exchange for the referral of business discounts negotiated by settlement service providers in the price of a third party settlement service, as long as the discounted price is charged to the borrower and disclosed on the HUD-1. Sellers and other parties would not be allowed to take advantage of such a discount. So if a lender negotiates a discount on closing services but in a no-cost loan pays the fees themselves, they would not be entitled to the discount and would have to pay full price.

## Conclusion:

Unfortunately, despite all best intentions, it appears that this rule may add to the confusion of the closing process instead of adding clarity. There are many important questions unanswered and it will clearly add to the time and cost of closing for the consumer. Significant liabilities and adjustments of business processes also may affect the settlement industry. This also may not be the best time to initiate these changes in light of a struggling real estate industry. HUD has in public presentations discussed their adamant intentions to have a rule in place by October. Finally, we are asking our members to communicate the industry's concerns to their representatives of Congress. For more information, go to <http://www.alta.org/respa/index.cfm> 

## LAW OFFICES LAURA McMAHON LYNCH, PLC



*Laura McMahon Lynch, licensed in Michigan since 1983, is a former Assistant Attorney General who represented the State of Michigan Homeowner Construction Lien Recovery Fund and prosecuted licensure violations by Residential Builders and Real Estate Brokers. Returning to private practice in 2000, Ms. Lynch now specializes in real estate related litigation and conflict resolution including:*

- defense of title claims
- quiet title actions
- construction lien and bond claims
- mortgage foreclosures
- general debt collection

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





## George Amar

*Owner*

Pinnacle Title Agency, LLC  
Kalamazoo



**MLTA Involvement:** Committee Chair of Abstracter/Agent Committee

**Personal Interests:** Going to the beach in Grand Haven. Driving my Z3. Collecting art. Listening to music. An occasional good cigar. Drinking red wine. Discovering new restaurants.

**Something About You:** I married my college sweetheart, Nancy. We are best friends and have been married for 36 years. We have two daughters and they each have given us two grandsons. After graduating from Western Michigan University in 1971 I worked in my family's real estate brokerage business. In 1976 I left the brokerage business but still loved the real estate industry so I started in the title industry at Transamerica Title Insurance Company. I quickly worked my way up to Kalamazoo County Manager. After 28 years I decided I was in training long enough and it was time to open my own title agency in 2004. Pinnacle Title Agency specializes in the commercial segment of the business and we service the entire State of Michigan. As I look back over my career, each position I had prepared me for the next career opportunity.

## Mike Cole

*Independent Title Services*

Vice President  
Grand Rapids



**MLTA Involvement:** Not enough. Not formally on any committees. Attended the last agent/abstractor committee meeting.

**Personal Interest:** Camping with wife and two teenage daughters, stand-up comedy, boating, actively involved with VOSH (Volunteer Optometric Services to Humanity).

**Something About You:** I have recently started performing stand-up comedy at open mic nights and I have a lifelong aspiration of starting an incident of Bigfoot sightings.

## Derek Dalling

*Deputy Executive Director*

Michigan Land Title Association  
Lansing



**MLTA Involvement:** Work directly with Convention, Membership and Public Relations Committees.

However, I assist with all committees as needed. Also work directly with the Board of Directors helping direct those meetings and assisting the President and Secretary/Treasurer with their leadership roles during the Board of Directors meetings. Basically, just get things done as they are needed.

**Personal Interests:** As a U of M alum I remain an avid University of Michigan fan. Also golf when I can. And I love being a dad and spending time with daughter Ashleigh and wife, Erin. Even though Ashleigh looks and acts like her daddy (unfortunately), I love spending time with her.

**Something About You:** I am a new Daddy again! My wife Erin had our second child on May 12th, a boy, Jonathan Evan.

## Janice E. Frank (Jan)

*Chief Operating Officer*

Attorneys Title Agency, LLC / Warranty Title Agency, LLC  
Farmington Hills



**MLTA Involvement:** Agents/Abstractors committee and Education Committee — I have joined both committees but have been unable to attend or contribute due to the increase in our business.

**Personal Interests:** Scrapbooking, camping, shopping, spending time with family and friends.

**Something About You:** It has been almost ten years that I have been with Attorneys Title Agency. After spending 20 years in this industry, I continue to learn new things and thoroughly enjoy my work! I look forward to each day's challenges and keep on top of things by staying involved in every aspect of the company. We stay very busy and I'm proud to say are growing every year! I feel very lucky to be part of such an amazing, hard working group of people. My husband Steve, daughters, Heather and Melissa and the newest member of our family, my son-in-law Dave are wonderfully supportive and are what keep me going!

## Welcome New Members

Michigan Express Recording, LLC (Sterling Heights)  Gary Beaver

Cornerstone Title Insurance Agency (Traverse City)  Charity Anderson

# BOARD BIZ

by Douglas McFarlane, Secretary/Treasurer MLTA

In spite of the economic downturn the resiliency of the membership has shown itself. While many other associations have experienced significant loss of membership the MLTA has been nearly unscathed. This speaks very well of our membership and its commitment to their professional association.

As the Convention Committee works diligently toward this year's Summer Convention, it should be noted that there will be some By-Laws revisions presented for approval by the membership. Advance notice of the proposed changes will go out to all members for consideration in advance of the convention so that you can cast an informed ballot.

As to the Summer Convention this year, a great deal of effort has gone into holding down the cost of attending in hopes that this will spur attendance regardless of the weak economy. Please give every consideration for participating.

In an effort to get grass roots input from the membership, the Board of Directors is working on a plan to hold regional meetings around the state where members will be invited to participate. More information will be forthcoming as this new approach unfolds.

The PAC committee is presenting a "bowling" competition at the Summer Convention utilizing the Wii technology. Members attending will be encouraged to form teams and join in the fun and competition all for the good cause of our PAC. In the spirit of the game the board has selected the moniker "Board Stiff". Mary Lou Hartwell, Tony Viviani and Marcy Welburn are ready to take on all comers! 🎳

## OFIS Now OFIR

Under Gov. Jennifer Granholm's Executive Order 2008-2, the Office of Financial and Insurance Services (OFIS) has been reorganized and renamed the Office of Financial and Insurance Regulation (OFIR).

"Renaming OFIS the Office of Financial and Insurance Regulation should reinforce for Michigan consumers and businesses the fact that we're in the business of financial oversight of the Michigan financial service sector — including banking, insurance and securities," said OFIR Commissioner Ken Ross. "New name — same focus — protecting Michigan consumers."

The agency's website has been changed to [www.michigan.gov/ofir](http://www.michigan.gov/ofir). The name change will also be reflected in the agency's logo, e-mail addresses, Web site content, templates and forms. Many of the items changed will be interchangeable as they pertain to OFIR and OFIS.

Previous legal documents, including rules, orders, decisions and bulletins will not be changed. The agency's toll free number remains 877-999-6442.

Granholm's executive order also created the new position of Automobile and Home Insurance Consumer Advocate that will fight for affordable, reliable and fair home and car insurance in Michigan and will be housed in OFIR. The Governor recently appointed Butch Hollowell to the position. 🎳

## ON THE MOVE...



### Corporate Title Agency and IBT Title & Insurance Agency

combined operations effective March 1, 2008. The resulting agency has 18 offices serving counties from the Mackinac Bridge south to Grand Rapids, and one office in southeast Florida. All Michigan offices are now doing business under the Corporate Title Agency name.

Jerome E. Jelinek is President of the agency and Douglas D. McFarlane is Executive Vice President.

*If your firm would like to share information in this section email [jsmallldon@lighthousegroup.net](mailto:jsmallldon@lighthousegroup.net).*

## BOWLING FOR MLTA-PAC DOLLARS



This year's Summer MLTA-PAC fundraiser should be a great time for participants and viewers alike. We will be "Bowling for PAC Dollars" in a competitive but fun virtual bowling tournament. Presently, we have 6 teams assembling to qualify for the 4 spots in the tournament. The fundraiser will be similar to years past where members donating to the MLTA-PAC will vote with their dollars for the team that they like the best. The funds contributed toward each team will determine which teams make the big dance and where they are seeded. Then we will have a virtual bowl-off to determine the winners.

Upon conclusion of the event, we will have a live auction to find new homes for not one but two complete Nintendo Wii game systems with two controllers and an extra game pack. These systems also have a two year extended service warranty. So plan on bringing your checkbook for the big event to bid early and often!

Watch your e-mail as the official team announcements and bid form will be coming soon! Please contact Tim McDonnell at 810.599.4878 or [tmcdonnell@oldrepublictitle.com](mailto:tmcdonnell@oldrepublictitle.com) if you have any questions or would like to assist with the fundraiser. Thank you in advance for your generous support of the MLTA-PAC! 🎳

Mark your  
calendars!  
and sign up on [milta.org](http://milta.org)

# 2008 MLTA Summer Convention

Sunday, July 20, 2008 to Tuesday, July 22, 2008  
at the Bavarian Inn in Frankenmuth, MI.



For those of you attending this event, the MLTA will be offering attendees a discounted room rate.

## SUNDAY, JULY 20, 2008

8:00 - 9:00 am

**MLTA Board Breakfast** - Altmuehl Room

3:00 - 5:30 pm

**Convention Registration** - River Room Lobby

3:00 pm

**Hotel Check In**

6:30 - 7:30 pm

**Icebreaker "Americana" Reception** - Terrace

This is an Election Year! Wear your Red, White & Blue!

**PAC Wii Bowling for Dollars!** - Terrace

Watch the MLTA Bowling Pros compete for your PAC donations! Bring all your "spare" change! This will be the preliminary rounds! So much fun we have to "split" it over two nights.

7:30 - 10:00 pm

**Welcome BBQ** - Terrace

After the exciting bowling competition, you'll want to "strike" up conversations and friendships at the BBQ.

## MONDAY, JULY 21, 2008

7:30 - 8:30 am

**KEGS Breakfast (MLTA Past Presidents Only)** - Altmuehl Room

8:00 am

**Continental Breakfast** - Bach/Beethoven Rooms

8:30 - 8:45 am

**Opening Business Session** - Bach/Beethoven Rooms

MLTA President Mary Lou Hartwell Presiding

- Announcements
- Nomination & Election of Officers
- Bylaw Changes

9:00 - 10:30 am

**Spouse/Guest Breakfast** - Danube Room

While the others are at the business sessions, join other guests/spouses for a relaxing breakfast

8:45 - 9:30 am

**ALTA Washington Report** - Bach/Beethoven Rooms

ALTA President Gary Kermott, First American Corporation

9:30 - 10:30 am

**Proposed Revision of RESPA Regulations: A discussion of the Emperor's New Clothes (or lack thereof)** - Bach/Beethoven Rooms

Speaker: Howard Lax, Lipson Neilson Cole Seltzer & Garin PC

10:30 - 10:45 am

**Break - Visit with Exhibitors**

10:45 am - 12:00 pm

**Michigan Politics 2008 — Off the Record** - Bach/Beethoven Rooms

Speaker: Tim Skubick of Michigan's "Off the Record"

## MONDAY, JULY 21, 2008 (Continued)

1:00 - 5:00 pm

**MLTA Annual Golf Scramble**

Timbers Golf Club

Advanced registration is required

6:30 - 7:30 pm

**President's Reception** - Bach/Beethoven Rooms

Hors'doeuvres and Cocktails.

**PAC Wii Bowling Finals** - Bach/Beethoven Rooms

The much anticipated Wii Bowling Finals

7:30 - 9:30 pm

**Induction of New MLTA Officers and Board**

- Induction of new MLTA Board
- Special recognition of Award recipients
- PAC Pin presentation
- Wii Bowling Champions Announced

9:30 pm

**MLTA Room Crawl!**

Time to visit with industry friends. Location details will be given at registration

## TUESDAY, JULY 22, 2008

8:00 - 9:00 am

**MLTA Committee Breakfast** - Bach/Beethoven Rooms

9:00 - 9:15 am

**Closing Business Session** - Bach/Beethoven Rooms

MLTA President Anthony J. Viviani Presiding

9:15 - 10:30 am

**The New "F" Words** - River Room Lobby

Sarah Maddox Sutton, Fidelity National Title

10:30 - 10:45 am

**Break - Visit with Exhibitors**

10:45 - 11:30 am

**Surviving Tough Times - Adversity Makes Us Stronger**

- Bach/Beethoven Rooms

Robert Shook, Author

11:30 am - 12:00 pm

**Golf Awards and Adjournment** - Bach/Beethoven Rooms

12:00 pm

**Hotel Check Out**



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# ABSTRACTIONS

by Allan Dick, COO, Best Homes Title

Plaudits to the MLTA Convention Committee for selecting a reasonably priced venue, which still affords ample recreational opportunities, for this year's MLTA Summer Convention. Obviously, time are tough. This is a location that should be particularly family-friendly, both in the area of costs and available activities. Chairman Tony Viviani and his committee are to be congratulated. Hope to see you there (July 20 - 22).

On the political front, one of our own - **Dan Grimshaw**, owner and CEO of Mid-State Title Services, Inc. in Vassar, has tossed his hat into the ring and will be running for Register of Deeds in Tuscola County. Good luck, Dan.

The MLTA Spring Seminars in Mt. Pleasant and Livonia, while very well presented and enthusiastically received, were more lightly attended than usual. This was likely due to at least three factors. First, sad to say, there just aren't as many title folk around (employed) these days. And, those of us left are finding it a bit harder to justify a day away from the daily grind to attend seminars, especially when half the seminar is devoted to information and instructions on legal descriptions. But, it's a topic we visit about every 7 years, and needed to be covered, especially for the less experienced or less trained people in our industry. And all the speakers, especially guest speaker **Randy Vugteveen**, a surveyor from Nederveld, Inc., did a fine job.

There will be a bit of a change for the Fall Education Seminar this year. While the details are still firming up, it is anticipated that, through the generous sponsorship of at least one of our MLTA members, we will have a nationally renowned speaker on Mortgage and Real Estate Fraud in the afternoon. Because this is a singular, one date event, we will forego the Livonia seminar this coming fall (only), and put all our efforts (and money) into the Mt. Pleasant presentation. More details will follow in the next issue of *The Title Examiner*.

What in the Sam Hill has happened to **Lester Sam Hill**, the anonymous and occasional columnist for *The Title Examiner*. Haven't heard from him in a while ... and miss his keen observations.


Back to the Summer Convention. As you will see elsewhere in this issue of *The Title Examiner*, the MLTA-PAC fundraising event for this year's convention is a bowling competition using the video sensation Wii, with the added bonus of the two Wii systems being auctioned off after the competition. I am told you don't have to be a good bowler, or even know how to play video games to participate (and possibly win). So, consider getting a three person team together and raise some funds for the PAC and maybe you will attain fame and fortune (well, at least fame).

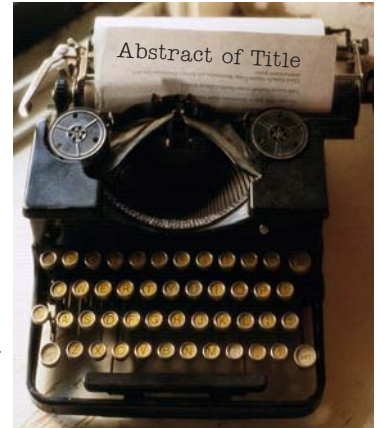
Interestingly, the latest report out of *Realtytrac* states that foreclosure-related filings rose about 4% in April from the previous month and 65% from April 2007. But, the states that are leading the pack in this increase are California, Florida, Nevada and Arizona - no mention of Michigan (We're no. 7! We're no. 7!). In fact none of the top ten foreclosure communities are from Michigan, what a pleasant change - not that we are out of the woods, by any means. But, fortunately, the resale of these foreclosures ("REOs") have created increased buy-sell activity. Not enough - but a step in the right direction.

One of the many standing MLTA committees is the Abstractor Agent Committee, currently chaired by **George Amar**, President of Pinnacle Title in Portage. This committee's mission is to provide a forum and a voice for the independent agents, many of whom may think that the underwriters are running the Association. You may find it interesting to learn that 5 of the 9 members of the MLTA Board of Directors are title agents, not underwriters. Regardless, this is a very energized committee with enthusiastic leadership and new ideas.

Bringing regional styled meetings to a more local basis is being contemplated. The next committee meeting will be at the Summer Convention. If you are an agent, please try to attend and contribute.

And speaking of agents, this hot off the presses - former MLTA President, **Bill Robinson**, is heading back across the aisle into the agency realm, and has accepted the position of President for Attorney's Title, Inc., effective June 1st.

Finally, the National Association of Realtors' Chief Economist, **Lawrence Yun**, forecasted late last month that home sales would begin recovering in the summer and that inventories will start to drop. Yun predicts that new home sales, which will fall 25% for all of 2008, will then rise 4.6% in 2009, while existing home sales are expected to increase 6.6% in 2009. No word on any Michigan predictions. 



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## Name These Michigan Cities...

1900's Vintage Postcards



*See page 19 for the answers!*

## MLTA COMMITTEE CHAIRS

CONTACT THE FOLLOWING CHAIR MEMBERS TO JOIN A COMMITTEE:

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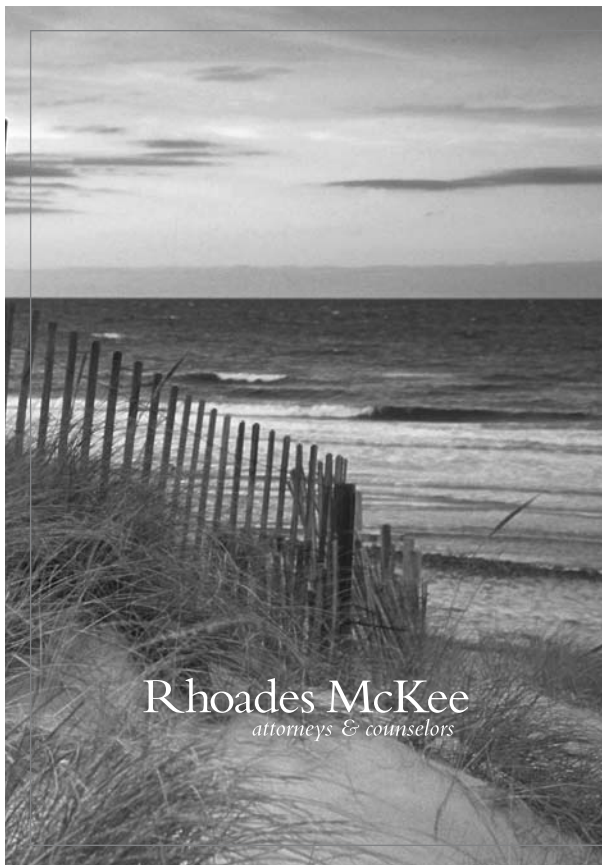
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**AD HOC PROFESSIONAL DESIGNATION** - Sarah Maddox-Sutton  
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### FENCES ARE NOT THE LAST WORD IN PROPERTY DISPUTES.

When property issues arise it is important to work with experienced attorneys who know the territory. Our real estate practice group is fully integrated with the disciplines of property rights, construction, law use, environmental law, municipal approvals and financing.

Mike Walton has been handling real estate property disputes on behalf of title insurance companies for more than 25 years. Contact Mike at 616.235.3500 to learn how his expertise can help you.



#### FINDING THE WAY

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# Survey Says... MLTA Spring Seminar: A Legal Description Success

by Bob Wuerfel, President, Lighthouse Title Group

The 2008 MLTA Spring Seminars were held in two locations, Mount Pleasant in April and Livonia in May. Allan Dick, kicked off the session, and while the numbers were down for a variety of factors



(Allan covers this in his Abstractions column), those in attendance enjoyed the legal description, survey and case law topics that were covered. Allan thanked Mary Lou Hartwell and the MLTA Board of Directors for their continued support to keep Education sessions as a focal point for the Association.

Allan also mentioned that the **Education Committee** was exploring alternatives in drawing greater membership participation in the current economic market such as: CD's with the seminar materials on them vs. printed booklets; live sessions with webinar access for members who are unable to attend but can participate from their offices. If you have ideas for the committee, please pass them on to either Allan Dick [adick@besthomestitle.com](mailto:adick@besthomestitle.com) or Sarah Sutton [Sarah.M.Sutton@fnf.com](mailto:Sarah.M.Sutton@fnf.com), both of whom co-chair the committee.

After the introductory messages were delivered, the **ALTA DVD** entitled "This Land is your Land" was played to prime the legal description pump for the day. Among the segments covered was the explanation of Baseline and Meridian as well as Township, Town and Ranges. While this was beneficial for those in attendance, this DVD is recommended to any member of your team to gain insight.



Randy Vugteveen, our Guest Speaker and Registered Land Surveyor from Nederveld Inc., followed with "Surveyors View of Land Planning". Randy started by going back to the early days (1800's) of the State of Michigan and

the surveying methods and instruments that were used. The Town/Range and Meridian were established near Jackson, Michigan. He mentioned that a common early survey method was Links and Chain measuring. Since there were minimal roads and a lot of forests, a townships measurement was considered "good" if it came within 1 chain of where it should be. An amazing feat for the time. Randy indicated that Sectional Corners have remained in the same locations today as when first surveyed in the early 1800's. From these corners, the surveys with precise GPS measuring tools come up with the legal descriptions that land owners use today.

Randy went over the three common survey types used: Mortgage Survey/Report; Boundary; ALTA Survey.

- **Mortgage Survey/Report** – Used typically for loan policies to show where improvements (home, etc.) lie within the land. It is now a common practice amongst surveyors NOT to stake these surveys/reports to avoid the homeowner assuming that the wooden stakes were a boundary survey.

- **Boundary Survey** – This survey contains a lot more information besides the home and other improvements. It may show recorded easements as well as actual measurements vs approximates. These actual surveys will get metal stakes on the boundary lines and a homeowner can rely on this as their property boundaries.

- **ALTA Survey** – Survey done according to National ALTA Specifications. This survey is commonly used on commercial transactions as it will show everything that affects the property being surveyed. Recorded (pulled from Title work) and unrecorded (municipal units) information is all precisely recorded on the ALTA Survey. In doing so, it is common to have the Survey Exception removed from the commitment. Allan Dick noted that in removing the exception, BE SURE that everything that is located on the ALTA Survey is listed as a specific exception(s) on the title commitment!

In Summary, Randy indicated that Land Surveying is more of an art than a science. Uncovering historic facts and researching past practices is key to the Art of Surveying. Even with all of the technological advances in equipment, surveyors often have to look into history for answers to today's complex surveying challenges. Allan Dick commented that it seems that the Title and Surveying fields are very similar in this regard.

With the information that Allan, the ALTA DVD and Randy conveyed, Polly Graves led the next segment on how to map out legal descriptions. There are four types: Platted, Condominium, Sectional and Metes & Bounds. Polly indicated that grasping the ability to read backwards is key in understanding how to read a legal description.



*Example:* SW/4 of the NE1/4 of Section 32, Town 4 North, Range 13 West. Go to the end and work backwards, so we begin at the end which tells us we're in the NE 1/4, from there we are the SW 1/4 (of the NE1/4).

Polly went over several "hands on" legal description examples with all of the MLTA members. She also mentioned a few tips when working with mapping directions and angles. All directions will always begin with North or South (not East or West), so North 89

*continued on page 8*



degrees 00 minutes 00 Seconds East is basically due East when mapping. Polly closed by stating "Make sure your legal is complete and check to make sure there are no gaps or overlaps in the description".

**Michelle Dishaw and Kathy Briggs of the MLTA wrapped up the morning segment by going over the "New Look" MiLTA.org website.** The new site was

launched in December 2007, replacing the original one that was launched in 2000. The site has: Membership Application, Seminar and Convention Registration information all on-line, and easy to find "Member" ability, with a quick link found on the home page. Also new to the site is a personalized Login for "MLTA members only" Section, which allows for member updates/editing and contains a Message Board/Discussion Forum. If you do not have or know your Login/Password information, please contact Michelle at [Michelle@KindsvatterAssociates.com](mailto:Michelle@KindsvatterAssociates.com) to gain access.



After Lunch, **Tim Ward** gave a brief Legislative update to the members. They are looking for uniformity in the E-recording process and have been in discussions with MARD in regard to this. Elimination of Entry Books SB 927 has been postponed, the latest MLTA draft appears to be favorably received with more to follow at a later date. The Access Issue is still in the pipeline, there is a better understanding of what the MLTA is looking for on this matter.



**Michael Donovan** followed with a presentation of Recent Court Cases Affecting Title Insurance. Michael touched on several cases, a few of which are indicated below. He mentioned these can also be found at the following website: <http://courtofappeals.mijud.net/resources/opinions.htm> where you can input the docket number to review the complete case(s).



First two cases are good news for the title industry involving duties of an escrow agent:

Docket 274417 – Burton vs Sanders

Docket 274970 – Deitrich Family Irrevocable Trust vs Title Agency

Refund of Property Taxes: (case based on date deed released from escrow)

Docket 274931 – Eltel Associates vs City of Pontiac

Transfer Tax: (case involving new construction)

Docket 132013 – Lake Forest Partners 2 vs Dept. of Treasury

Tax Reversion under the Old Tax Act :

Docket 276263 – Beethoven LLC vs DeBates

Tax Foreclosure under the New Tax Act:

Docket 275268 – Gillie vs Genesee County Treasurer

Joint Tenancies:

Docket 269244 – Jackson vs Estate of Ronald Green

Dower:

Docket 270716 – Estate of James W. Miltenberger, Deceased

Mortgage Foreclosure:

Docket 273897 – Davenport vs HSBC Bank USA

Marketable Record Title:

Docket 268260 – Vantor vs Anderson, Michigan Court of Appeals

Quiet Title:

Docket 272203 – Jonkers vs Summit Township

**The Day wrapped up with Breakout Groups and Panel Discussion, with**

**John Bommarito, Meredith Wiegarden and Allan Dick moderating.** The

table/breakout groups were presented with 12 underwriting scenarios and were asked to come up with answers to them. It was great to see the interaction

amongst the groups as well as the solutions established. John, Meredith and Allan each took turns providing answers and feedback. The vast majority of the members stayed for this last segment and rated it high as well as being very insightful and beneficial! Thank you to the MLTA members who attended and made our seminars a success!



# HOME PRICES BY CITY

MSNMoney.com



Declines in U.S. housing prices accelerated further during the first quarter, chipping an additional 1.7% off prices from December to March, according to the Office of Federal Housing Enterprise Oversight.

Of 292 metro areas, more than 100 recorded year-over-year decreases in prices, the OFHEO reported. But over a five-year period, just two metro areas — Detroit and Warren, Michigan — showed a decrease in prices, though a number of other cities in Michigan, Indiana and Ohio appreciated in single digits.

Nationwide, prices were down 1.3% compared with the third quarter, the OFHEO said, and down 0.3% from the fourth quarter of 2006.

The OFHEO data are gathered from a wider sampling than most other gauges of housing activity and focus primarily on properties financed with conventional 30-year home loans.

## Findings of the report include:

The states with the greatest price appreciation between the first quarter of 2007 and the first quarter of 2008 were Wyoming (6.3%), Utah (5.6%), Montana (4.9%), Texas (4.7%) and Alabama (4.5%). The states with the sharpest depreciation for the same period were California (-10.6%), Nevada (-10.3%), Florida (-8.1%), Arizona (-5.5%) and Michigan (-3.1%). City rankings are listed by metropolitan areas. The OFHEO's House Price Index is published on a quarterly basis and tracks average house-price changes in repeat sales or refinancings of the same single-family properties. The index is based on analysis of data obtained from Fannie Mae and Freddie Mac from more than 30 million repeat transactions over the past 30 years.

## Price appreciation as of March 31 (by percentage)

<u>City</u>	<u>Rank</u>	<u>1 Quarter</u>	<u>1 Year</u>	<u>5 Years</u>
<i>Ann Arbor, MI</i>	<i>254</i>	<i>0.94</i>	<i>-6.29</i>	<i>1.33</i>
<i>Battle Creek, MI</i>	<i>228</i>	<i>1.09</i>	<i>-2.62</i>	<i>11.11</i>
<i>Bay City, MI</i>	<i>191</i>	<i>-2.32</i>	<i>-0.11</i>	<i>8.55</i>
<i>Detroit-Livonia-Dearborn, MI</i>	<i>253</i>	<i>-1.08</i>	<i>-6.11</i>	<i>-4.19</i>
<i>Flint, MI</i>	<i>246</i>	<i>0.21</i>	<i>-5.04</i>	<i>0.59</i>
<i>Grand Rapids-Wyoming, MI</i>	<i>203</i>	<i>1.09</i>	<i>-0.71</i>	<i>9.2</i>
<i>Holland-Grand Haven, MI</i>	<i>189</i>	<i>0.18</i>	<i>-0.09</i>	<i>10.33</i>
<i>Jackson, MI</i>	<i>209</i>	<i>4.68</i>	<i>-1.18</i>	<i>11.24</i>
<i>Kalamazoo-Portage, MI</i>	<i>180</i>	<i>1.65</i>	<i>0.34</i>	<i>14.4</i>
<i>Lansing-East Lansing, MI</i>	<i>213</i>	<i>0.58</i>	<i>-1.44</i>	<i>10.96</i>
<i>Muskegon-Norton Shores, MI</i>	<i>202</i>	<i>-1.58</i>	<i>-0.7</i>	<i>8.69</i>
<i>Niles-Benton Harbor, MI</i>	<i>51</i>	<i>1.59</i>	<i>4.14</i>	<i>28.36</i>
<i>Saginaw-Saginaw Township North, MI</i>	<i>233</i>	<i>-0.64</i>	<i>-3.38</i>	<i>4.47</i>
<i>Warren-Troy-Farmington Hills, MI</i>	<i>252</i>	<i>-0.32</i>	<i>-6.07</i>	<i>-1.18</i>



# Troubled Homeowners Turn to Short Sales More Often

by Patrick Revere, Journalist, Holland Sentinel Newspaper

With sale signs stacking up in neighborhoods, selling a home is becoming increasingly more difficult, particularly if time is limited because of a looming foreclosure. Lenders and brokers say one way to limit damage is to conduct a short sale.

During the last two years of soaring under-employment and fallout from sub-prime loans, the term "short sale" has become a regular part of lexicon within the residential housing market.

Ronald Haan, executive vice president at Macatawa Bank, based in Holland, said short sales traditionally have been associated with reduced sale prices for vacant properties. But in the current housing market, its becoming more common for homeowners.

"It means that you're looking to sell the home for less than the amount of the loan that was used to buy it," Haan said. "The real easy answer in any case is to go through with the sale. But it has to start with the borrower taking control of the situation, contacting and working with the bank."

The short sale will create less instability for the housing market than a foreclosure, will be less costly to the bank and will do less damage to the credit of the homeowner.

Haan said a bank typically is open to attempting to conduct a short sale, but it involves the homeowner coming in to fill out a new personal financial statement so there's full understanding of that person's revenue and amount of debt.

"Something in there is likely changed, and we need to identify what that is," Haan said. "From there we help them figure out what the home is worth and move things forward."

"In some situations, depending on the financial situations, a borrower can get help on utility bills. If that happens, there's more money to put to the mortgage payment," he said. "There are a lot of solutions, and I always say, 'Don't wait too long.' If you get in contact with the bank and begin working something out, there's less of a chance that there's going to be a real problem."

"The activity that is taking place in short sales is enormous," said Jack Bouman, president of Coldwell Banker Woodland Schmidt in Holland. Bouman said a homeowner who goes into foreclosure is more likely to stop paying the bills, including utilities and maintenance, because they know the damage to their credit is already done. But if water pipes freeze or other damage occurs, the bills continue to mount for the bank.

Federal Reserve Chairman Ben Bernanke has urged banks to work harder to keep people on the verge of mortgage default in their homes.

"It seems to me that some day banks will begin to realize they need avoid any foreclosure and take the time to sit down and negotiate a reduction in the mortgage balance, adjust the interest rate and allow people to continue along in ownership," Bouman said.



## Tips:

- A short sale generally is less damaging than foreclosure for all parties
- Homeowner needs to communicate with bank about financial struggles
- New sale price must be approved by bank
- If home is sold, bank can still negotiate repayment of the loan balance

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## Residential Sales Statistics - April 2008

Local Association	2008 Apr sales	2008 YTD Apr # Sales	2007 YTD Apr # Sales	08-07 YTD % Change	2008 YTD Apr Ave Price	2007 YTD Apr Ave Price	08-07 YTD % Change
Alpena, Alcona, Presque Isle Board of REALTORS®	25	86	96	-10.42%	\$90,439	\$115,513	-21.71%
Ann Arbor Area Board of REALTORS®	251	924	983	-6.00%	\$211,183	\$226,049	-6.58%
Antrim Charlevoix Kalkaska Association of REALTORS®	35	108	120	-10.00%	\$150,866	\$179,065	-15.75%
Battle Creek Area Association of REALTORS®**	102	308	338	-8.88%	\$95,382	\$115,999	-17.77%
Bay County REALTOR® Association	100	356	476	-25.21%	\$77,450	\$93,093	-16.80%
Branch County Association of REALTORS®	35	134	128	4.69%	\$80,219	\$99,413	-19.31%
Central Michigan Association of REALTORS®	77	230	226	1.77%	\$85,473	\$109,282	-21.79%
Clare-Gladwin Board of REALTORS®	36	123	143	-13.99%	\$61,235	\$77,027	-20.50%
Dearborn Board of REALTORS®	175	611	578	5.71%	\$106,255	\$137,963	-22.98%
Detroit Board of REALTORS®	932	3,360	2,267	48.21%	\$20,514	\$46,183	-55.58%
Down River Association of REALTORS®	282	945	1,036	-8.78%	\$94,151	\$123,724	-23.90%
Eastern Thumb Association of REALTORS®	102	376	412	-8.74%	\$110,773	\$136,914	-19.09%
Eastern U.P. Board of REALTORS®	31	69	92	-25.00%	\$107,359	\$80,046	34.12%
Emmet Association of REALTORS®	47	147	140	5.00%	\$314,215	\$262,699	19.61%
Flint Area Association of REALTORS®	476	1,640	1,796	-8.69%	\$84,439	\$110,013	-23.25%
Grand Rapids Association of REALTORS®	324	2,866	2,969	-3.47%	\$122,030	\$149,810	-18.54%
Greater Kalamazoo Association of REALTORS®	338	1,019	1,153	-11.62%	\$138,342	\$150,836	-8.28%
Greater Lansing Association of REALTORS®	400	1,395	1,499	-6.94%	\$108,924	\$137,537	-20.80%
Hillsdale County Board of REALTORS®	42	139	141	-1.42%	\$81,175	\$96,286	-15.69%
Jackson Area Association of REALTORS®	118	412	456	-9.65%	\$81,580	\$119,699	-31.85%
Lapeer & Upper Thumb Association of REALTORS®	46	148	178	-16.85%	\$136,709	\$129,147	5.86%
Lenawee County Association of REALTORS®	104	323	349	-7.45%	\$107,315	\$124,854	-14.05%
Livingston County Association of REALTORS®	169	549	566	-3.00%	\$193,342	\$211,519	-8.59%
Oakland	441	1,551	1,698	-8.66%	\$158,709	\$215,145	-26.23%
Macomb	641	2,177	1,933	12.62%	\$117,388	\$155,380	-24.45%
Mason-Oceana-Manistee Board of REALTORS®	72	240	229	4.80%	\$116,907	\$133,949	-12.72%
Midland Board of REALTORS®	61	232	320	-27.50%	\$152,783	\$151,920	0.57%
Monroe County Association of REALTORS®	107	317	366	-13.39%	\$141,691	\$169,077	-16.20%
North Oakland County Board of REALTORS®	323	1,039	908	14.43%	\$158,064	\$183,794	-14.00%
Northeastern Michigan Board of REALTORS®	40	119	179	-33.52%	\$86,661	\$90,079	-3.79%
Paul Bunyan Board of REALTORS®	82	307	290	5.86%	\$78,813	\$99,968	-21.16%
Saginaw Board of REALTORS®	152	501	555	-9.73%	\$84,120	\$90,823	-7.38%
Shiawassee Regional Board of REALTORS®	55	179	212	-15.57%	\$80,857	\$94,977	-14.87%
Southwestern Michigan Association of REALTORS®	217	707	852	-17.02%	\$172,449	\$180,400	-4.41%
St. Joseph County Association of REALTORS®	51	174	228	-23.68%	\$115,087	\$114,631	0.40%
Traverse Area Association of REALTORS®	163	486	583	-16.64%	\$188,508	\$163,697	15.16%
Upper Peninsula Association of REALTORS® *	157	456	541	-15.71%	\$91,724	\$103,239	-11.15%
Water Wonderland Board of REALTORS®	82	255	324	-21.30%	\$111,995	\$114,451	-2.15%
West Central Association of REALTORS®	76	268	287	-6.62%	\$88,360	\$103,646	-14.75%
West Michigan Lakeshore Association of REALTORS®	365	1,165	1,370	-14.96%	\$140,455	\$153,316	-8.39%
Western Wayne Oakland County Association of REALTORS®	735	2,385	2,338	2.01%	\$167,701	\$202,510	-17.19%
<b>TOTALS</b>	<b>8067</b>	<b>28,826</b>	<b>29,355</b>	<b>-1.80%</b>	<b>\$119,796</b>	<b>\$135,455</b>	<b>-11.56%</b>

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

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# PREP

## Working Together in West Michigan

by Jerry Czaja, Chief Deputy Register,  
Kent County

*It is the industry that binds us... it is the partnership that unites us. What would happen if we all worked together to address industry-related issues?*

Real estate transactions are complex, requiring the involvement of many segments of the property records industry. Attorneys, mortgage companies, title insurance firms, Realtors and county officials all play an important part in these transactions. Serving constructive notice to the public is accomplished through the proper and timely recordation of each transaction in the register of deeds office. It is important in today's changing marketplace that industry stakeholders work together to ensure quality representation for the home buying public.

It has become increasingly apparent that a structured forum was needed at the local level to improve local relationship by opening and enhancing lines of communication, creating networking channels, and expanding educational opportunities. That structured forum is now available in West Michigan through the creation of a local PREP chapter. The Property Records Education Partners (PREP) is sponsored by the Property Records Industry Association (PRIA) at the national level and is supported by other industry organizations such as ALTA, NACRC, IACREOT, and AEA. There are currently 44 PREP chapters making a difference in 19 states with many more in development.

Under the guidance of Jerry Czaja, chief deputy register of deeds for Kent County, the first West Michigan PREP meeting was held in June 2007. Twenty-three industry participants from various segments of the industry attended this first meeting. The PREP chapter idea was greeted enthusiastically with great hopes for success. Emily Cox of Fidler Technologies served as the PREP chapter co-chair.

There have since been two more meetings of the PREP chapter and the contact list continues to grow. Currently, there are over fifty participants in the West Michigan chapter.

Attendees at these meetings have been able to observe presentations regarding the Uniform Real Property Electronic Recording Act (URPERA), the workings of a title plant, and the reasons for title insurance. Future agendas are being planned to include interesting presenters such as a member of the FBI to discuss real estate fraud and a member of the United States Notary Association to speak on eNotarization.

A workgroup was formed to address the issue of document rejections at the register of deeds office. The group was organized by Gary Scholten, register of deeds, Ottawa County and hosted by LandAmerica in Zeeland. Scholten states, "This is a wonderful educational opportunity for all involved and a great example of what can be accomplished at the local level through PREP."

Participation in a PREP chapter enables those involved to have the opportunity to discuss industry issues and find solutions together to problems at the local level. Being able to come together and agreeing on solutions will help all of the parties involved in real estate transactions. Being able to streamline the entire process and make it less confusing should save time, energy, and money for everyone involved.

For more information on PREP visit [www.pria.us](http://www.pria.us). For more information on the West Michigan PREP or information about setting up a PREP chapter in your part of the state contact Kent County chief deputy register Jerry Czaja at 616-632-7630 or [jerome.czaja@kentcountymi.gov](mailto:jerome.czaja@kentcountymi.gov).



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# MBT Lowers Property Values, Real Estate Experts Say

by B. Candace Beeke, Associate Editor, Business Review Newspaper

The commercial real estate community statewide is rallying to change the Michigan Business Tax, which they say will cause massive impacts to property values and investment.

The Commercial Alliance of Realtors new president, Stuart Kingma, vice president at Wisinski Group in Grand Rapids, calls the MBT his key priority right now and already has spent much time in Lansing lobbying for change. Those legislators, who include Rep. Michael Sak, Democrat of Grand Rapids, are open to "affect a change that's beneficial or at least less detrimental situation than we find ourselves with today," Kingma said.

"People don't realize the extent to which they have penalized the real estate sector," said Brad Ward, director of public policy and legal affairs at the Michigan Association of Realtors. Among many aspects of the tax the real estate community finds damning are the gross-receipts tax of 0.8 percent, the business income tax of 4.95 percent on net income after interest and depreciation, and the surtax of 21.99 percent on the sum of the first two.

In tandem, these components can increase a building owner's total tax by up to 300 percent, said Sam Cummings, president of Second Story Properties in Grand Rapids. "Comparing apples to apples, SBT to MBT, using the same income 2007 to 2008 ... for those in income-producing real estate ownership, the tax will be from 200 percent to 400 percent greater ...," said Joshua Weiner, CEO of Meyer C. Weiner developers in Portage.

Another issue affecting companies like Weiner's is the Unitary Business Group definition in the MBT. "Several companies out there like ours ... own multiple entities. They're all under a different limited liability corporation or partnership," Weiner said, explaining that under SBT rules, companies did not file for subsidiaries that didn't meet SBT requirements. "Now you must lump all those units together as one, due to the Unitary Business Group definition." That likely will add to the tax burden, as well, he said.

Selling a building held for some years will result in far less gain than before the MBT, as well, Kingma said.

"In a nutshell, you did not, under the SBT, receive a credit for depreciation, but when you sell under the MBT you are being taxed for a depreciation benefit you never received," he said. "Investors looking long-term in the state of Michigan ..., if the cost of getting their capital back out is so great, they're either not going to make the investment or take a 1031 exchange" and invest it elsewhere... "I know it's so significant" a loss in sales gain, Weiner said, "there are those in our industry in contract to sell a property in 2007, and in the contract it said if it doesn't close by December 2007, the deal's off. This is a disincentive to sell."



Also freshly affected by the new tax, which took effect Jan. 1, are shared tenant expenses, known as Common Area Maintenance. These landlord-exacted charges often cover maintenance, utilities, landscaping, and other such expenses. Landlords collect CAM with no profit, yet the MBT taxes CAM as "additional rent." That will cause property values to fall, Kingma said, as owners see less revenue on their assets. "Income on the building is less, and building values are predicated on capitalized cash flow." The CAM issue indirectly also could cause rents to increase as landscapers and janitors pass on their new MBT service charge responsibilities to their customers, said Charlie Hoats, owner of Trio Real Estate Services and property manager at Waters Realty & Development in Ann Arbor and Grand Rapids. "They're typically not going to just pay that and be done," Hoats said. "They're going to send a letter out to all their customers ... and pass it along. Their customers are landlords. It eventually trickles down to the tenants in these spaces." If those commercial tenants also are now paying a service charge as part of their own business, they could be unable to afford to pay the increase, forcing landlords to lower rents and further devalue their property, he said. "This is a huge issue for commercial real estate. I don't think many people get it, but they're starting to," Kingma said. CAR has allied with the Commercial Board of Realtors, based in Brighton, and the MAR to alter the MBT. Sak is drafting a bill to that effect, Ward said.

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## Manage Your Time Wisely, It Will Pay Off

submitted by Marcy Welburn, LandAmerica Financial



Try grouping activities into the following four areas: customer-related activities, prospecting related activities, administrative activities, and other activities (i.e., time spent catching up with coworkers).

The market has slowed for some and picked up for others. Residential originations are down, while the use of lending default products are predictably picking up. Regardless of where you fall on the spectrum, you should continue to focus on activities that will maximize your efforts to both bring in new business and expand your existing book of business.

It's not always easy to take a fresh look at your own process and adjust it to achieve maximum return, perhaps because many people believe that if their process wasn't working, they wouldn't be using it. But the truth is we can all benefit from a critical eye and an impartial look at where we spend our time, and whether our activities bring us maximum or minimum return on our time investment.

If a customer of yours spent \$1,000 a month on advertising but got zero business as a result, you would recommend he spend those advertising dollars in a way that's more likely to generate business. So today, treat yourself like a customer. Give yourself a consultation. If you discover, like your customer, that you are investing time in activities that bring you little or no return, you'll know what advice to give yourself.

**Where Do I Spend My Time?** You can get as detailed as you wish with this list. Just keep in mind that the more detailed and honest you are about where you spend your time, the more benefit you will receive from an analysis of your schedule.

**What Are My Goals?** Ask yourself, what is expected of me and what am I being rewarded to accomplish? If I were to break my job down and prioritize what I am expected to achieve, what would be on that list? Priority items are most likely going to be revenue-generating items; capturing new business, expanding existing business and so on. Be specific in your goals. For example, put down whether you have a goal for a specific number of orders per month.

**How Do My Activities Help Me Achieve My Goals?** Every activity you perform should be an opportunity to accomplish your objectives. If an activity on your list does not meaningfully contribute to one, some, or all of your goals, it you should probably re-evaluate why you are spending time on it.

Be wary of over-justifying activities that don't truly contribute to goals. It is tempting to spend more time on activities you like, even if they don't truly contribute to your goals, but keep in mind that you are only holding yourself back when you do this. Remember, each activity must have a purpose.

Similarly, calling on customers without a purpose, or call objective, is an even riskier time investment. Your customers will notice and see you as someone who squanders your time and theirs. Determine the purpose of your calls and activities in advance so that you can stay on track.

**Are All of My Clients Good Time Investments?** When you use a consultative sales approach, make

no mistake: you will acquire "usurpers," or customers who utilize your time and services without ever sending you enough business to pay for it. Every year you should examine your customer base and determine whether the business generated by each customer actually merits the amount of time you've put into earning that business.

**Am I Too Much of a People-Pleaser?** When you are a salesperson, it is hard to avoid becoming a constant people-pleaser. But keep in mind the following: in order to succeed at both relationships and growing revenue, you have to prioritize your day. Not every email needs to be answered immediately. Not every request merits putting the rest of your day on hold. Learn to recognize non-essential interruptions and deal with them after your top priorities have been accomplished.

**Is My Life Easier When I Stay Organized?** If staying organized is so beneficial, why is it so hard to stay organized? One reason is because the benefits of staying organized reveal themselves in small doses. You save a few seconds here, a few minutes there. *But these baby steps do add up.* Just like a person who sticks to a healthy diet and exercise will see dramatic results over time, a person who stays organized will also see dramatic results over time.

**Stay Focused On High Payoff Activities, You Will Achieve Your Goals Faster.** Once you identify activities that are keeping you from reaching your goals faster, it is important that you adjust or eliminate them in order to focus on those activities that bring you closer to achieving desired results.

While some low-payoff activities might be hard to let go, don't be afraid to spend less time on bad time investments. It will leave you more time to focus your energy on activities and customers that bring you closer to your goals.



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# NEW OPPORTUNITIES AND DEVELOPMENTS IN REAL ESTATE TAX

by Gregg A. Nathanson, Esq., Attorney, Couzens, Lansky

## I. OPPORTUNITY TO AVOID PAYING REAL ESTATE TRANSFER TAXES IN A DECLINING RESIDENTIAL MARKET

- A. Michigan State Real Estate Transfer Tax Act requires payment of State Real Estate Transfer Taxes upon the transfer or sale of real property. MCL 207.521 et. seq.
- B. Transaction is exempt from the State Real Estate Transfer Tax if, on the date a parcel occupied as a principal residence is transferred, its state equalized value (SEV) is less than or equal to its SEV on the date the owner purchased or acquired the parcel and the property is sold for not more than its true cash value (TCV) at the time of sale. MCL 207.526(t)
- C. Transfer is exempt from the State Real Estate Transfer Tax (\$3.75 per \$500, or \$7.50 per \$1,000 of value) but not the lower county real estate transfer tax (\$.55 per \$500, or \$1.10 per 1,000 of value).
- D. The property must be the seller's "principal residence" as defined in MCL 211.7dd(c).
- E. The following hypothetical examples are contained in Michigan Attorney General Opinion No. 7214 issued by Mike Cox on April 3, 2008, and help illustrate how the exemption is to be applied under commonly arising factual scenarios. Each assumes that a husband and wife acquired or purchased real property in 2006, and conveyed the parcel to another person in 2008. Further assume that the husband and wife occupied the property as their principal residence.

### EXAMPLE 1:

*SEV when acquired in 2006 = \$74,000*

*SEV when transferred in 2008 = \$72,000*

*TCV in 2008 = \$144,000*

*Transfer or sale price in 2008 = \$140,000*

*OUTCOME: This transfer qualifies for exemption from the State Real Estate Transfer Tax because the SEV for 2008, the year of sale, is less than the SEV for 2006, the year of acquisition, and the sale price does not exceed the true cash value.*

### EXAMPLE 2:

*SEV when acquired in 2006 = \$74,000*

*SEV when transferred in 2008 = \$72,000*

*TCV in 2008 = \$144,000*

*Transfer or sale price in 2008 = \$148,000*

*OUTCOME: This transfer is not exempt under MCL 207.526(t) because the sale price exceeds the true cash value for 2008, the year of sale.*

### EXAMPLE 3:

*SEV when acquired in 2006 = \$74,000*

*SEV when sold in 2008 = \$75,000*

*OUTCOME: This transfer regardless of the sale price, is not exempt under MCL 207.526(t) because the SEV for 2008, the year of sale, exceeds the SEV for 2006, the year of acquisition.*

- E. In summary, to qualify for this exemption (a) the property must have been occupied as a principal residence; (b) the property's SEV for the calendar year in which the transfer is made must be less than or equal to the property's SEV for the calendar year in which the transferor acquired the property; and (c) property can not be transferred for consideration exceeding its TCV for the year of transfer.
- G. If after an exemption is claimed, the treasurer determines that the sale price is in excess of the true cash value, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due to the seller or transferor.

## II. OPPORTUNITY TO CLAIM SECOND PRINCIPAL RESIDENCE EXEMPTION FOR HARD TO SELL HOMES

Michigan now provides a limited opportunity for someone having trouble selling their principal residence, who has moved to a new principal residence in Michigan, to claim a principal residence exemption (PRE) on both homes. Public Act 96 of 2008.

- A. Until recently, a person could only claim one principal residence exemption at a time. This exemption permits a homeowner to pay only the 6 mil state education tax. The homeowner is exempt from paying local school operating taxes.
- B. Michigan now permits someone who is having trouble selling their home to claim two principal residence exemptions at the same time. An owner who claims a PRE for their current home can also claim a conditional PRE on the old house, for up to three years, if property was previously exempt as the owner's principal residence, and if (a) the property is not occupied, (b) the property is for sale, (c) the property is not leased and (d) the property is not used for any business or commercial purpose.
- C. The old property is eligible for a conditional PRE claim if that property is available for lease and all other conditions are met. If property subject to a conditional rescission is leased, the PRE claim shall be deemed rescinded retroactively as of December 31, of the year immediately preceding the year during which the property is leased.
- D. Currently, a homeowner is required to rescind a PRE claim within 90 days after the exempted property is no longer owned or occupied by then as their principal residence. Rescission is accomplished by filing a rescission form with the local tax collecting unit. The law amends this section of the Act to allow the filing of a conditional rescission form that continues the principal residence exemption for up to three years for property that meets the law's eligibility criteria. The form is Michigan Department of Treasury Form 4640 (Rev. 04-08), Conditional Rescission of Principal Residence Exemption.
- E. The owner must file a conditional rescission form on or before May 1.
- F. The owner must also verify annually to the local assessor on or before December 31, that the property is still eligible for the special exemption. If an owner does not carry out the annual verification, the local assessor could deny the principal residence exemption on the property. MCL 211.7cc(5)
- G. The Michigan Department of Treasury published Conditional Rescission of PRE "Frequently Asked Questions" to help guide taxpayers in understanding and complying with this new Act. See Form 4643 (04-08).

## III. OPPORTUNITY TO INADVERTENTLY LOSE PRINCIPAL RESIDENCE EXEMPTION

The Michigan Court of Appeals recently held that a personal residence owned by a limited liability company, could not qualify for a personal residence (homestead) exemption under MCL 211.7cc and 211.7dd. Stewart and Christine Vanderwerp v Charter Township of Plainfield (Michigan Court of Appeals April 22, 2008).

- A. In this case, for estate planning purposes, the owner of the home established a living trust (Trust) and limited liability company (LLC). She deeded the property to the LLC. The LLC was wholly owned by her Trust. At all times pertinent, she occupied the property as her principal residence.
- B. The Court of Appeals held that the property did not qualify for the principal residence exemption because the LLC owned the property, even though the homeowner's Trust owned the LLC, and the homeowner occupied the property as her principal residence.
- C. In reaching the result, the Court reasoned that an exemption from the taxing power of the State should be narrowly construed against the property owner. The Court held that the "owner" was the LLC, even though the LLC was owned by the Trust, the Trust was owned by the homeowner, and either the Trust or the homeowner could claim the PRE if it owned the property directly. The homeowner no longer had any interest in the property after it was conveyed to the LLC. In addition, the Trust had no interest in the real property, only an ownership interest in the LLC.
- D. The years at issue in this tax appeal involved the period during which the LLC owned the property. The homeowner was permitted to begin claiming the principal residence (homestead) exemption after the property was conveyed from the LLC to the Trust.

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*This is the 1st of 3 segments on this topic to be continued  
in the next 2 editions of the Title Examiner.*

Obtaining title insurance for a client's fee simple interest in property is commonplace today. Some attorneys, however, go the extra mile and obtain title insurance on appurtenant easement interests, leasehold interests or, in the context of representing a lender, insurance as to the priority of an assignment of leases, rents and profits. This segment will address the advantage of obtaining such coverage and the requirements typically imposed in order to receive this coverage. In this segment we will explore:


## **Appurtenant Easements**

In a commercial transaction, property is frequently assembled and then re-subdivided for the sale of out parcels. Prior to the time a deed of trust is recorded to secure funds borrowed for the acquisition and development of the property, a declaration of restrictive covenants and cross-easements is usually recorded for the entire project. This provides the requisite cross-easements for access, utilities and parking. The lender recognizes the benefit of having such cross-easements created and allows such instrument to enjoy priority over its deed of trust, either by the order of recording or by express consent. Provided the title examiner confirms there is no prior outstanding interest that could defeat or impair these cross-easements, the title insurance underwriter will agree to show them as additional insured parcels at no additional cost. Recognize, however, that the typical declaration of restrictive covenants and cross-easements document also imposes obligations on all parties benefited. Thus, it is appropriate and often necessary to also show the documents that establish the cross-easements as exceptions to title.

This author recommends that cross-easements be treated as a separate tract in the title insurance policy. This allows the underwriter to set forth requirements and/or exceptions to title unique to the servient tract burdened by the easements for the benefit of the insured parcel.

Interests created subsequent to the creation of the easement should not be shown as exceptions. For information purposes, these later created interests may be shown as subordinate matters as to the easement tract, if so desired. Regardless, it is important to examine title as to the easement even after its creation to confirm that it has not been modified, subordinated or released.

The benefit of having the appurtenant easement interest shown as an additional insured tract is most apparent in the context of a lender who acquires title to the outparcel via foreclosure. Since the defaulting borrower will frequently be less than cooperative, and because such appurtenances are essential to the value of many out parcels, the savvy purchaser of such an out parcel will want the appurtenant easements conveyed by express and specific terms rather than by the boiler plate language in a standard deed. By specifically including such appurtenant easements in the deed of trust and therefore in the title insurance policy, the lender will be in a position to comply comfortably with such a request.

The real property practitioner and his client must recognize that the value of a title insurance policy covering the appurtenant easement lies in the comfort that the title insurance company will defend a challenge that the insured does not have easement rights; title insurance will not work to enforce a dishonored obligation imposed on other parties. For example, to the extent the declaration of restrictive covenants and cross-easements requires all parties enjoying the benefit of such easements to contribute their pro-rata share of monies necessary to maintain said easements, the failure of one party to do so will not be rectified by title insurance. Such failure to honor the obligation is usually excluded from coverage because (a) it is an event that occurs after the policy's effective date, (b) it is a matter known by the insured, not disclosed to the underwriter and not of public record, (c) it is a matter assumed by or agreed to by the insured, or most significantly, (d) it is not a challenge to the insured's interest in the easement. It is a breach of contract that is not a "covered risk" as defined in the policy. 

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# MIND CAPTURE MARKETING:

## INVESTIGATE, CROSS POLLINATE, IMPLEMENT, THEN DETONATE

by Tony Rubleski - President, Mind Capture Group

*"Innovation and the ability to borrow strategies from industries other than your own, can quickly revolutionize your market position and profits!" - Tony Rubleski*

Why is the obvious often times so difficult for people to see? The clues are all around us but most people playing the business game are either too lazy or narrow-minded that they'll continue to play at the amateur level. Please grasp the power of what I'm going to share with you in this article, as it can produce quantum leaps and breakthroughs within any business or organization. If you take what I'm about to share seriously, you'll never view the world around you the same way as you did before.

### A Guru's Candid and Public Confession About Marketing

95% of marketing is systemically the same, regardless of the product, service or message a business may be offering 5% of marketing is pure innovation or more likely a new combination of proven marketing principles and strategies borrowed from somewhere else This 5% is the arena you want to begin playing within as you expand your marketing efforts and get good at building Mind Capture.

Unless you have the time, a team of enlightened researchers, or are simply one of the few mortals who can create entirely new marketing strategies (please call me directly if this describes you), then you're often best served by what I'm about to share. The transference of marketing ideas from one industry to an entirely different one is an acquired and valuable mind set that I describe as simply the ability to...

### Investigate, Cross Pollinate, Implement and Then Detonate

So how do you acquire this unique and powerful marketing mind set of being able to dissect, borrow and sort through marketing strategies from other industries that you can pollinate, implement and detonate within your marketing mix?

Here are three quick ways to condition your mind to be aware of opportunities and discover gems buried outside your current industry niche.

1. Read, listen or check out on-line a broad range of magazines on business and current events including franchise and opportunity based publications to look for ways they market and attract new business. Get out of your comfort zone and explore outside your industry for new ideas and strategies you can borrow, test and detonate within your own vertical market.
2. Watch, listen and learn from what's happening around you and how other marketers grab your mind, time or money. The trick is to approach what appears to be mundane with a sense of childlike curiosity with the intent to learn something new. When I'm on vacation, my wife will often tell me to relax because she knows I'm watching and taking mental notes on things that impress me as good marketing or service in action that I can pick up and use within my own business or share with others.
3. Form or join a mastermind that's sales and marketing focused consisting of different businesses to allow the free flow of information and ability to ask questions related to new and repeat business activities. Someone may have a powerful way to attract leads that you've never heard of that could be slightly adjusted and implemented within your industry with massive success.

Use your mastermind to ask a ton of questions. This is not a complex or confusing formula, but simple common sense. My five year old son is my best guide. He's a question machine.

I'm stunned at his curiosity and capacity for wondering how everything, and I mean EVERYTHING works! I'm amazed at many of his questions because I realize how easy it is for most adults to become creatures of habit which often shuts down or diminishes our God given abilities to learn and create.

### A Second Powerful Exercise To Assist You In Turning The Innovation Machine On Overdrive

I must thank one of my central marketing mentors Dan Kennedy for the next piece of advice I heard many years ago at one of his private boot camps. It's timeless and instructive for every organization as it relates to their marketing and promotion efforts.


### How many industry norms can you violate and turn upside down?

Let's be clear here, he was not advocating breaking the law or getting in trouble (your competitors will often be furious), but essentially questioning every common accepted practice to see if a new way of doing things or competitive advantage can be discovered or created. It's absolutely brilliant and a thought process that top entrepreneur's use to create and differentiate from the mundane and complacent providers in a given market segment or industry.

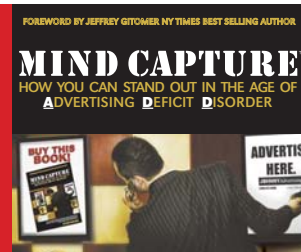
I call it Disruptive Innovation because the goal is to not think outside the box, but essentially build an entirely new box altogether.

Here are a few well known modern business disrupters who have revolutionized the business landscape and entire industries via disruptive thinking and innovation:

<u>COMPANY</u>	<u>INDUSTRY</u>
● Google	Advertising/Media
● Starbucks	Restaurant
● FedEx	Mail Delivery
● Amazon	Book Store/Publishing
● Apple	Telecommunications
● Wal-Mart	Grocery/Retail Stores
● Southwest Airlines	Airlines
● Lexus	Automotive
● Disney	Entertainment/Recreation
● Expedia/Priceline.com	Travel
● Ebay	Auctions
● QVC	Retail/Mail Order
● Send Out Cards	Greeting Cards

I highly suggest you research each of these companies in greater detail to uncover clues, tips and ideas in relation to how they think, view competition, foster change and encourage innovation at all levels within their organizations. In addition, you'll often find a premium placed on training initiatives and systems to achieve consistency and maintain positive customer service experiences. 

*Excerpted with permission from the forthcoming book, Mind Capture: How You Can Stand Out In The Age of Advertising Deficit Disorder (7/29/08 - Morgan James publishers) by Tony Rubleski ©2008. For more information visit: [www.MindCaptureGroup.com](http://www.MindCaptureGroup.com).*



# Michigan Land History - *The Center of the Lower Peninsula*

by LeRoy Barnett, Freelance Writer

As Americans, we are attracted to efforts to find distinction in our world. We seem to enjoy looking for the first, the biggest, the longest, the highest or, in some cases, the center of something.

A provincial example would be the ongoing search for the middle of the Lower Peninsula. In the late nineteenth century, St. Louis declared itself to hold this title and legend says that a grand ceremony was even held at the time in a municipal park to dedicate a plain stone marking the alleged exact spot.

The contention of being the heart of the mitten was used by St. Louis boosters in community advertising and on city letterhead stationery. But the rectangular gray rock that ostensibly identified the hub of Lower Michigan

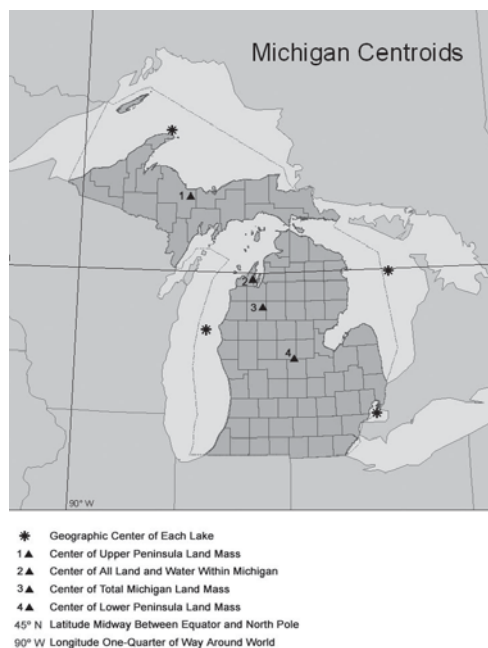


was not inscribed in any way or adorned with a plaque, eventually leading local officials to seek some means of giving their city's claim to fame more visibility.

A chance to raise the profile of St. Louis' geographical uniqueness occurred in 1953 when the settlement celebrated its centennial. Townsfolk decided to use the anniversary occasion to get state government blessing for their reputed status as the bull's-eye of Southern Michigan.

Because route M-46 passed by the park with the old bare stone, St. Louis' citizens asked the Highway Department to erect a sign near the rock identifying the significance of the location. The transportation people said they would not honor this request until proof was provided to back up the assertion that St. Louis was the focus of Southern Michigan's land mass.

Various state agencies—like State and Conservation—were appealed to in an effort to obtain the necessary verification of St. Louis' peculiar status, but the desired confirmation was not forthcoming from authorities in Lansing. In fact, the Gratiot County cause even suffered a setback during this search for support when a member of the Michigan Geological Survey opined that the real center of the Lower Peninsula was probably at Coleman, in northwestern Midland County.



Just as the residents of St. Louis were about to despair over the possibility of losing one of their claims to fame, they were rescued by a professor of mathematics at nearby Alma College. Faculty member Robert Clack cut out a map of the Southern Peninsula and glued it to a similarly-sculpted, uniform piece of cardboard. With some effort he managed to balance the bottom of this irregularly shaped surface on the point of a pin. When he pushed the pin through to the top, it emerged where St. Louis sits on the map.

The people of St. Louis presented this skewed map to the Highway Department as proof of their central location, and the bureaucrats in charge there accepted the evidence as confirmation. So important was this deciding document that the cartographic creation with its telltale hole is still preserved today in the St. Louis City Hall.

True to its word, the Highway Department kept its part of the bargain and prepared

a large sign to be displayed in the city park next to the barefaced rock. The



message on this board read, "This location marks the geographic center of the Lower Peninsula of Michigan as closely as can be determined."

The hard-earned sign was presented to the city and dedicated with appropriate ceremonies on 17 December 1955. On site to participate in the proceedings were representatives of various state agencies, along with Lt. Governor Phil Hart who served as guest speaker at the occasion. The residents of St. Louis now had an elevated sign and a mute stone testifying to their special place in the layout of the Lower Peninsula. This accomplishment apparently led locals to get a little carried away with their descriptions of the town, for soon they were declaring on promotional literature and road signs that their city was "the geographical center of Michigan."

Russell Hellman—a member of the legislature from a Lake Superior district—happened to see this ambitious claim on a billboard while driving to his home in the Keweenaw Peninsula. Realizing that the statement was false, the Upper Peninsula representative good-naturedly admonished St. Louis officials for overlooking that part of Michigan north of the Straits. The powers in St. Louis graciously admitted their error, promised to take corrective action with respect to the inflated boast, and in the absence of an olive branch gave Hellman a jar of olives as a peace offering.

*continued on page 19*



continued from page 18

The lack of any message on the rectangular stone in the city park bothered many St. Louis residents. To correct what they saw as a flaw in the town's defense of its core position, it was determined that another stone should be placed on the site with explanatory text.

Early in 1962 a campaign was launched to accomplish this goal, with \$1.00 donations solicited from all interested parties. The requisite funds were raised in just a few months, and with the contributed money a large granite marker was purchased from a local monument dealer. This handsome stone—unveiled and dedicated on 25 May 1962—proudly proclaimed with engraved words that “St. Louis [is the] Geographical Center of the Lower Peninsula of Michigan.” Having taken care of properly marking the supposed



site of Southern Michigan's nucleus, the next project was to attract visitors to this focal point. This, it was determined, could best be done by erecting informational signs on the highways that led into town. Thus, soon thereafter motorists entering the city on major thoroughfares were notified by placards at the settlement's borders that St. Louis was the “Middle-of-the-Mitten.”

These notices at the municipal limits remained until 1972, when the State Highway Department ordered the proclamations removed because they did not conform to regulations governing

signage on numbered routes. St. Louis had no choice but to take down the offending advertisements along trunk lines through town (M-46 and Business US-27), but officials cleverly kept the promotional signs in place where all county roads entered the community.

In December of 1977, St. Louis acquired its first radio broadcasting station, a country music spot at 1520 on the AM dial. It is only fitting that the call letters for this station would be WMLM, the code standing for Middle of Lower Michigan.

Today, St. Louis has no outspoken rivals for the title of pivot-point for the Lower Peninsula. Ironically, however, the town's claim to possessing Southern Michigan's core value has now been shown to be inaccurate by computer technology and the inclusion of originally omitted data.

The proof that St. Louis was at the crux of things came, it may be remembered, from a map-balancing experiment by Professor Robert Clack. While his technique was probably the best that could be employed at the time, out of necessity he removed from consideration the islands surrounding Lower Michigan. When the territory comprising the Manitou, Fox and Beaver archipelago is factored into the equation—plus Bois Blanc Island north of Cheboygan and some small islands around Alpena and in Saginaw Bay—the center of the Lower Peninsula turns out to be about four miles north of St. Louis.

Does this mean that St. Louis should be striped of its honors and be made to remove its monuments to centrality? No, the town can continue to bask in the geographic spotlight as the navel of the Southern Peninsula. It may do so because it is still the largest community near to the actual axis site and because the community has proven over time to be a good steward of the title, “Middle-of-the-Mitten.”

There are other median points in our state that have been slightly changed on account of modern computer analysis. Since

1920, for example, the federal government has said that the center of

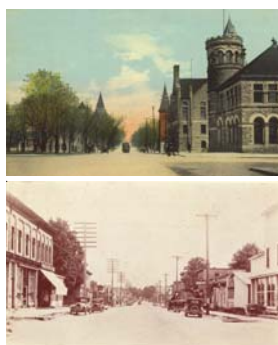


the total Michigan land mass is “five miles northwest of Cadillac.” More sophisticated computations now show that this site is still in Wexford County, but located just 3.5 miles north of Cadillac. As for the Northern Peninsula, there is apparently no town that claims for itself the title of “UP Centroid” or some such designation. However, if any community would qualify for such a christening it appears to be Skandia, near the intersection of highways US-41 and M-94. The balance point for the Upper Peninsula land mass is just 2.5 miles southwest of this small Marquette County settlement. The nexus of Michigan above the Straits is so close to Lake Superior because of the gravitational pull of Isle Royale to the northwest.

There are many other central places across our state, some of which are shown on the accompanying map. What these various points tell us is that no matter where one is across the wide expanse of Michigan's land and water, we are always close to the heart of Wolverine territory. 🐾

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Name These  
Michigan Cities...  
**ANSWERS**  
from page 7



*Top: Lansing (Ingham County)  
Capitol Avenue*

*Bottom: Cedar Springs (Kent County)  
Main Street*



# MLTA Calendar of Events

## 2008

July 20-22	Summer Convention Bavarian Inn, Frankenmuth
October 14 & 15	Fall Education Seminar Soaring Eagle Inn, Mt.Pleasant
October 15 – 18	ALTA Convention Koloa, Hawaii
November 5	Fall Education Seminar Livonia Radisson

## 2009

July 18 -22	Summer Convention Amway Grand Plaza Hotel, Grand Rapids
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