

I. Property Ownership (Sales 10%, Broker 10%)

A. Real and personal property; conveyances

Real property is conveyed (transferred) by deed and is defined as:

Land

Improvements on the land (buildings, etc)

Fixtures (items once personal property but are now attached permanently)

Plants (perennials)

Air space rights above land

Subsurface rights (mineral, oil, water) below land

Water-related rights (riparian - water, littoral - shoreline)

Personal property (aka chattel) is conveyed (transferred) by bill of sale and is defined as anything that is not real property. It includes:

Unattached items (i.e. appliances, artwork, etc)

Plants (annuals)

Emblements (growing crops to be harvested)

Trade fixtures (Items used in the operation of a business). Even if its attached, it remains personal property.

B. Land characteristics and legal descriptions

Land physical characteristics include **immobility** (cannot be moved), **indestructibility** (permanent, cannot be destroyed) and **heterogeneity** (no two pieces of land are exactly alike)

Legal description of real property is a method to identify the exact location and boundaries of land.

1. Metes and bounds method of legal property description

Legal description using a known reference point (monument), identifies lengths and directions of boundaries starting with a POB (Point of Beginning) and ending at the same POB.

Example: Beginning at the point 250 feet east of the center of the intersection of Main & Division streets in Kent County, thence 150 feet south, thence 100 feet east, thence 150 feet north, thence 100 feet west to the point of beginning.

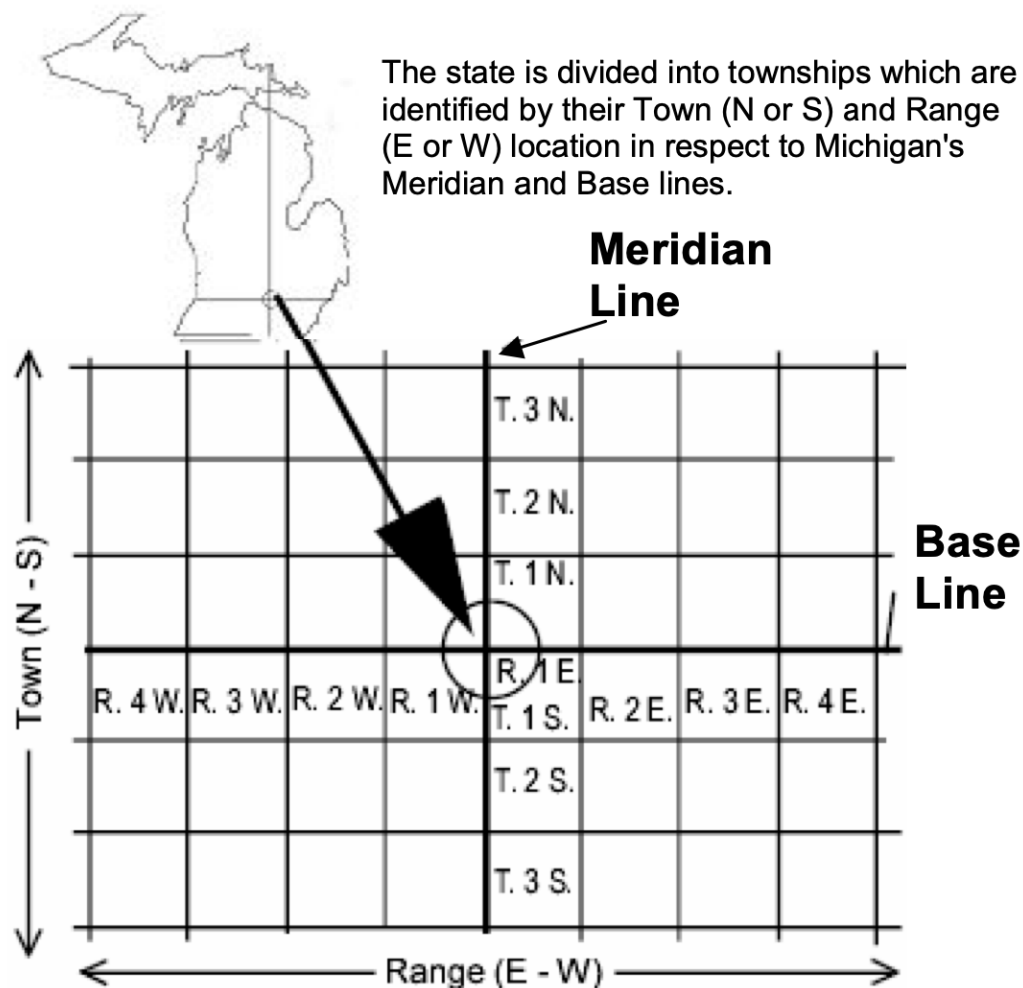
2. Lot and block (recorded plat) method of legal property description

Legal description using a surveyor's plat (plan, map or drawing) of land subdivided into various "lots" (or condominium "units") indicating boundaries. Regulated under the Michigan Land Division Act.

Example: Lot 257 of Addisons Addition, Kent County.

3. Government survey (rectangular survey) method of legal property description

Legal description method using grid system consisting of Base Lines (imaginary East-West latitude lines) and Meridian Lines (imaginary North-South longitude lines) creating 6 mile by 6 mile squares (Townships) and further subdivided into 1 mile by 1 mile squares (Sections)



Towns are numbered either north or south of base line. Ranges are numbered either east or west of principal meridian. Michigan's center for principal median and base lines is located near Jackson, MI.

1 Township = 36 square miles = 36 sections (note unique numbering of sections)

1 Section = 36 square miles = 640 acres

A township is normally a quadrangle approximately 36 miles on a side which contains thirty-six (36) sections. As shown below in some townships corrections for the earth's curvature will show up on it's northern and western boundary lines. Also, note the way in which sections are numbered within a township.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Example: "S 1/2 of the NW 1/4 of section 6, T3S, R2W"

How to read and locate it: (Read it from right to left) From the principal meridian and base lines, travel west to range #2 (6 to 12 miles) and south to town #3 (12 to 18 miles), locate section #6 within the township. In section #6, locate the northwest 1/4, then, locate the southern half of that quarter.

4. Measuring structures (linear and square footage)

Linear - measuring distance

Square footage - measuring area (length x width)

Example: a structure measuring 40' x 30' (linear) has a square footage of 1,200 sq. ft.

ANSI - American National Standards Institute measures exterior dimensions above grade (ground level and above).

GLA - Gross Living Area measures the exterior dimension that is finished space (includes walls, ceilings and floors) that has access to electricity, plumbing, HVAC. etc. Do not measure decks or garages.

5. Land measurement

1 Acre = 43,560 square feet (length x width)

1 Mile = 5,250 feet

1 Square Mile = 1 Section = 640 Acres

C. Encumbrances and effects on property ownership

Any claim against a property from someone who is not the owner which lessens an owner's control of the property. Encumbrances include **liens, easements and encroachments**.

1. Types of liens and their effect on the title and value of real property

Lien - the right to secure an interest in property while a debt remains unpaid. Michigan's Due on Sale Clauses Act ([MCL 445.1621-1629](#)) requires liens be satisfied upon the transfer of title to real property. Value is diminished until lien is extinguished. Value - Liens = Owner's Equity

Mortgage - lien placed by lenders of money loaned for the purchase of property.

Construction lien - placed by contractor, sub-contractor, laborer or supplier for improvements to property until the amount owed is satisfied.

Property Tax / Special Assessment lien placed by local government when a tax payment is due.

Court Judgement - lien placed by successful court suit until restitution is paid.

2. Easements, rights of way and licenses, including their effect on the title, value and use of real property

Easement - A non-possessory right to use another person's property for a specific purpose without owning it. **Right of ways** allows travel over land (ingress and egress) and are permanently written into the subservient estate's deed. Easements can be affirmative (granting use) or negative (restricting use). Easements can diminish land value by limiting the property's use (building plans, etc).

Licenses are not easements yet, like easements they allow the use of someone's land. Licenses are temporary, revocable and not written into any deed.

Easement appurtenant - Easement benefitting a neighboring parcel of land for one party (dominant estate) while burdening another party (subservient estate)

Easement in gross - Easement benefitting an individual or entity rather than a parcel of land (i.e. utility easement or license)

Utility easement - allows utility companies to install and maintain infrastructure.

Grant, Express Grant Easement - written easement agreement between parties

Easement by Reservation - transferring ownership of property but retaining rights to use the property.

Easement by Necessity - court ordered easement for land-locked property.

Government Condemnation (a.k.a. Eminent Domain) - The government's right to take privately owned property provided it is used for public purpose and the owner is fairly compensated.

Easement by Prescription - a.k.a. Adverse Possession.

3. Encroachments and their effect on the title, value and use of real property

Encroachment - an intrusion of a garage, fence, tree, etc over the owner's property line. If encroachment continues beyond the statutory timeframe, property may be subject to allowing encroachments continuation which may devalue or limit full use of property. Surveys are used to determine encroachments.

4. Potential encumbrances on title, such as probate, leases, or adverse possession

Probate - Part of Michigan's family court system finalizing a person's affairs after they die.

Leases - An agreement for possession of property that belongs to landlord (Lessor) for a period of time for consideration (Rent) from the tenant (Lessee). A lease gives lessee the right to possess property throughout the duration of the lease that may extend beyond the life of the lessor or the sale or transfer of the leased property.

Adverse Possession - Claimant must file a 'quieting title suit' to claim ownership. Must be ongoing for 15 years, Trespass must be open (not hidden), continuous (on going), notorious (widely known), and hostile (without owners approval).

5. Property rights that may be conveyed separately from use of the land surface, such as mineral and other subsurface rights, air rights, or water rights

Surface, sub-surface and air rights can be separated and sold independently of other rights of ownership.

Water rights include access and use of water (rivers and lakes) by adjacent property owners and public users. Water rights cannot be separated or sold independently of other ownership rights. Water rights include **riparian** (water use) and **littoral** (shoreline) rights and are determined whether the body of water is natural vs man-made or navigable (can float a log or canoe) vs. non-navigable (no ingress or egress).

D. Types of ownership

6 Unities of ownership:

Possession - each owner owns an undivided share in the property.

Interest - each owner owns the exact same percentage of ownership.

Title - each owner takes title in the same form.

Time - each owner enters into ownership at the same time.

Survivorship - Each remaining owner absorbs the rights of deceased owners.

Marriage - Marriage is considered to be only one entity. Each spouse owns 100%

1. Ownership in severalty/sole ownership

Ownership by one person only. Because ownership is singular, there are no ownership unities.

Upon death, ownership rights descend to **heirs** (legal next of kin) or **devisees** (paragraph in a persons last will and testament granting real property)

2. Implications of ownership as tenants in common

Ownership by two or more people.

Includes 3 unities of possession, title and time.

Does not include unities of interest (may have differing percentages of ownership), survivorship or marriage.

Upon death, ownership rights descend to **heirs** (legal next of kin) or **devisees** (paragraph in a persons last will and testament granting real property)

3. Implications of ownership in joint tenancy

Ownership of two or more people.

Includes 5 unities of possession, interest, title, time and survivorship.

Does not include unities of marriage.

Upon death, ownership rights are equally divided between remaining owners.

3a. Implications of ownership by tenants by the entirety

Ownership by married couples only

Includes all 6 unities of possession, interest, title, time, survivorship and marriage.

Upon death, all ownership rights are transferred to remaining spouse.

4. Forms of common-interest ownership, such as Timeshares, Condominiums and Co-ops

Timeshares (aka. Interval Ownership) - a form of condominium ownership.

Condominiums are a form of ownership rather than a style of building whose co-owners own/manage **common areas** (entry, playgrounds, etc) Formed by a **master deed**, controlled by a board selected by co-owners through an **HOA** (Home Owners Association) in which maintenance fees are covered by a monthly HOA fee. Purchasers of new condominiums must be given a copy of the master deed, purchase agreement (with 9 day right of rescission), escrow agreement, condominium buyer's handbook and disclosure statements. Owners of condominiums own real property, pay their own mortgages and property tax. Site Condominiums are single family residences located in a condo association rather than a multi-family unit.

Cooperatives (a.k.a Co-Op) - Owners of Co-ops own stock in the company that owns the physical property. Co-Op owners own personal property that includes a proprietary lease to inhabit property. This lease covers the co-op's ongoing expenses including mortgages, insurance, property taxes and maintenance,

5. Property ownership held in a trust or by an estate (BROKER ONLY)

Owners of property (real and personal) may purchase or transfer their interest in property into a trust which is a legal, fiduciary agreement. Often used to avoid probate, separate ownership interest from individuals or other long-term estate planning concerns. Persons creating trusts are known as **trustor** or grantor. Persons named to manage trusts are known as **trustees**, Persons benefitting from the trust are known as **beneficiaries**. Trusts can be revocable (can be amended) or irrevocable (cannot be amended). Assets can be transferred into a some trusts anytime during the grantors lifetime or upon their death using a **lady bird deed** (a type of quit claim deed).

6. Ownership by business entities

Any business can own real property provided the right to do so (purchase, lease, sell, encumber) is articulated in the organizing documents of the company.

7. Life Estate ownership

Ownership interest granted during the lifetime of the **life estate tenant** only. Upon the death of the life estate tenant, the life estate will prescribe whether the property is in **reversion** (goes back to the life estate granter) or to a **remainderman** (is passed on to a succeeding owner)

II. Land use Controls (Sales 5%, Broker 5%)

A. Government rights in land

US Government guarantees private property ownership through the US Constitution. Prior to this, England used the Feudal system (ownership by the kingdom granting use to the kingdom, fiefdom and serfdom in exchange for products and services). Americans use the **Allodial system** where property rights are vested in individual owners without requirements to the government. However, the government retains certain rights to land:

1. Government rights to impose property taxes and special assessments

Ad Valorem (latin, “based on value”) property taxes based on property’s value.

Assessed Value x Millage Rate = Annual Property Taxes

Assessed Value - an estimate of current value, determined by a local government assessor for tax purposes.

Special Assessments - Additional charges by taxing authorities assessed on only particular properties who specifically benefit from municipal improvements.

Millage Rate - Property tax rate expressed as 1/1,000 of a dollar. Multiply millage rate by .001 to determine conversion to decimal. Example: 25.8567 millage x .001 = .0258567. Millage rates are determined by municipality and school district as well as rates for **Homestead** (personal residence) or **Non-Homestead** (investment) properties. Municipalities usually charge a Summer and Winter tax.

Taxes can be **Prospective** (due and payable at the beginning of the tax period), **Retrospective** (due and payable at the end of the tax period), on a **Calendar Basis** (based on JAN 1 to DEC 31) or **Due Date Basis** (any date decided and extending for 12 months). In Michigan, these determining elements are based on local custom rather than state statute.

Specific to Michigan:

Assessed Value - MI constitutional requirement to set value at 50% of the usual selling price. Property is re-assessed upon transfer (sale) or improvements (building permit)

SEV - State Equalized Value - adjusted value determined by county and state equalization if it's above or below 50% of the assessed value. Represents 50% of true cash value.

Capped Value - Assessed value cannot rise more than 5% OR the rate of increase in the Consumer Price Index (CPI), whichever is less.

Taxable Value - the actual value used to calculate property tax which is based on the lesser of the capped or assessed value.

2. Government rights to acquire land through eminent domain, condemnation and escheat

Eminent Domain - the government's right to take private property provided it's for a public purpose and the owner is fairly compensated. **Condemnation** is the term for the process of the government to legally acquire property.

Escheat - the state government's right to take and own private property from a deceased owner who has no **heirs** (legal next of kin) or **devise** (written last will and testament).

B. Government controls on land use

Police Power of the State - the authority by federal, state and local governments to regulate and enforce order within it's boundaries to protect the public's health, safety, morals, and general welfare. Includes:

Building codes - Michigan Residential Code - sets minimum building/construction standards.

Ordinances - local laws which include a **Master Plan** established by local planning commissions to regulate the use of land. Categories include Agricultural, Residential, Commercial and Industrial and can be further subdivided, and **Setbacks** (require buildings to be set certain distances from property lines)

When building codes and zoning change, new construction must conform to new rules unless granted a "**variance**". Existing buildings are not required to update to the new rules and may remain under the former rules, known as "**nonconforming use**" or "**grandfathered in**".

Flood Zones (FEMA - Federal Emergency Management Agency) establishes varying levels of flood risk, flood maps and potential lender requirement of flood insurance.

Wetland Protection Act (EGLE - Michigan Department of Environment, Great Lakes and Energy) reviews and provides permits regarding use and development of wetlands - areas that can support aquatic vegetation and life.

Other Environmental Concerns

Abatement - measures taken to reduce, minimize, eliminate or control environmental pollution by a licensed professional.

Asbestos - Fire resistant material used in buildings until the 1970's when it was discovered to cause lung cancer.

Lead-based Paint - Adding lead to paint was prohibited in 1978. It is extremely toxic when swallowed, absorbed through the skin or inhaled as dust affecting brain, blood and kidneys. Federal government requires the disclosure of properties built prior to 1978 that may contain lead-based paint, a 10 day period to inspect such properties and provide the federally written booklet, "Protect your Family from Lead in your Home".

Radon - Naturally occurring colorless, odorless radioactive gas commonly found in basements, Known to cause lung cancer.

Mold - Natural spores resulting from a combination of air (poor ventilation), humidity and organic matter which can cause allergic reactions. Black mold can be toxic.

Urea Formaldehyde Foam Insulation (UFFI) - used for insulation in the 1970's causing poisonous gases when not sealed properly.

Water Quality - should be tested by local health department for **Nitrites** (fertilizer contamination), **Nitrates** (manure - farms, livestock, septic systems contamination) and **PFAs** (forever chemicals used in manufacturing).

Underground Storage Tanks - rusty and deteriorating metal tanks containing fuel or chemicals. Environmental Audits are common in commercial purchases and lending.

Carbon Monoxide (CO) - poisoning the body due to the incomplete combustion of fuel (gas, wood or oil) in central furnaces and portable heating units. Install

smoke and CO detectors in homes. Smoke and CO Detectors are required by local ordinances for many rental properties.

Insect Infestation - termites, roaches, ants, spiders are common infestations.

C. Private controls on land use

Land use controls can originate or be enforced through public (government) and private sources (property owners, neighboring property owners and neighborhood associations).

1. Deed conditions or restrictions on property use

A provision in a deed to control the present and future use of property. Deed restrictions are usually more restrictive than local ordinances and the more restrictive requirement will usually prevail when contested in court. Certain requirements can be written into specific deeds. Legal conditions and restrictions remain in the deed and those requirements continue to be enforced upon subsequent owners (i.e. no fence can ever be built on this property). Illegal conditions and restrictions are removed from the deed by law and have no enforcement on future owners (i.e. property can never be sold to minorities).

2. Subdivision covenants, conditions and restrictions (CC&Rs) on property use

Regulations for preserving and maintaining property value and neighbor relations. May be created by the original builder and can include control of the number of pets, size of buildings and road agreements (maintenance and cost of private roads), etc.

3. Condominium and owners' associations regulations or bylaws on property use

Condominium communities through its Master Deed create its **Covenants, Conditions and Restrictions** (regulations), Home Owners Association (HOA) for the governance of the community and **HOA fees** (usually a monthly fee paid by condominium owners for the maintenance of its common elements (property shared with all condominium owners))

III. Valuation (Sales 8%, Broker 8%)

A. Appraisals

A written, professional opinion of value provided by a licensed Appraiser that must comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

1. Appraisals for valuation of real property

Lenders rely on Appraisal Reports by licensed Appraisers to determine the safest amount of money that can be loaned for the purchase or refinancing of a property.

2. Situations which require appraisal by a licensed or certified appraiser and brokerage-related actions that constitute unauthorized appraisal practice

Real estate licensees may only provide a statement value to determine an accurate marketing/selling of a property. Any other purpose requires the engagement of a licensed Appraiser. When a broker feels unqualified to fully analyze a property's value, the services of a licensed Appraiser should be engaged.

3. General steps in appraisal process

State the purpose of the appraisal.

List, gather, record and verify the data needed for each valuation approach.

Analyze and interpret data for each valuation approach.

Reconcile data for the final estimate.

Prepare an Appraisal Report.

B. Estimating Value

Fair Market Value - What a willing buyer will pay and a willing seller will offer for a property when neither are under any pressure or duress to purchase or sell a property that is exposed to the market for a reasonable amount of time.

Market Price - The actual selling price of property that may be higher, lower or the same price as its fair market value.

Arms Length Transaction - A truly competitive market without intervening factors such as selling to a relative or friend.

Highest And Best Use - The use of a property that results in its highest value, both financially and socially.

1. Economic principles and property characteristics that affect value of real property

Economic principles include:

Conformity/Comparability - The principle that properties located near other like-kind properties will stabilize value.

Regression - The principle that the value of a larger, more expensive property located near less expensive properties will be reduced because of the adjacent properties.

Substitution - The principle that a buyer will not pay a higher price than it would cost to buy a similar property.

Contribution - The principle that improvements to a property will increase its value. However, the cost of the improvement may not increase the property value by the same amount.

Anticipation - The principle that future changes known to the community will affect (either positively or negatively) property value.

Assemblage (a.k.a. Plottage Value) - The principle that merging two or more parcels together into one lot may have greater or lesser value than if valued separately.

Property economic characteristics include:

D - desirability (preferred location and area value)

U - utility (improvements - can be developed)

S - scarcity (supply - land has limited quantity)

T - transferability (can be sold, leased or willed to another person)

Types of depreciation affecting value:

Depreciation - the loss of value for any reason.

Physical Deterioration - Loss of value due to ordinary wear-and-tear maintenance and repairs left undone. Example: Roof leak.

Functional Obsolescence - Loss of value due to outdated design or newer building products available. Example: 4 bedroom home with only 1 bathroom.

External / Economic Obsolescence - Loss of value due to changes beyond property boundaries. Example: Increasing crime rates.

Curable Obsolescence - Repairs or improvements that are economically reasonable to correct.

Incurable Obsolescence - Repairs or improvements too costly to correct which would create an over-improvement (more cost than the value added by the improvement).

Deferred Maintenance - Existing maintenance and repairs that are due but left undone.

Accrued Depreciation - The amount of depreciation that has occurred between the time of the improvement and the date of the appraisal.

Economic Life - The period of time which a structure is expected to remain useful to its original function.

2. Sales or market comparison approach to property valuation and appropriate uses

Most commonly used for pre-occupied houses and vacant land. Value of subject property is estimated by using comparable properties that have recently sold in the same area. The **subject property** value is never adjusted. **Superior comparative** properties are adjusted downward to be more like the subject property. **Inferior comparative** properties are adjusted upward to be more like the subject property. The best comparable properties to consider have been recently sold (within 6 months) and located in the same area. Use 3-4 comparable sold properties rather than an active or pending properties.

3. Cost approach to property valuation and appropriate uses

Most commonly used for new properties or properties with little or no other available properties to comparable to. Process includes valuing land separately as if the site was vacant. Add the cost estimate of reconstruction of the building (less any depreciation), Add the land value (which doesn't depreciate) to the building value.

Reproduction Cost - The cost to replace building components with an exact duplicate product.

Replacement Cost - The cost to replace building components with like-kind products with the same utility.

4. Income analysis approach to property valuation and appropriate uses

Most commonly used to value income producing properties.

Income Analysis Approach #1 - **Capitalization Rate** is used when comparing the estimated return on an investment

$$\text{Value} = \text{Net Operating Income} / \text{Capitalization Rate}$$

Net Operating Income - Estimated gross rental income (less vacancy rate) MINUS operating expenses (less debt service and income tax implications)

Capitalization (CAP) Rate - Rate of return an investor receives on an investment.

Income Analysis Approach #2 - **Gross Rent / Income Multiplier** is used when comparing income producing properties with other income producing properties.

$$\text{GRM} = \text{Sold price of comparable properties} / \text{Rent income of that property.}$$

$$\text{Value} = \text{Average GRM} \times \text{Rent (can be calculated either monthly or annually)}$$

C. Comparative Market Analysis (CMA)

Used exclusively by licensees (not appraisers) to assist a seller to determine an appropriate listing price for a property using sale or leasing data. A CMA created by a licensee cannot be used for any other purpose. CMA must include disclaimer in bold face print: "This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser."

1. Competitive/Comparative Market Analysis (CMA), BPO or equivalent

Under the supervision of a broker, salespersons may provide a CMA to clients but cannot charge for a fee for this service. Brokers may provide clients with a Broker Price Opinion (BPO) and may charge clients for this service. CMA's and BPO's are not used by lenders.

2. Automated Valuation Method (AVM), appraisal valuation and Comparative Market Analysis (CMA)

An Automatic Valuation Model/Method (AVM) is a computer-generated property value estimate based on algorithms and public data that provides a quick, general valuation. A Comparative Market Analysis (CMA) is a more detailed analysis conducted by licensed real estate agents while Appraisals are performed by licensed Appraisers.

IV. Financing (Sales 10%, Broker 9%)

A. Basic Concepts and Terminology

Michigan is a **lien theory state** meaning the buyer/mortgager is the actual titleholder of the property while a lender/mortgagee is merely holds a lien on the property. Failure to pay mortgage payments may result in a **foreclosure** - the legal taking of property by the lender to satisfy the amount owed in the mortgage. Other states may be a **title theory state** meaning the lender/mortgagee becomes the titleholder of the property until the debt is paid in full giving the owner/mortgager of the property full right of ownership.

1. Loan financing (for example, points, LTV, PMI, interest, PITI)

Principal & Interest - the two main components of most loan payments. Principal is the amount of money that remains due to be repaid. Interest is the cost of borrowing the money, expressed as an annual percentage rate payable to the lender.

APR - Annual Percentage Rate is the amount of interest charged for borrowing money which includes interest and other costs of borrowing (I.e. discount points).

PITI - monthly loan payments that includes Principal, Interest, Taxes and Insurance. Annual amount due for property taxes and home owners property insurance are divided into monthly payments (1/12th) and are added to the principal and interest amounts due. The lender collects these amounts, holds the money is **escrow**, and pays it on behalf of the borrower when the amounts become due.

LTV - (Loan to Value) The amount (expressed as a percentage) of money a lending institution will loan based on the appraised value of the property (not it's purchase price).

Equity - The portion of ownership remaining after all liens on the property are satisfied.

Equity = property value MINUS outstanding debt.

Discount Points - Prepaid interest charged at the beginning of the loan in order to reduce the annual interest rate charged over the life of the loan. The cost of each discount point is equal to 1% of the borrowed amount which reduces the interest rate by 1/8%. Eight discount points reduce the interest rate by one full percentage rate.

PMI - Private Mortgage Insurance policy protecting lenders in the event a borrower defaults on a loan. This amount is paid monthly and can be discontinued when a borrower gains enough equity in the property. Conventional loans require PMI payments from borrowers when the LTV is less than 80%. PMI's counterpart, **MIP (Mortgage Insurance Premium)** is used for FHA guaranteed mortgages which can be paid at one time or monthly.

2. General underwriting process (e.g., debt ratios, credit scoring and history)

Borrowers must qualify to obtain a loan. Each loan product has its own requirements a borrower must meet. Qualifications include employment history (length of time at each job as well as length of time in a given profession), income level (enough incoming funds to make loan payment), debt ratios (total debt load of a borrower expressed as a ratio of total income - say 31%) and credit score (a three digit number usually between 300-850 that represents borrower's credit risk of repaying debt).

3. Standard mortgage/deed of trust clauses and conditions

A **Mortgage** document is a lien on the property that pledges the property as security for the debt in case of default. Mortgages must be recorded at the county Register of Deeds office (where the property is located) for it to be legally enforced.

A **Deed of Trust** is not used in Michigan. While a mortgage is a contract between the lender and the borrower, A deed of trust is used in some states that replace a mortgage and includes a third party, a trustee to hold title to property until the debt is either satisfied (then title is given to the borrower), or defaulted (then title is given to the lender).

Standard clauses and conditions that establish the rights and responsibilities of lenders and borrowers include:

Acceleration clause - If the borrower defaults, the entire amount owed becomes due and payable immediately.

Alienation clause - Requires borrowers to pay loan balance in full when selling/transferring property.

Subordination clause - Requires liens to be recorded at the county Register of Deeds office (where the property is located) in the proper order they were created. Michigan is a "**rush lien state**" meaning liens recorded first receive priority over subsequent liens when disbursing money for repayment.

Prepayment Penalty clause - Protects lenders rights to earn interest. Allows them to charge extra fees to borrowers who pay off their debt early. Fee is based on a percentage of the loan balance.

Release clause - Loan provision used in mortgages that cover multiple properties to release individual properties from the mortgage as they are sold. Used primarily by builders, investors, etc.

Mortgage Discharge - Receipt from lender to borrower as evidence that all mortgage payments have been made and the lien is released from the property.

4. Essential elements of a promissory note

A **promissory note** is a separate loan contract that outlines the terms of the loan which the borrower personally promises to repay the debt. Includes borrower and lender information, principal amount being borrowed, interest rate, repayment schedule, maturity date (date the loan must be repaid by), Collateral (assets that are used to secure the loan), penalties, other loan terms and signature of borrowers.

B. Types of Loans

1. Conventional loans

Private institutional lenders (banks, credit unions, mortgage companies, etc.) provide mortgages that are not guaranteed by the government, so the lender bears all risks associated with lending. Conventional loans can be **conforming** (follows guidelines set by the Federal Fair Housing Finance Agency) or **non-conforming**. Conventional mortgages usually have stricter qualifying criteria than other types of loans. PMI is usually required for loan down-payments of less than 20% of the purchase price. Conventional loans can have either fixed-rate interest or adjustable rate interest.

2. Amortized loans, partially amortized (balloon) loans, interest-only loans

Amortization - Paying principal and interest in regular payments which results in all money owed to the lender is paid in full by the end of the loan term.

Partially Amortized Loan - Paying principal and interest in regular payments which does not result in the full repayment of the loan which leaves a balance due to be paid by a “**balloon payment**” or refinancing of the remaining amount due.

Interest Only Loan - Borrowers pays interest only leaving the full principal due at the end of the loan term.

Negative Amortization - Paying principal and interest in regular payments which results in more indebtedness to the lender at the end of the loan term.

3. Adjustable-rate mortgage (ARM) loans

ARM mortgages have a lower interest rate to start that changes over time. Rate is re-adjusted based on current market conditions (indexes like US Treasury Securities index or the London Interbank Offered Rate a.k.a. LIBOR). Includes the initial interest rate, interest rate cap (limit on interest rates during each adjustment period) and adjustment period (time delay before the interest can change again). Example: 5/1 ARM - Initial interest is fixed for 5 years and can change every 1 year afterwards.

4. Government Guaranteed Loans

In an effort to stabilize markets and meet certain social and economic goals, the United States government guarantees some mortgages. The government does not make loans. It merely guarantees that the lending institution will be paid in full if the borrower defaults.

a. FHA insured loans

Mortgage guaranteed by the Federal Housing Authority (FHA). Targeted to buyers of principal residences (non-investment property) with less cash reserves (typically 3.5% downpayment), lower credit scores (Credit score of 500-579 require 10% downpayment, while 580 or greater only require 3.5% downpayment) and greater debt-to-income ratios (less than 43%). Must be appraised and inspected by FHA approved appraisers and inspectors. Property must meet certain construction standards. FHA 203(k) mortgage targets for 1-4 family residences and properties needing rehab.

b. VA guaranteed loans

Mortgage guaranteed by Veteran Affairs (VA). **Entitlement** offered to veterans of the military with a **Certificate of Eligibility** stating the maximum amount of loan the veteran is entitled to, lower interest rates and zero downpayment. VA loans include 1-4 family residences provided the veteran intends to occupy the property as their primary residence.

c. USDA/Rural Development loan programs

Mortgage guaranteed by the Federal Housing Authority (FHA). Targets principal residence ownership to low-to-moderate income persons living in rural areas. Program works with state agencies such as **Michigan State Housing Development Authority** (MSHDA) to provide downpayment assistance through zero downpayment loans and grants.

5. Owner financing (for example, installment or land contract/contract for deed)

Owners can sell their own properties offering financing terms to the buyers.

Land Contracts (aka Contract for Deed) - Seller (Vendor) retains title to property while Buyer (Vendee) makes regular installment payments to the seller toward the purchase price. Vendee has ownership interests called “**equitable title**”.

Purchase Money Mortgage - Seller transfers title to buyer and holds a mortgage the same way any other lender would do so. Very un-common in Michigan.

6. Reverse-mortgage loans

Usually used to supplement retirement income. Owner uses equity in property to receive regular monthly payments that do not require repayment until the owner dies or sells property. Most reverse mortgages are Home Equity Conversion Mortgages (HECM).

7. Home equity loans and lines of credit

Owners use the equity in their home as security to borrow money. Home Equity Loan (HEL) is a fixed amount to be repaid over a fixed term. Home Equity Line of Credit (HELOC) is a revolving, open-ended line of credit which can be borrowed at anytime - usually through is a the use of an associated checking account to access funds.

8. Construction loans

A short-term loan (12 months or less) with higher interest rates used for new construction that the lender pays out in incremental payments as construction progresses. When construction is complete, the loan can be paid off or converted to a conventional mortgage.

9. Rehab loans

Used by homeowners and investors. It combines the financing for the purchase price and cost of renovations into a single loan. Valuation is based on the finished renovations. Government guaranteed rehab loan, FHA 203(k) loans allows for the purchase price, cost of renovations and financing up to 6 months of mortgage payments while you live elsewhere during renovations.

10. Bridge loans

Temporary, short-term, higher than usual interest rate loan used by buyers to purchase property while their existing property is being sold. Value of both properties are used as collateral for the loan.

C. Financing and Lending

1. Real Estate Settlement Procedures Act (RESPA), including kickbacks

Federal law administered by the Consumer Financial Protection Bureau (CFPB) protects home buyers using federally guaranteed mortgage loans for 1-4 family residential properties by mandating disclosure of all charges and credits related to settlements. Prohibits “**kickbacks**” - payments to “settlement service providers” (lenders, real estate agents, inspectors, etc.) when specific services have not been provided.

2. Truth-in-Lending Act (Regulation Z), including advertising

Federal law requiring lending institutions to disclose the true cost of borrowing money to purchase 1-4 family residences. Lenders must use the Annual Percentage Rate (APR) which is a combination of the interest rate and all other cost to borrow (closing cost) expressed as part of the annual percentage rate so buyers can shop and compare mortgages. Borrower’s **right of rescission** (cancellation) of the loan only applies to lines of credit and purchase of timeshares.

Loan advertisement may only include cash price and APR. Additional advertising of other terms trigger inclusion of all terms such as cash price, APR, down payment, monthly payment, number of payments and amount of finance charges. Generic terminology used in advertising (i.e. “low down payment”, “easy terms”, etc) are acceptable and will not trigger Regulation Z advertising requirements.

3. Requirements and time frames of TRID (TILA-RESPA Integrated Disclosures)

Federal requirement combining TILA and RESPA rules into uniform industry-wide documents that require timestamped acknowledgement. Requires lenders to provide a “**loan estimate**” within 3 days of applying for a mortgage (borrower has 10 days to decide acceptance of terms) and a “**closing disclosure**” at least 3 days prior to closing a transaction. Any change in terms on the closing disclosure (i.e. change in the loan product, APR, additional cost, etc.) requires a new closing disclosure and triggers an additional 3 day period.

4. Equal Credit Opportunity Act (ECOA)

Requires lenders to use all income when qualifying borrowers for a mortgage. Prohibits discrimination that includes receiving public assistance money. Requires lenders to send a letter within 30 days explaining why credit was denied.

5. Lending Process (application through loan closing)

Criteria lenders consider when approving/declining a loan:

Credit Score

Income

Work History

Credit History

Existing Debt Load

Process involved:

Complete loan application

Pay application fee (includes loan origination fee and appraisal fee)

Gather documents (tax returns, W-2 income, 1099 income, etc.)

Loan is approved by underwriter

Property transaction is closed (completed)

Deed, Promissory Note and Mortgage are recorded at the local Register of Deeds

6. Risky loan features, such as prepayment penalties and balloon payments

Uninformed borrowers may be surprised to learn about additional cost associated with choosing certain loans. Lenders and licensees should advise clients to know the specific terms of any loan chosen.

Prepayment Penalty - Some loans can be paid off at any time during the term of the loan by merely paying the principal (outstanding balance due) and any

accrued interest. Others require an additional fee known as a prepayment penalty (usually based on a percentage of the principal) to satisfy the lenders anticipated earning of interest if the loan had continued through the whole term.

Balloon Payment - a term used in partially amortized loans to describe the final payment of the loan's outstanding balance due at the end of the loan's term.

V. Contracts (Sales 19%, Broker 19%)

A. General Contract Law

A contract is an intention by two or more parties to create a legally binding relationship to do or not do something. There must be **mutual consent** (meeting of the minds).

1. General principles of contract law

A contract must include:

Offer - A clear offer with the exact terms and conditions.

Acceptance - Unambiguous acceptance of the offer without exceptions or changes.

Equitable Title - legal interest the buyer acquires after signing a purchase agreement or land contract.

Time is of the Essence - Contract clause stating the dates specified must be timely performed.

Statute of Limitations - Law that allows a specific time limit for a contract to be enforced.

2. Elements necessary for a contract to be valid

Consideration - Something of value exchanged between the parties such as money, services or goods.

Legal Capacity - Both parties are legally capable of entering into the contract. Capacity includes legal age - (Age of majority in Michigan is 18 years old), mental fitness (competent to understand and give assent including permanent (mental health) or temporary (influence of alcohol or drugs) disability) and without duress (forced into a contract through threats, coercion or undue pressure including physical threats, financial threats or emotional manipulation).

Legal Purpose - A contract requirement that no laws are broken in order to complete the contract.

Mutual Agreement - All terms in the contract are fully and unequivocally agreed to including legal description (the property exchanged is accurately described) and price (the exact value exchanged is stated).

3. Effect of the Statute of Frauds

Michigan's **Statute of Frauds** - Describes which contracts must be in written form and those which can be valid when expressed only verbally. All real estate contracts (both offers and counter-offers) are required to be in writing to be valid with one exception - rental property leases of 12 months or less can be created verbally.

4. Offer and a contract

An offerer (buyer) makes an offer. The offeree (seller) accepts the offer. An offer becomes a legally binding contract when the parties involved receive **Notification** (both parties know the other party has accepted the terms of the contract). Notification can be verified (but not legally required) by "**Bottom Lining**" which is signing the contract a final time as evidence the parties have witnessed the other parties' signatures.

5. Enforceability of contracts

Valid contract - Contracts must contain all the necessary elements (mutual agreement, legal purpose, legal capacity and consideration) to be valid and enforceable.

6. Void, voidable and unenforceable contracts

Void contract - one or more of the required elements are missing making the contract illegal and unenforceable.

Voidable contract - Can be voided by one of the parties - usually due to legal capacity issues (underage, competency or duress). Both parties may choose to complete the transaction as written but persons with limited legal capacity have the power to void it.

Another legal concept that a court may rule a contract unenforceable is an **Unconscionable contract** - contract terms that are so unfair giving one side more bargaining power than the other.

7. Bilateral and unilateral contracts

Unilateral contract - a promise is exchanged for a performance (i.e. reward if found)

Bilateral contract - a promise is exchanged for a promise (i.e. real estate contract)

8. Nature and use of option agreements

Option contract - a unilateral contract that obligates an owner to sell. It is somewhat like an offer to purchase but is only enforceable on the seller (optionor), not the buyer (optionee). Option contracts include all the terms necessary to complete a transaction. Buyer may “exercise her option” by forcing the seller to enter into a bilateral contract and complete the transaction but has no requirement to do so herself. Option contracts limit the seller’s power to sell their property to someone else.

Lease with Option To Buy - a rental lease agreement that contains provision for the tenant to purchase the leased property under certain price and terms. The tenant is required to fulfill the terms of the lease but is under no obligation to exercise the option to purchase the property.

9. Notice, delivery, acceptance and execution of contracts

Execute - To make a contract binding by signing/agreeing to it.

Executory Contract - Contract in process of being completed.

Executed Contract - Completely performed (a.k.a closed) contract.

10. Appropriate use, risks, and advantages of electronic signatures and paperless transactions

Parties to a contract may agree to accept the use of electronic/paperless documents and electronic signatures. Advantages include the speed and availability of the parties involved. Risk includes confirming the terms of the offer has been explained and the proper person is affixing their signature. The agreement to use electronic/paperless documents should be in writing and approved by all parties.

Uniform Electronic Transaction Act of 2000 - Federal law allowing documents to be signed electronically rather than having an in-person signature. To be compliant, the signed electronic document must be storable and encrypted.

11. Rights and obligations of the parties to a contract

For both parties:

Each party has a right to accept, reject or counter an offer.

Each signatory to a contract has the right to receive a copy of the signed document.

For buyers:

Offers and counteroffers may be revoked anytime prior to the offer's acceptance by the other party.

For sellers:

Sellers have no requirement to accept any offer including offers that contain the highest price. Note - Depending on the listing agreement's language, sellers rejecting an offer matching the price and terms originally advertised may be financially liable to pay broker's commission for finding an "**able and willing**" buyer. Other listing agreement language may include a "**success fee**" whereby the broker only earns a commission upon the successful closing of a transaction.

Assignment - Unless prohibited in the contract, most real estate contracts are assignable meaning the buyer (assignor) has the right to sell/assign their position in the contract to a third party (assignee) who assumes the buyer's rights.

Novation - a substitution of a new contract to replace an existing one.

12. Possible remedies for breach or non-performance of contract

A breached contract can be resolved by the parties involved by themselves using:

Amendment - mutual agreement to a change in the terms of a contract.

Mutual Release - mutual agreement to terminate an agreement.

Also, breached contract can be adjudicated by a court with proper jurisdiction.

Possible remedies the court may order include:

Rescission - terminating a contract by returning the parties to their original position prior to the contract.

Specific Performance - the court enforces the completion of the contract as written.

Monetary remedies can be decided by the court including:

Compensatory Damages - reimbursement of actual cost incurred.

Liquidated Damages - costs pre-determined in the contract should a breach occur.

Consequential Damages - losses due to foreseeable consequences.
(i.e. additional cost incurred due to a delayed closing)

13. Termination, rescission and cancellation of contracts

There are 3 terms defining the means of ending a contract before it's completed.

Rescission - legal remedy that treats a contract as if it never existed.

Termination - legal remedy to end a contract based on applicable law.

Cancellation - a contract clause that outlines how to cancel the contract.

B. Purchase and Lease Contracts

1. Addenda and amendments to contracts

Addenda (plural: Addendum) - addition of new information to a contract.

Amendment - modification of existing information.

2. Purchase agreements

A legally binding agreement where a buyer agrees to buy and a seller agrees to sell under specific terms and conditions.

3. Contract contingencies and methods for satisfying them

Contingency - a condition in a real estate contract that must be met before the sale can be finalized. Failure to complete a contingency allows a buyer to escape the contract without penalty. (Examples include: contingent upon satisfactory inspection, contingent upon the sale of another property, contingent upon municipal approval of buyer's building plans, etc.) Agent should gather written proof that any contingency has been satisfied prior to closing.

4. Leases and rental agreements

Rental agreement - a short-term contract, often 30 days, between a landlord and tenant.

Lease agreement - a long-term contract, often 12 months, between a landlord and tenant that may be renewed.

Leases give tenants certain rights (**Leasehold Estate**) which includes rights of occupancy, livable conditions and privacy. Leases provide tenants rights that exceed/survive ownership interests. Leases are said to "**run with the land**" meaning new owners of a leased property must obey the terms of an existing lease.

Types of Leasehold Estates:

Estate At Will - Tenancy for an indefinite duration of time which normally continues month-to-month with the approval of landlord and tenant. Either party can terminate occupancy by giving the other a notice.

Estate For Years - Tenancy for a predetermined duration of time. The tenancy expires at the end of the lease.

Estate for Period to Period (a.k.a Year to Year or Periodic Estate) - A lease that automatically renews itself at the end of the agreement.

Estate At Sufferance (a.k.a Holdover Tenants) - Tenant that gains access to a property legally but remains present illegally. These tenants may be removed legally only through **Actual Eviction** (court ordered action) and not through **Constructive Eviction** (illegal actions to compel leaving). Note: Some situations are not considered estates at sufferance: **Trespasser** (gained access illegally with the intent of staying short-term or **Squatter** (gained access illegally with the intent of staying there long-term). Trespassing and squatting are illegal in Michigan and landlords have the right prevent re-entry and to *carefully* remove these people (many laws govern this action) from the premises.

5. Lease-purchase agreements

An agreement that combines a lease with the potential for a tenant to purchase the property at the end of the lease.

6. Types of leases

Gross Lease - Tenant pays a fixed amount for rent. Landlord pays operating expenses. Gross leases are common in residential property.

Net Lease - Tenant pays rent plus some or all of the operating expenses. Triple Net leases include property taxes, insurance and maintenance cost. Net leases are common in commercial property.

Ground Lease - Long-term lease of vacant property with the right to improve/build upon the land.

Oil & Gas Lease - Lease that permits gaining access to landlord's property with the intent to search, remove and sell oil, gas or minerals found in exchange for a portion of the profits earned (royalty).

Escalation Clause - Leases may include cost increases. These include:

Percentage Lease - Base rent plus a portion of future business sales. These leases are common for retail sale businesses.

Graduated Lease - Lease that includes pre-planned rent increase amounts at certain time intervals.

Index Lease - Interval rent adjustments based on common financial indexes such as Consumer Price index (CPI), etc.

C. Proper handling of multiple offers and counteroffers

Multiple offers may be received for a property, but only one offer can be accepted by the seller. All other offers may be kept as “**back-up offers**” in case the accepted offer falls through. Sellers may reject all offers and request buyers submit their **highest and best offer** to the seller by a certain time.

Counteroffers are a rejection of (legally cancelling) the original offer. Both parties may counteroffer (continue negotiating) until their terms are in agreement with each other at which time the offer becomes a binding contract.

VI. Agency (Sales 13%, Broker 13%)

A. Agency and non-agency relationships

Agency - Agency is the concept that one has the responsibility to act on behalf of and in the best interest of another person. A person who acts is known as the **fiduciary or agent**. The person(s) who receives agency services is known as the **principal or client**.

Non-agency relationships occur when acting within the real estate profession without possessing a contract to do so. Those persons are called **customers**.

Sub-Agent - an agent of an agent.

1. Agency relationships and how they are established

Agency is created by a contract that establishes the terms of an agency relationship. A agency contract can be **expressed** (written) or **implied** (not written but established by actions either said or performed).

Agency is created by a contract. The contract is an agreement for employment to perform certain tasks on behalf of the client/principal. There are agency contracts for sellers (Listing Agreement/Service Provision Contract) and buyers (Buyer Agency agreement).

2. Types of listing contracts

There are 3 types of listing agreements used to represent a seller -

Exclusive Right To Sell - List with only one broker who receives the full commission.

Exclusive Listing - Lists with only one broker. Seller retains right to sell property themselves and not pay a commission.

Open Listing - May list with several brokers who can collect commissions. Seller retains right to sell property themselves and not pay any commission.

3. Buyer brokerage/tenant representation contracts

Exclusive Buyer Agency Agreement establishes an agency relationship between buyers or lessees of properties (principal / client) and their real estate licensees (fiduciary / agent).

4. Other brokerage relationships, including transaction brokers and facilitators

Transaction Coordinator/facilitator - A licensee who is not acting as a fiduciary (agent) for either the buyer or seller. With full written disclosure to both parties, agent's obligation is to assure the completion of a transaction.

5. Powers of attorney and other assignments of authority

Power of Attorney - Legal document that authorizes a person (agent) to act on behalf of another (principal) as his/her **Attorney-In-Fact**.

Special Agent - Agent authorized to act in a specific matter for the principal.

General Agent - Agent authorized to act in a range of matters for the principal.

Universal Agent - Agent authorized to act in all matters for the principal.

6. Conditions for termination of agency or brokerage service agreements

Agency can be terminated by:

Completion/Performance of the contract.

Expiration of the contract.

Mutual Agreement - all parties agree to termination.

Destruction of the property.

Death of the principal.

Force of Law - court ordered decree.

B. Agent Duties

Services: (All services may be waived in a limited service agreement)

1 Marketing of the client's property.

2 Acceptance of delivery and presentation of offers and counteroffers.

3 At the time of execution of an offer to purchase, a licensee shall recommend to the purchaser that the purchaser require that the seller provide a fee title policy in the amount of the purchase price to the purchaser, issued or certified to the approximate date of closing of the real estate transaction.

4 Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied.

5 Assistance to complete the transaction under the terms specified.

6 Provide a complete and detailed closing statement signed by the broker unless closing is conducted by a title insurance company.

1. Fiduciary duties of agents

A real estate broker may authorize a designated agent to represent the client if that authorization is in writing.

Licensee owes, at a minimum, the following:

- 1 Reasonable care and skill in representing the client.
- 2 The performance of the terms of the service provision agreement.
- 3 Loyalty to the interest of the client.
- 4 Compliance with the laws, rules, and regulations of state and federal statutes
- 5 Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the broker.
- 6 Accounting of all money and property received by the broker.
- 7 Confidentiality of all information obtained. [MCL 339.2512d](#)

2. Agent's duties to customers/non-clients, including honesty and good faith.

Licensees deal with clients/principals (those under contract with the agent) and customers (those who are not under contract). Licensees owe principals trust and loyalty. Licensees owe customers fairness and honesty.

C. Agency Disclosures

Licensees must disclose in writing their agency status to all persons involved in a transaction or those who have the potential to become part of a transaction. Disclosure must occur prior receiving any information that might put the sharer of information at an adverse position while negotiating.

1. Disclosure of agency/representation

Disclosure Regarding Real Estate Agency Relationships - the form used when explaining licensee's agency status.

2. Disclosure of possible conflict of interest or self-interest

Anytime a licensee becomes involved in a transaction that could influence or benefit the agent or their close relative, a written disclosure must be presented and signed by the opposing side to acknowledge that such relationship exists. When an agent is buying, selling, or otherwise handling a transaction for themselves (a.k.a. **self-dealing**), a disclosure must be made. NOTE: Most E & O insurance policies do not cover self-dealing transactions. Also, transactions for a close family member or business relationship must be disclosed.

VII. Property Disclosures (Sales 7%, Broker 7%)

A. Property Condition

Seller's Disclosures benefit both buyer and seller. Buyers are made aware of the condition of a property giving them the ability to make further investigations. Sellers have written proof that conditions were disclosed providing possible relief from future lawsuits for non-disclosure.

1. Seller's property condition disclosure requirements

Applies to transfers of all residences (1-4 family), not vacant or commercial property. Exclusions: court orders (probate, foreclosures, bankruptcy, eminent domain) non-occupant fiduciary, between co-tenants, between spouse, parent, grandparent, child, grandchild, divorce, governmental entities, newly constructed residential property [MCL 565.953](#) Seller and agent are not responsible for inaccurate information not within their personal knowledge. [MCL 565.955](#) Seller may amend disclosure in writing [MCL 565.962](#)

2. Property conditions that may warrant inspections or a survey

Latent Defect: hidden defect not easily seen but known to seller. Non-disclosure of a defect creates "silent fraud" on behalf of seller.

Patent Defect: defect that can be discovered by reasonable inspection.

Survey - Licensed surveyor identifies property boundary lines and produces a written survey. **Mortgage survey** - drawing of the property boundaries that include the placement of improvements. **Stake survey** - a mortgage survey plus the surveyor adds flags to boundary corners.

3. Red flags that warrant investigation of public or private land use controls

Public controls include property taxes, eminent domain, zoning, setbacks, building permits. Private controls include HOA rules/restrictions, easements, encroachments. An agent providing **due diligence** for their client may perform additional inspections.

B. Environmental and Government Disclosures

1. Environmental issues requiring disclosure

Use of UFFI (Urea Formaldehyde Foam Insulation), insect infestation, asbestos, radon gas, formaldehyde, lead-based paint, fuel/chemical storage tanks, proximity to airport or gun range are included in a Seller's Disclosure.

2. Federal, state, or local disclosure requirements regarding the property

Lead-Based Paint Disclosure ([Residential Lead-Based Paint Hazard Reduction Act of 1992](#)) - Federal requirement for sellers, landlords and real estate agents to disclose possible lead contamination in homes built prior to 1978. Buyers are given the opportunity for an independent lead inspection. **Abatement** is the reduction in the use of something. **Mitigation** is the reduction of the effects of something. Law prohibits certain methods of lead removal such as dry sanding, dry scraping and torching which can create significant levels of lead dust.

Seller's Disclosure ([Sellers Disclosure Act 92 of 1993 & MCL 265.954](#)) State requirement created by the legislature for sellers of residential (1-4 family) dwellings to report all known functionality/defects of property being sold. Disclosure must be delivered (to the buyer or their agent) prior to the execution of binding contract. Buyers may terminate an otherwise binding purchase agreement if disclosure is not received within 72 hours. Buyer's right to terminate a purchase agreement expires upon the closing of the transaction. Sellers must answer all questions, be honest, add additional pages (signed by the seller) if needed, and may update disclosures that become inaccurate. Agents are required to make disclosures public and can be held liable for inaccuracy *only if* acting in concert with the seller to violate the act. Exceptions to the Seller's Disclosure Act are new construction, court orders, foreclosures, bankruptcy, government entities, transfers between co-tenants, spouses, divorcing ex-spouses, parents, grandparents, child and grandchildren.

C. Disclosure of material facts and material defects

Materiality - The materiality principle is the idea that information learned is significant enough to impact a person's decision to buy or sell property.

Material defects - include issues that have a direct effect on property value such as roof leaks, broken furnace, pollution, etc.

Material facts - include legal issues with neighbors, improvements without building permits, etc.

Non-material facts - Have no effect on value like these reasons for selling: divorce, lost job, location of murder, suicide or poltergeist (a.k.a **stigmatized property**). There are no duty to disclose non-material facts.

An agent must encourage the seller to disclose all known defects. If an agent is aware of material defects, the agent has a the duty to disclose is the information to the buyer - even if they represent the seller.

VIII. Property Management (Sales 3%, Broker 5%)

A. Duties and Responsibilities

The duties of a property manager must be outlined in the Property Management agreement which establishes the owner (lessor) of the property as the principal, not the tenant (lessee) and the licensee as the agent.

1. Procurement and qualification of prospective tenants

Duties of a property manager include advertising vacancies, locating potential tenants, performing background checks that may include work history, credit history, arrest and legal history and completing all documentation to establish tenancy.

2. Fair housing and ADA compliance specific to property management

Managers must ensure that all tenants and applicants are treated equally and fairly. Managers must ensure disabled tenants, employees and the public have the same level of access to facilities as those who are not disabled. Disabled tenants, at their own expense, may make modifications to rental units to meet their accessibility requirements. Common modifications include lowering counters, widening doorways and removing non-load bearing walls. Owners and managers may require a unit be returned to its original state at the end of the tenancy. Exception: exterior doors

3. How to complete a market analysis to identify factors in setting rents or lease rates

For rental properties, valuation extends beyond the market value of its real property and into maximizing profitability through rent and lease rates. Compare market vacancy rates. If subject vacancy rates are higher than the market comparisons, rental rates are likely too high. If subject vacancy rates are lower than market comparisons, rental rates are likely too low.

4. Property manager responsibility for maintenance, improvements, reporting and risk management (BROKER ONLY)

Preserving the asset value through maintaining a property and risk reduction are core responsibilities of management. These include inspections, preventative maintenance, common area maintenance, supervision of purchasing improvements and services, physical safety and security of persons on the

property and proper insurance coverage that includes casualty, liability, fire, hazard, consequential loss and workers compensation policies.

5. Handling landlord and tenant funds; trust accounts, reports and disbursements (BROKER ONLY)

Shall maintain property management accounts separate from all other accounts. May be interest-bearing account. Interest earned on account shall be handled in accordance with the property management employment contract. Broker or any designated employee of the real estate broker engaged in property management may be signatory on checks drawn on property management accounts. Shall maintain records of funds deposited and withdrawn from property management accounts. Property management account records shall indicate the date of the transaction, from whom the money was received or to whom it was given, and other pertinent information concerning the transaction the property management employment contract may require. All records shall be subject to inspection by the department. [MCL 339.2512c](#)

6. Provisions of property management contracts (BROKER ONLY)

Common provisions in a property management contract include the scope of services and the property manager's specific duties, the fee structure and compensation details, the term of the agreement with termination clauses, a clear statement of owner and manager responsibilities, outlines of liability and insurance requirements, and provisions for financial reporting.

B. Landlord and tenant rights and obligations

Landlord and tenants rights and obligations are written into the lease agreement and guided by Michigan's Landlord Tenant Relationship Act ([PA 348 of 1972](#)) and Truth In Renting Act ([PA 454 of 1979](#)).

IX. Transfer of Title (Sales 6%, Broker 6%)

A. Types of deeds

Deed - written document transferring ownership in real property.

Title - abstract theory of ownership and transfer.

Bill of Sale - written document transferring ownership in personal property.

Grantor - One transferring title to real estate.

Grantee - One receiving title to real estate.

6 Covenants of Title:

Seisin - Assurance the Grantor is actually the rightful owner.

No Encumbrances - Property is free and clear of liens and encumbrances.

Right to Convey - Grantor is legally entitled to transfer title.

Quiet Enjoyment - There is no other person claiming ownership interest.

Covenant of Warranty - Promise of Grantor to defend against other claimants.

Further Assurances - Promise of Grantor to do whatever is reasonably necessary after transfer to perfect title if needed.

Warranty Deed - Contains all covenants of title.

Special Warranty Deed a.k.a. Grant Deed - Contains all covenants of title covering ONLY the during the timeframe of ownership of the Grantor.

Quit Claim Deed - Contains NO covenants. Used primarily to clear clouds of title.

Sherrif's Deed - Conveys interest that the Sherrif has rights to transfer. Used for foreclosed property.

Other unique deeds - **Gift Deed** (consideration is "Love and Affection"),

Guardian's Deed (transferring minor's interest), **Deed in Lieu of Foreclosure** (deed given to lender to avoid foreclosure), **Trustee deed, Executor Deed** (testate), **Administrator Deed** (intestate) (3 judicial probate related deeds)

B. Title Insurance and Searches

Title Insurance policies cover defective titles. It does not cure titles, but merely covers the court cost for the court to decide. Protects against unrecorded instruments, forged instruments, information examining attorney overlooked, and undisclosed or missing heirs.

1. Title insurance policies and title searches

Owner Policy - Provided and paid by seller to protect the buyer.

Lender (Mortgagee) Policy - Provided and paid by the buyer to protect lender.

Title Search - Inspection of the chain of recorded instruments (40 years) researching ownership and encumbrances of property.

2. Potential title problems and resolutions

Cloud on the Title - Defects affecting marketability of the title.

Quieting Title Suit - Court ordered hearing to determine ownership.

Seller's Affidavit - Seller's signed statement declaring they are not aware of any clouds that are not known.

Subrogation Clause - Title policy clause allowing company to collect reimbursement from party that caused any loss.

Lis - Pendens - document giving notice of a pending lawsuit.

3. Marketable and insurable title

Title that is free of any clouds or defects - qualified to be insured with a title insurance policy.

C. Closing Process

1. When transfer of ownership becomes effective

Delivery and Acceptance - Title transfers to real property when Grantor voluntarily delivers deed which is accepted by Grantee.

2. Process and importance of recordation

Deeds are not required to be recorded at the county (where property is located) Registrar of Deeds to be legal. However, recording gives notice to the public as well as provides evidence of the transfer if the deed is ever lost.

To be legal, deeds must include:

Names of Grantor and Grantee.

Words of Conveyance - use phrases like transfers, grants, conveys, etc. which includes the Habendum Clause describing how title is taken, i.e. fee simple, defeasible fee or life estate.

Legal Description.

Consideration - amount paid for conveyance.

Execution - Grantor's signature. Grantee never signs deed.

In addition to the previous list of requirements, deeds must also include the following to be recorded:

Date.

Name and address of person preparing the deed.

Signatures must have names printed or typed underneath.

Address of Grantor and Grantee.

Acknowledgement - notarized.

3. Settlement procedures (closing) and parties involved

Parties involved in closings normally include buyer, seller and closing agent. Also common attendees include brokers and agents, lenders and attorneys.

Process includes confirmation the purchase agreement is accurately performed, expenses are correctly assigned to buyers and sellers, funding is confirmed, loan documents are completed, money is exchanged for title, documentation is completed and appropriately recorded at the county's Register of Deeds.

Listing brokers are responsible for the completion and accuracy of the closing.

4. Home and new construction warranties

Home warranties can be purchased by third party providers that cover the service, repair or replacement of home's major systems and appliances. These are usually purchased annually.

New construction warranties are not legally required in Michigan. However it is common for home builders to supply a 1 year warranty on workmanship and provide manufacturer warranties on components.

D. Special Processes

1. Special issues in transferring foreclosed properties

Foreclosed property ownership is sold with a Sheriff's Deed. 3 Rules for non-judicial foreclosure: Must be advertised in a local publication for 4 weeks, owner must be served notice and property auctioned at a Sheriff's Sale. Winning bidder must wait for redemption period to expire: 6 months most common, 12 months for "family farm" consisting of 3 acres or more or 21 days if the property is abandoned.

2. Special issues in short sale transactions

Short sales are transactions where lien holders (usually mortgage companies) accept a less-than-full payment of the amount owed. Short sales must be approved by all lien holders and require extra time for the process.

3. Special issues in probate transactions

Probate transfers concern deceased property owners settlements ensuring all decedents debts and financial commitments are paid. Property transfers require approval from the probate court and require extra time for that process.

X. Practice of Real Estate (Sales 12%, Broker 12%)

A. Anti-discrimination

The first anti-discrimination law was the Civil Rights Act of 1866 which prevented discrimination based solely on race. This act covers all real estate transactions and there are no exceptions.

1. Federal Fair Housing Act general principles and exemptions

The Federal Fair Housing Act became law in 1968 and was updated in 1988. The original act prohibits discrimination based on race, color, religion or national origin. The 1988 amendment included protected categories of sex, disability or familial status (families with children under 18 and pregnant women). Exemptions do not prohibit age or familial status in government-designated retirement housing, retirement communities whose residents are all 62 years of age or older, retirement communities if 80% of the dwellings have one person who is 55 years or older, or some residential dwellings of 4 units or less if sold or rented by owners owning 3 or less houses. Both owners and agents may be held responsible if discrimination occurs. Those who have been discriminated against have 1 year to file complaint with HUD or 2 years to ignited a case in federal or state court.

2. Protected classes under Federal Fair Housing Act

Race, Color, Religion, National Origin, Sex, Disability and Family Status

3. Protections against discrimination based on gender identity and sexual orientation

Federal law - none

Michigan law - both are considered protected categories

NAR policy - both are considered protected categories

4. Prohibited conduct under Federal Fair Housing Act (Redlining, Blockbusting, Steering, Disparate Treatment)

Redlining - Lenders who refuse mortgages for homes in certain neighborhoods

Blockbusting - Agents who induce sellers based on neighborhood ethnic or social changes that cause values to decline. A.k.a. Panic peddling

Steering - Agents who encourages buyers towards or away from certain areas based on protected classes.

Disparate Treatment - Conceal available properties, misrepresentation of availability of properties, discriminatory advertising or providing unequal services to customers or clients.

5. Fair housing advertising rules

Prohibits any advertisement that indicates a preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, or disability. Ads must focus on the property itself rather than the "ideal" occupant, avoid targeting specific groups, and include an "Equal Housing Opportunity" statement or logo to demonstrate compliance with the law.

6. Americans with Disabilities Act (ADA) obligations pertaining to accessibility and reasonable accommodations

The Americans with Disabilities Act (ADA) deals with equal access to commercial properties. Prohibits discrimination against individuals with disabilities in all areas of public life, including employment, state and local government services, public accommodations, commercial facilities, transportation, and telecommunications.

B. Legislation and Regulations

1. Licensees' status as employees or independent contractors

Licensees can be either employees or independent contractors. Independent contractors must have a written agreement and earn no less than 75% of their income from their brokerage from the direct sale of real estate.

2. Anti-trust laws and types of violations, fines and penalties

Anti-trust - Collusion (2 or more businesses joining forces to put another at a disadvantage) to prevent commercial competition by creating or controlling monopolies. Includes price fixing, boycotts and refusal to deal with others, territorial or customer allocation and tying agreements (I will do this IF AND ONLY IF you do that). Felony conviction, Fines up to \$100,000. Imprisonment up to 3 years, Injured parties may receive treble (3X) damages.

3. Do-Not-Call List rule compliance

Do-Not-Call (DNC) - Businesses must register with the FTC and download the National DNC Registry to remove listed numbers from their calling lists.

Exceptions: You can contact those who made an inquiry to you within 90 days or

have an existing business relationship within 18 months. Fines up to \$51,744 per incident from the FTC for each violation.

4. Proper use of Social Media and Internet communication and advertising

All media must ensure honesty, accuracy, and transparency, clearly disclose their license information and brokerage name, and comply with federal, state, and local advertising laws, including the NAR Code of Ethics. All content must be truthful, and any testimonials or endorsements must not be misleading. Agents must also obtain permission to use third-party content or images of others, protect client confidentiality, and ensure that all listings and information posted online are current and accurate, removing expired listings immediately

C. Duties and Responsibilities

1. Protection of confidential personal information (written, verbal or electronic)

Agents have a fiduciary responsibility to maintain client confidentiality that extends indefinitely, beyond the timeframe of any agency agreement.

2. Duties when handling funds of others in transactions

No checks made out to licensee personally. Checks should be made out to the office holding the funds until closing. (Usually listing broker, title company or selling broker) All funds must be turned into broker immediately. Broker has 2 banking days after notification of acceptance of offer to deposit funds. Agents may act as courier of funds to title company within 2 banking days. Funds cannot be disbursed without agreement of all parties of the purchase agreement or by interpleader (Court decides who received the money).

3. Licensee responsibility for due diligence in real estate transactions

Due diligence is the buyer's comprehensive investigation into a property's condition, legal status, and financial details within a specified timeframe after an offer is accepted but before closing.

D. Supervisory Responsibilities (BROKER ONLY)

1. Broker's supervisory responsibilities (licensees, teams and unlicensed assistants and employees) (BROKER ONLY)

Must provide direct communication, review and guide agent's practice, reports, performance and provide written operating policies and procedures
is responsible for all persons in their office whether employees, licensees, non-licensees, or individual members of teams. A broker cannot create any working relationship that circumvents their authority to supervise.

2. Broker relationship with licensees (employees or independent contractors and governing rules) (BROKER ONLY)

Licensees can be either employees or independent contractors. Brokers pay employees a wage (hourly, salary, commission or any combination of these) and pay employer's portion of social security (6.2%), medicare taxes (1.45%) and federal and state unemployment taxes. Independent contractors must have a written agreement and earn no less than 75% of their income from their brokerage from the direct sale of real estate to qualify as independent contractors. Independent Contractors are paid either a flat fee or commission determined in their agreement. IC are responsible to pay their own taxes.

XI. Real Estate Calculations (Sales 7%, Broker 6%)

A. Calculations for Transactions

1. Seller's net proceeds

Sale price - mortgage/liens - seller closing costs = seller net proceeds

2. Buyer funds needed at closing

Sale price - mortgage proceeds + buyer closing cost = funds needed at closing

3. Real property tax and other prorations

Assessed value x millage rate = property tax

Prorations: Fairly dividing cost or income between buyer and seller
(For state test purposes only - 30 days/month, 360 days/year & unless stated otherwise, the Buyer is responsible for the day of closing)

Prospective: Paid in advance

Retrospective: Paid at the end

Calendar basis: Jan 1 through Dec 31 each year

Due date basis: Starts on any date and extends for any stated period of time

What is the total amount due?

What time period does this amount cover? (monthly, quarterly, or annually)

What is the per diem (daily) rate?

Determine the number of days between DUE date and CLOSING date.

Determine who deserves a charge (DEBIT) or a reduction of charge (CREDIT).

4. Real property transfer fees

County (Revenue Stamps)	\$ 0.55 per \$500 or fraction thereof
State (Transfer Tax)	+ <u>\$ 3.75 per \$500 or fraction thereof</u>
TOTAL	\$ 4.30 per \$500 or fraction thereof

Purchase price divided by 500, rounded up to whole number x \$4.30 = Transfer

5. PITI (Principal, Interest, Taxes and Insurance) payments estimate given loan rate and term

P - Principal - total amount owed

I - Interest - usually expressed as an annual number and paid monthly

T - Taxes - annual property taxes due divided into monthly payments

I - Insurance - annual homeowner's property insurance divided into monthly payments

Formula: (i=interest rate, p=principal, pmt=payment, t=time period)

NOTE: Most interest rates are expressed as an annual percentage

Interest = Annualized PMT / Principal - 1

Payment = Principal x Interest + Principal / Time Periods

Principal = Payments / (1 + Interest Rate)

Test site amortization table:

\$1,000 PMT/MO	3%		5%		7%	
1 Year	\$	84.69	\$	84.60	\$	86.53
5 Year	\$	17.97	\$	18.87	\$	19.80
10 Year	\$	9.66	\$	10.60	\$	11.61
15 Year	\$	6.90	\$	7.90	\$	8.99
30 Year	\$	4.21	\$	5.37	\$	6.65

Find the term (number of years) and the rate (percentage) for a loan payment of \$1,000 per month. Multiply by the number of \$1,000's borrowed. This calculates principal (outstanding balance due on loan) and interest (amount charged for the use of the borrowed money).

Add annual property tax estimate (divided by 12 months) and add annual home owners insurance (divided by 12 months) to calculate complete PITI monthly payment.

B. General Concepts

1. Equity

Equity = Property value - Mortgages/liens

2. Rate of return/Capitalization rate

Rate of Return = Gain / Investment

3. Loan-to-Value ratio

Expressed as a percentage, LTV describes the amount of money a lender is willing to lend compared to the properties appraised value.

$LTV = \text{Loan Amount} / \text{Appraised Value}$

$\text{Loan Amount} = \text{Appraised Value} \times LTV$

4. Discount points and loan origination fees

Discount points are pre-paid interest costs made to reduce ongoing interest payments. Each point is valued at 1% of the mortgage amount. 8 Discount points are equal to a reduction of 1% of APR.

$\text{Discount Points} = \text{Mortgage Amount} \times .01 \text{ (1\%)}$

Loan origination fee is an upfront fee charged by a lender to cover the costs of processing, underwriting, and funding a loan application. This fee is typically a percentage of the total loan amount.

MICHIGAN STATE LAWS AND RULES

XII. Duties and Powers of the Department and the State Board of Real Estate (Salesperson-3 Items, Broker-3 Items)

a. General powers

Article 25 of the Michigan Occupational Code passed in 1980 regulates real estate professions in the state, allows for the creation of the board and department to manage the promulgation of rules, development of examinations, fees, penalties and civil fines.

BOARD OF REAL ESTATE BROKERS AND SALESPERSONS - The purpose of the board is to promulgate rules to establish minimal competency [MCL 309.308](#), interpret licensing requirements and aid in investigations. Consists of 9 voting members appointed by the Governor with the advice and consent of the Senate; 6 members are licensees; 3 members represent the general public. Each member has 4 year terms with a limit of 2 consecutive terms. Members must be at least 18 years old and be Michigan residents. The board must meet at least 2 times per year, but usually meets quarterly. [MCL 339.301, 339.302](#)

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS (LARA) - The department promulgates rules. [MCL 339.205](#), Provides examination and test scoring. [MCL 339.206](#). Issues licenses to qualifying applicants. Has physical dominion over files of Board and ensures public access to the files. Furnishes office services, secretarial and administrative assistance, orientation and budgetary functions for the Board. May contract with others to implement responsibilities of Department or Board and does so with PSI testing (Professional Services Industries).

b. Investigations, conferences, hearings, and exemptions

Broker can be audited by the Department at the brokerage office anytime during normal business hours [MCL 339.2516a](#) Investigations can originate by LARA as an audit or by the public as a complaint.

Complainant can be the department or any person. Complaint must be filed within 18 months of the violation. Department will send a written acknowledgment of complaint within 15 days to complainant and respondent (broker and agent). Department reviews facts and has 30 days to report its findings. If no violation, department can close case. If there is a violation, can issue a formal complaint. Department can suspend license and order a cease and desist order which

entitles respondent to hearing within 30 days. Respondent may request an informal conference (which is heard by the department), formal hearing (heard by an ALJ - Administrative Law Judge), or can be sent to circuit court. The board sets penalties. [MCL 339.502, 339.504, 339.506, 339.507, 339.511, 339.512](#)

Department may petition the court to subpoena persons and documents. [MCL 339.512](#)

Prohibited Conduct -

A licensee that commits 1 or more of the following is subject to the penalties:

1 Acts for more than 1 party in a transaction without the knowledge and written consent of all parties.

2 Fails to provide a written agency disclosure to a prospective buyer or seller

3 Attempts to represent a different real estate broker other than employer

4 Fails to account for or to remit money that comes into the licensee's possession that belongs to others.

5 Changes a business location without notification to the department.

6 Broker fails to return a real estate salesperson's license within 5 days

7 Pays a fee to a person that is not licensed for any potential referral (except commercially available list).

8 Creates a market analysis (not appraisal) beyond the scope of determining fair market value for persons interested in selling or purchasing real estate

9 Fails to provide the minimum services specified under a service provision agreement unless expressly waived in writing by the client under section.

10 Mishandles trust or property management accounts. [MCL 339.2512](#)

Violations -

Practicing fraud or deceit in obtaining a license,

Committing fraud, deceit, or dishonesty in practicing occupation,

Violating rule of conduct of the occupation.

Demonstrating lack of good moral character,

Committing acts of gross negligence in practicing occupation,

Practicing false advertising,

Committing act which demonstrates incompetence,

Violating any other provision of this Act or rule promulgated under this Act,

Failing to comply with subpoena issued under this Act,

Failing to comply to a citation

Aids or abets another person in the unlicensed practice of an occupation

Acting for more than one party in same transaction without prior written consent of all parties concerned,

Representing or attempting to represent a real estate broker other than employing broker without express knowledge and consent of employing broker

Failing to account for or to remit all money and property coming into licensee's possession belonging to others,
Changing business name or location without notifying Department,
Real estate brokers who fail to return to the Department a real estate salesperson's license within 5 days after termination,
Paying commission or valuable consideration to person not licensed under this article (for an action which requires a license),
Failure to maintain escrow funds according to the rules. [MCL 339.604](#)

c. Penalties - [MCL 339.508](#)

Denial (of a license)

Suspension

Placement of limitation on license

Revocation

A civil fine to be paid to department, not to exceed \$10,000

Censure

Probation

Requirement that restitution be made

May require a bond be posted or cash deposit. (maximum of \$5,000)

[MCL 339.519](#) May petition to review limitations

XIII. Licensing Requirements (Salesperson-5 Items, Broker-4 Items)

a. Activities requiring a license and exemptions

Unless under contract to a licensed broker to handle transactions, engaging in more than 5 real estate sales in any 12 month period, representing to the public they are principally engaged in the sale of real estate, or devoting over 50% of working time (or more than 15 hours per week) to the sale of real estate.

Activities - Any person or other entity that with intent to receive compensation or valuable consideration performs any of the following acts for another person regarding real estate:

- a. Sells or offers to sell.
- b. Buys or offers to buy.
- c. Provides or offers to provide a market analysis.
- d. Lists, offers to list, or attempts to list.
- e. Negotiates purchase, sale, exchange, or mortgage.
- f. Negotiates for the construction of a building.
- g. Leases, or offers to lease, rents, or offers for rent, real estate or its improvements. Engages in property management as a whole or partial vocation.
- h. Sells, offers to sell, buys or offers to buy, leases or offers to lease, or negotiates purchase, sale or exchange of business, business opportunity, or goodwill of existing business when real property is associated with the transaction. Note: "Negotiating" a mortgage (here) refers to engaging in activities not regulated by the Mortgage Brokers, Lenders, and Servicers Licensing Act.

Exemptions - The following do not need a real estate license, unless they are doing these things as a vocation:

1. A person acting under court order. For example:
 - a. Executor (personal representative),
 - b. Administrator (personal representative),
 - c. Receiver (neutral person/trustee in a bankruptcy),
2. An attorney-in-fact operating under a power of attorney.
3. An attorney-at-law in performance of his/her duties as an attorney.
4. A licensed builder who builds and sells new, 1 to 4 family units which have never been occupied.
5. An existing tenant in rental property, accepting consideration of one month's rent (or less) for the referral of prospective tenants.
6. An auctioneer under certain conditions.
7. A person licensed or registered as a mortgage broker, mortgage lender, or mortgage servicer

8. A trustee selling under a deed of trust.

Note: These exemptions are for isolated transactions only - not as a vocation.

MCL 339.2503

b. Types of licenses

There are two levels of licensing: Broker and Salesperson. All licenses expire 3 years on the anniversary of receiving license. A salesperson may only hold one license. A broker may only hold one license. Associate broker may hold only one non-principal license and an unlimited number of principal licenses. **MCL 339.2509** Additionally, Branch office licenses are required for any office located other than the main office.

c. Eligibility for licensing

All licensees must be at least 18 years old **MCL 339.2502a**

Salesperson - Must complete an approved 40 hour real estate course that includes at least 4 hours of instruction on civil rights and fair housing, pass state exam (within 36 months of taking the course and valid for 1 year from the date of the exam), pay fees and hang license with and be supervised by a licensed broker. Broker supervision includes direct communication, review of salesperson's practice, review of salesperson's reports, guidance and providing a written operating policy and procedures manual. A Salesperson must be a person (not Corp, LLC) **MCL 339.2504, 339.2512**

Broker - Must complete an approved 90 hour real estate course that includes at least 9 hours of instruction on civil rights and fair housing, pass state exam, 3 years prerequisite experience and pay fees.

Prerequisite experience includes: 1 year of experience is equal to:

Salesperson - 5 or more transactions in any 12 month period.

Builder, investor, developer, attorney, appraiser, loan officer, title company officer - built or sold 5 or more buildings (residential, commercial or industrial) in any 12 month period.

Any other experience approved by the department.

Law degree, bachelors or masters degree in business or finance.

Any other educational credential approved by the department.

A broker may be a person or business entity (i.e. Corp, LLC, partnership, association, common law trust, etc). All business brokerages must have at least one managing principal associate broker **MCL 339.2508**

The department issues only one broker's license per company. All broker-level licensees affiliated with the broker become associate brokers of the brokerage. Those responsible for the operation of the company become principal associate brokers. A broker may employ an unlimited number of principal associate brokers in each company. Those not responsible for the company become non-principal associate brokers. A broker may employ an unlimited number of non-principal associate brokers in each company. A broker may employ an unlimited number of Salespersons in each company.

The department shall not issue a broker's license to an individual convicted of embezzlement or misappropriation of funds. [MCL 339.2505](#)

Nonresident licensees must file a notarized Consent To Service form. [MCL 339.2514](#)

Licensees are required to carry their pocket card while doing business.

If Department denies an application for license, applicant may petition Department and/or Board, in writing, for review of decision. Department may require a bond not to exceed 5 years or \$5,000.

NOTE: Licenses expire in a three year cycle on it's anniversary date. Licenses are renewed online at: michigan.gov/MiPlus. Continuing education credit is registered at CEMarketplace.net

d. License renewal, including continuing education

Continuing Education - All continuing education falls into 3 categories - Legal Update, Fair Housing or Elective Courses. Each year, licensee must complete at least 2 hours of Legal Update and 1 Hour of Fair Housing. By the end of the 3 year licensing cycle, licensee must complete at least 18 total continuing education credit hours [MCL 339.22629](#)

Renewal (On Time) - To renew license within 30 days after expiration, you must apply for renewal, complete required continuing education hours and pay fees [MCL 339.204](#)

Late Renewal - Must complete everything for an on-time renewal plus:

0-60 days late - must pay late renewal fee [MCL 339.411](#)

Within 3 years of expiration - 6 hours of continuing education for each (partial) lost year

Beyond 3 years of expiration - Pass state exam again, re-take entire course or provide proof of taking Continuing Education for each lost year.

Renewal (for revoked license) - Licensee must wait 3 years from date of revocation before reapplying and must complete all license requirements without credit given for any education, exams or experience gathered prior to the revocation. [MCL 339.2502a](#)

e. Transfer or change in license

Name and address changes must be submitted to the department within 30 days. [MCL 339.204\(5\)](#) When agent terminates employment, broker must return license to department within 5 days [MCL 339.2507](#) Transfers to new brokerage must be approved by receiving broker only (not the sending broker).

XIV. Statutory Requirements Governing the Activities of Licenses (Salesperson-10 Items, Broker-15 Items)

a. Advertising

Broker representing seller shall not advertise the property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker. [MCL 339.2512d](#)

All advertising (Including print and social media) must include the broker's name, broker's telephone number or street address, and state that the person is a real estate broker. The business name of the broker must be equal or greater type size than the name of the associate broker, salesperson, or cooperating team/group. Broker shall not conduct business or advertise under a name other than that in which the broker's license is issued or under an assumed name (DBA - Doing Business As) that is authorized by law.

Selling personally owned property

BROKERS - May advertise real property that he or she personally owns for sale or for lease in his or her own name, and is not required to include the name of the real estate broker. However, the advertising shall indicate affirmatively that the individual who is selling or leasing the real property is a licensed real estate broker or associate real estate broker.

SALESPERSONS - Shall not advertise to sell real property under his or her own name unless the property is their principal residence. Shall not advertise real property for rent or lease under his or her own name unless the salesperson is the owner of the property.

b. Commissions and Specific Services for Which Fees may be charged

Licensees may accept commissions from employing broker only. Licensee may accept commission from former broker provided work was performed during employment. [MCL 339.2510](#)

Existing tenants may accept up to one month's rent for referring prospective tenants without the need to be licensed [MCL 339.2512](#)

Non-licensed persons cannot sue in court to receive real estate commissions [MCL 339.2512](#)

c. Disclosure/conflict of interest

All licensees must disclose in writing (and be available for LARA audit) licensee status and relationship to property (I,e, owner, member of LLC ownership, agent related to seller, etc.) [MCL 339.2516](#)

d. Handling of contracts, documents, listing and recommendations

A licensee must disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the licensee's duties that each agency relationship creates before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller. The disclosure of the type of agency relationship shall be in writing, shall be provided to the client, and shall substantially conform to the "Disclosure Regarding Real Estate Agency Relationship" form.

Agent must provide at signing a true executed copy of the agreement to the party or parties signing the agreement. Every agreement must be fully completed by the licensee before the party or parties sign it. A service provision agreement must include a definite expiration date and must not contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement on or after the expiration date. [R 339. 22131](#)

A licensee shall promptly deliver to the buyer a signed copy of the offer to purchase after it is signed by the buyer. A licensee shall make certain that all terms and conditions of the real estate transaction are included in the offer to purchase. (3) A licensee shall deliver all signed, written offers to purchase to the seller within 2 business days after receipt. Delivery may be made through any method acceptable to the parties including in person, by mail, or through an electronic communication. Digital signatures for any real estate transaction requires the prior agreement of the parties. On obtaining a proper acceptance of the offer to purchase, signed by the seller, the licensee shall promptly deliver true executed copies of the acceptance to the purchaser and seller. A licensee is not subject to disciplinary action for failing to submit to the seller any additional offers to purchase that are received after the seller has accepted an offer and the sales agreement is fully executed, unless a service provision agreement requires that subsequent offers be presented. [R 339.22132](#)

A licensee shall not become a party to a net service provision agreement for an owner, seller, or buyer as a means of securing a real estate commission. [R 339.22135](#)

e. Handling of monies and trust accounts

EARNEST MONEY TRUST ACCOUNTS Broker may have none, one or more non-interest bearing demand trust accounts. Money can be held during the consummation or termination of the transaction deposit not more than \$2,000.00 of its own money in each trust account to cover bank service charges and bank minimum balance requirements, etc. Broker cannot use any business or personal account - only trust account. Broker shall keep records of money deposited including the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction and shall show clearly for whose account the money is deposited and to whom the money belongs. The records are subject to inspection by the department. Trust account shall designate the real estate broker as trustee.

Salespersons must deliver funds to broker upon receipt (immediately). Broker must deposit funds within 2 banking days after the broker has received notice that an offer is accepted by all parties. When funds are held by third parties (title company, etc.), licensee must deliver funds within 2 banking days after offer is accepted. [MCL 339.2512](#)

f. Place of business/branch office requirements (Broker Only)

Broker shall maintain a place of business (not a PO Box) within the state. Additional locations must obtain a branch office license. Branch offices located more than 25 miles from the nearest municipal boundary of the main office must have direct supervision of an associate broker. Direct supervision means an associate broker is physically present at the branch office on a regular basis to supervise and manage the business during ordinary business hours. [MCL 339.2505](#)

g. Record keeping

Definitions -

Commingling - Mixing money together that is intended for separate purposes.

Conversion - Using money for other purposes than it was intended for.

Earnest Money Deposits (EMD) - EMD monies must be held separately (in trust) from other funds. Must be deposited into a non-interest bearing account. Broker may keep up to \$2,000 of operating funds without being considered commingling. Only broker may sign checks to disburse EMD monies however, other persons can become **co-signatory** on the account. Information must be kept for 3 years and made available to LARA upon request. Must include a

Journal (record of chronological sequence of funds received and disbursed) and a **Ledger** (record of deposits and disbursements affecting each transaction).

Bookkeeping for deposit information includes:

- Date of receipt & date of deposit
- Names of depositor & seller
- Address of property or brief legal description
- Amount and purpose of funds

Bookkeeping disbursement information includes:

- Date of disbursement
- Name of payee
- Check / record number
- Amount & purpose of disbursement

Property Management Funds - Handling of money is determined by the property management employment contract. Monies must be held separately (in trust) from other funds. May be deposited into an interest bearing account. Information must be kept for 3 years and made available to LARA upon request.

Bookkeeping for deposit and disbursement information must include:

- Dates of money received and disbursed
- Amount of funds
- Names of Payer and Payee
- Other pertinent information related to the transaction

h. Inducements

A plan or scheme involving a lottery, contest, game, or drawing to promote the sale of real estate is forbidden. Offering the same gift to all clients or customers does not violate the rule. [MCL 339.2511](#)

i. Alternative Dispute Resolution vs. Arbitration (Broker only)

Alternative Dispute Resolution (ADR) methods include arbitration, mediation, negotiated rule making, neutral fact-finding and mini-trials. The purpose of ADR is to avoid a court trial which can be slower and more costly than ADR. Depending on the terms of the method, ADR can be legally binding and enforceable through the court system.

Arbitration - Both parties agree to present their cases before an arbiter (independent third party) who will arrive at a fair conclusion. There is no appeal

process and all parties agree to be bound by the arbiter's decision. Arbitration laws are governed by the [Uniform Arbitration Act 371 of 2012](#)

j. No disclosure duty attaches to stigmatized property

No action can be brought against licensee for:

1 failure to disclose former occupant's disability status.

2 failure to disclose site's history of homicide, suicide or other illegal occurrence lacking material effect.

3 failure to disclose availability of sex offenders registration. [MCL 339.2518](#)

k. Closing responsibilities

Listing brokers are ultimately responsible for the closing of each transaction and must offer complete supervision to the process. Brokers or their assignees (i.e. title companies) must furnish a complete and detailed closing statement to all parties in the transaction. All closings must be completed under the terms of the purchase agreement (and any amendment agreed to by all parties).

XV. Contractual Relationships (Salesperson – 5 Items, Broker – 5 Items)

a. Agency relationships available in MI

There are 4 types of agency relationships allowed in Michigan. They are Seller's Agents, Buyer's Agents, Dual Agents and Transaction Coordinator

1. **Transaction coordinator** - NOT acting on behalf of either seller or buyer. The primary goal of the licensee is to professionally complete a transaction.

2. **Designated agency** - Licensee appointed by broker to act as a client's sole agent relieving other agents in the same brokerage any liability for fiduciary (or lack of) actions.

3. **Dual agency** - Acting under contract to both seller and buyer simultaneously. Agent must have written consent and disclosure by both parties before entering into dual agency. Licensee must limit disclosure of information that would benefit or damage either party. **MCL 339.2517**

4. **Agency disclosures** - Michigan requires using the document, "Disclosure Regarding Real Estate Agency Relationships" to explain the various options of agency as well as disclosing particular relationships in each transaction. Licensee must disclose agency relationship BEFORE confidential information is shared by customer **MCL 339.2517**

b. Broker/Salesperson relationships

When joining a brokerage, licensee enters into an agency relationship with the licensed broker. The broker is the principal and the licensee is the agent. Salespersons can be either an employee or independent contractor of the broker. The contract that establishes the agency relationship is the broker's **Independent Contractor** agreement.

c. Service Provision Agreements (Listings, Buyer Broker)

Michigan uses the term **Service Provision Agreement** when describing contracts that establish an agency relationship. These include Listing Agreement, Buyers Agency Agreement and Limited Services Agreement. All listing agreements must include non-discriminatory language regarding religion, race, color, national origin, age, sex, disability, familial status or marital status **MCL 339.2515**.

XVI. Additional State Topics (Salesperson-12 Items, Broker-13 Items)

a. Land Division Act - Public Act 591 (Disclosure of Private Road)

Statewide rules for creating smaller parcels. Splits resulting in lots larger than 40+ acres are exempt from the act. 4 parcels allowed for first 10 acres. Add 1 parcel for each additional 10 acres. Add 2 bonus divisions if 60% of the parcel remains intact to preserve open space. Max number of splits for 40 acres is 9. All divisions must wait 10 years to make further re-divisions. Lot shape must have a depth of not more than 4 times it's width. Use of private road must be disclosed when selling. Private road agreement should be written detailing the cost and responsibilities of its maintenance.

b. Michigan fair housing

There are two prominent Michigan civil rights laws. Violations include refusal to negotiate, engage in, receive or transmit offers, permit inspection of a property, advertise property with any limitations for a protected group or accept any listing with the understanding that discrimination may occur. Claimant may file a private civil rights case in circuit court. Time limit to file a claim is 3 years. Time limit to file a claim against the state is 1 year. Time limit to file a claim with the Michigan Civil Rights Commission is 6 months.

1. Elliott-Larsen Civil Rights Act (PA 453 of 1976)

Prohibits housing discrimination on the basis of race, color, religion, national origin, age, sex, marital status, familial (family with children under 18 or pregnancy) and work discrimination on the basis of height, weight and arrests not resulting in conviction. Added categories in 2023 are gender identity and sexual orientation.

2. Persons with Disabilities Civil Rights Act (PA 220 of 1976)

Defines the definition of disability, public accessibility, and accommodation of rental residential property.

c. Landlord Tenant Relationship Act, Truth in Renting Act

Michigan's Landlord Tenant Relationship Act (PA 348 of 1972) regulates residential (1-4 unit) leases.

Handling & use of security deposits - max 1.5 times rent which belongs to the

tenant until the landlord establishes a right to it. Can be taken for rent in arrears, premature termination of lease, actual damage to property (beyond normal wear and tear) and tenant's unpaid utility bills.

Inventory checklist - A written report on the quality/functionality of rented property completed at commencement (by tenant) and termination (by landlord). Tenant can request copy of previous tenant's checklist.

Termination processes - Landlord must mail a notice of damages being assessed (along with an itemized estimate of cost) within 30 days of termination. Funds not in dispute must be repaid to tenant immediately. Tenant has 7 days to respond.

Legal remedies and penalties - Noncompliance by either party constitutes agreement. Landlord must initiate a civil action to claim security deposit within 45 days of occupancy termination and either receive a money judgement or show proof of failure by tenant to provide new address to serve notice.

Truth In Renting Act (PA 454 of 1979) regulates rental agreements, use of commercially available forms, use of legal language (non-discriminatory, or illegal provisions).

d. Usury laws (Broker only)

Usury is charging loan interest beyond the legal limits:

Residential mortgage by regulated lender - 25%

Land contract by seller, builder or agent representing buyer or seller - 11%

Other unlicensed person with written contract - 7%

Other unlicensed person without written contract - 5%

MCL 438.31

e. State Transfer Tax

Tax paid by seller upon the transfer/exchange of real property. Rate of County tax (Revenue Stamps) is \$.55 for each \$500.00 or fraction thereof. Rate of State tax is \$3.75 for each \$500.00 or fraction thereof.

Price divided by 500 = number of taxable units rounded up to next whole number.
Number of taxable units x \$4.30 = total transfer tax due.

Exceptions to paying the state transfer tax - sale is less than \$100.00, foreclosure, court ordered transfers, dissolution of tenants by the entirety or adding another owner to a joint tenancy. MCL 207.505, 207.526

f. Michigan Condominium Act

Preliminary reservation for an unbuilt condominium cannot bind buyer (or their deposit) to an agreement. Buyer must receive copies of purchase agreement, master deed, escrow agreement, Condominium Buyers Handbook and all disclosures. Time-Shares are regulated as condominiums. Converting apartments to condominiums is allowable provided handicap and senior (65+ years old) lessees are offered an extended 10 year lease.

g. Michigan State Housing Development Authority (MSHDA)

MSHDA's purpose is to help low to moderate-income citizens by providing low cost mortgages for the purchase (no re-financing) of principal residences (not income properties).

h. Uniform State Anti-trust Act

Antitrust - laws to promote competition and prevent monopolies. Prohibits price fixing, boycotts or concerted refusals to deal, territorial or customer allocation and tying agreements. Felony conviction with fines up to \$100,000 and 3 years in prison. Do not enter into conversations that might prevent fair competition.

i. Michigan Right to Farm Act (Seller's Disclosure Required)

Seller must disclose if any farm or farming operation is located in the vicinity. Disclosure is made on the Seller's Disclosure form. Farms may exist near residential housing provided they use established practices, are operated commercially (not a hobby farm), and are within proper zoning.

j. Changes in the Land Contract Laws (Dodd Frank Law-federal)

Home sellers (selling 1 property in any 12 month period) using land contracts must determine buyer has the reasonable ability to repay loan by checking buyers financial information, use the services of a loan originator to qualify buyer for a land contract sale, loan interest is fixed for at least 5 years and loan repayment cannot result in negative amortization.

END