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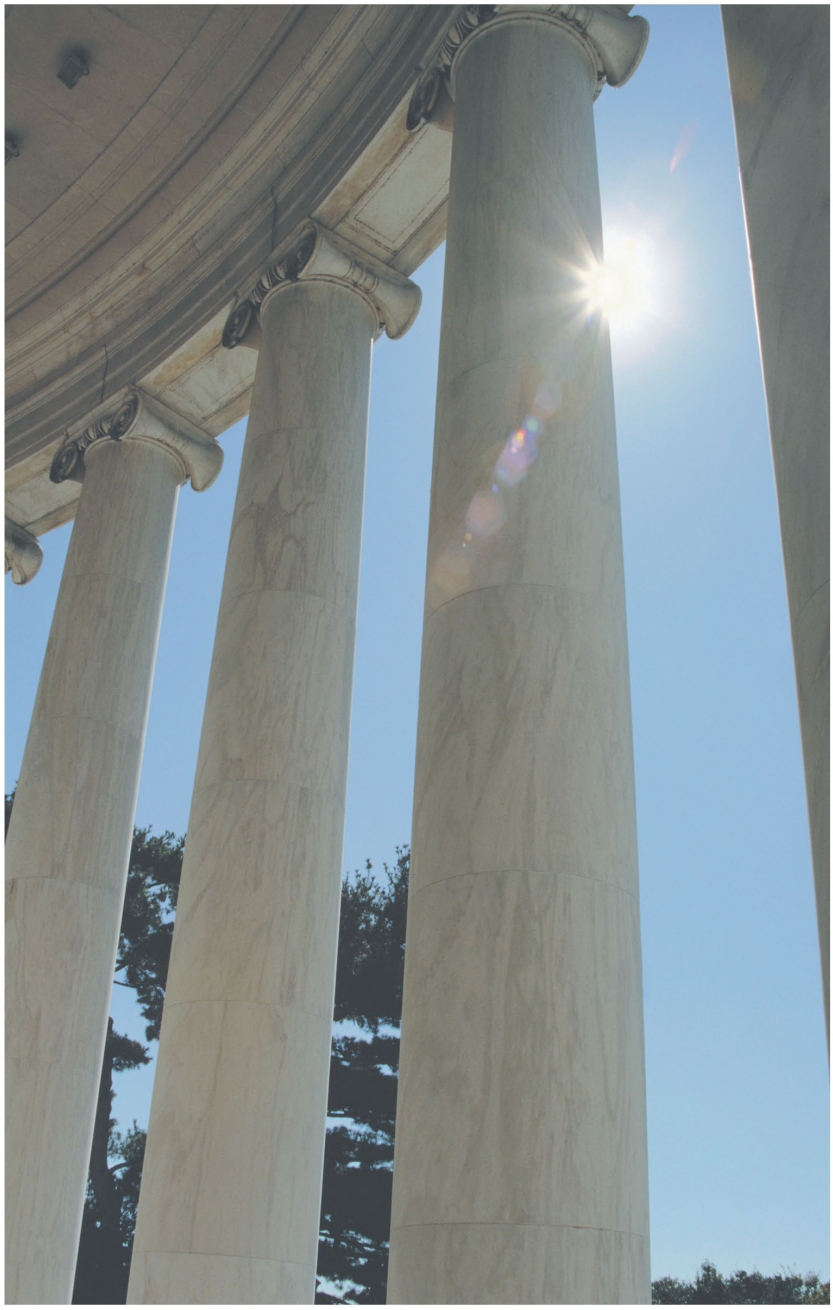


Real Estate Continuing Education Course

2021 Real Estate CE
(800) 308-9004 or (517) 381-9600
194 E Ash, PO Box 156 Mason MI 48864

www.institute-for-ce.com or www.joedypatrick.com

ABOUT THIS COURSE

The Occupational Code states: In completing the appropriate number of hours of eligible continuing education courses, a licensee must complete at least 2 hours of eligible continuing education courses in each year of a license cycle that involve law, rules, and court cases regarding real estate. The licensee may select any continuing education courses in his or her area of expertise to complete the remaining hours of eligible continuing education courses required under subsection (1) and may complete those hours at any time during the license cycle. Completion of 2021 Michigan Comprehensive Legal Update satisfies six(6) clock hours of the 18 clock hours necessary to renew your license for the three (3)-year license period beginning November 1, 2018 and ending on October 31, 2021, if that is the cycle of your license.

This course also satisfies the mandatory, annual, minimum two (2) clock hours (defined as fifty minutes) of "laws, rules and court cases regarding real estate." If you have specific questions regarding license renewal, please contact: State of Michigan Department of Licensing and Regulatory Affairs Bureau of professional licensing Real Estate Brokers and Salespersons PO Box 30670 Lansing, Michigan 48909 (517) 373-8068

Upon completion of this course, the course sponsor will report your attendance to CEMarketplace. CEMarketplace (a division of Michigan REALTORS) will send you an email confirming you have been reported. If you do not get the email, first check your spam folder then go to CEMarketplace.net, create an account and look up your information.

CHAPTER 1 – CHANGES IN LAWS AND RULES IN MICHIGAN

CHANGES TO OCCUPATIONAL CODE

Prior to 1985, our one-year license expired December 31 each year and no continuing education was required. That was the first year that one even was required to take a real estate course to get a license. In 1995, the state decided to stagger the expiration dates of the various license. October 31 was given to Morticians and Real Estate Brokers and Salespersons.

In 2001, our lawmakers changed the law to make the real estate license be a three-year license so it expired in 2003, 2006, 2009, etc. The rules also stated that of the 6 hours of education that was required for each year one had an active license, two hours of legal update was required each year. The state's computer system, however, could not verify if one had complied with the two hours legal update each year requirement.

As of January 1, 2015, with a grant from Michigan Department of Licensing, CE Marketplace, a division of Michigan Realtors® took over the tracking of the continuing education requirement. There was then no requirement for schools to pass out certificates. Some schools continued to pass them out. January 1, 2018, we were informed to not pass them out. Prior to that date, if somehow somebody did not get reported they could self-report by uploading their certificate. From that date forward all courses must be preapproved and reported by the school.

Upon completion of a course the school is allowed up to ten days to report and CE Marketplace is allowed up to five days. Within two weeks of course completion a person should receive an email from ceMarketplace.net.

If the email is not received, DO NOT call your school, or the state or CEMarketplace. Go to CEMarketplace.net and make an account and you should be able to find your record of attendance there. If a person really likes paper evidence the page may be screen printed.

Now to complicate things just a bit. People still get a three year license, however, the anniversary date of the application will be the expiration date of the license.

All of the salesperson or associate broker candidates who obtained a license in December of 2020, must take 18 hours of education in the three years ending 2023. The two hours of legal update will still be required to be taken each year before the anniversary date.

The state used to sub-contract their website. Today you apply for a license or to renew a license by going to www.Michigan.gov/miPlus

BTW, when applying for a salesperson or associate broker or broker license, do NOT speed read. There is a place on the site which requires you to upload your proof of education and successfully passing the examination.

From this day forward, you will have to remember your expiration date and make certain you have the required classes each year. Our company plans on offering a class which is named after each year. As you cannot take the same class twice, if you have an expiration date of June 1 and you take the class of the year in March. If you take the same class in October, it will not count.

CHAPTER 1 – CHANGES IN LAWS AND RULES IN MICHIGAN

One more thing, there is a new set of numbers. Some are the same, one has changed. Salespersons still begin with 6501. Principal associate broker license begin with 6502. Branch Offices begin with 6503. Individual broker begin with 6504. LLCs and corporations begin with 6505/ NON-principal associate brokers begin with 6506.

Public Act 63 of 2020 amends Chapter 81 of the Revised Statutes of 1846 to prohibit a person from bringing an action to enforce an unsigned agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate against the owner or purchaser of the real estate. Currently under the law, certain agreements, contracts, and promises are void unless the agreement, contract, or promise, or a note or memorandum of it, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise. This legal principle is commonly known as the "statute of frauds" and includes an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate. The bill would amend these provisions to further state that a person could not bring an action to enforce an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate against the owner or purchaser of the real estate unless the agreement, promise, or contract is in writing signed by the party to be charged.

Supporters of the bill argued in House committee that the statute of frauds protects buyers and sellers from anyone coming forward claiming compensation under a contract to which he or she was not a party and makes it easier to know what is owed to whom without the fear of noncontractual parties claiming that different compensation is owed.

Public Act 159 of 2020 The bills amend different acts to allow for the remote signing, witnessing, notarization, and recording of certain documents from April 30, 2020, through December 31, 2020, and make related changes. To a large extent, the bills would put into law the provisions of Executive Order 2020-187.

House Bill 6294 would amend the Estates and Protected Individuals Code (EPIC) to allow certain documents to be signed or witnessed using two-way real-time audiovisual technology and to allow certain visits required under EPIC to be conducted using that technology. Signing or witnessing the execution of documents

Under the bill, for documents executed on or after April 30, 2020, and before January 1, 2021, the act of signing or witnessing the execution of a document or instrument under the act, including a will, a disclaimer under section 2903, a funeral representative designation, a parental appointment of a guardian of a minor, an appointment of a guardian of a legally incapacitated individual, a durable power of attorney, or a patient advocate designation would be satisfied by use of a two-way real-time audiovisual technology if all of the following requirements were met:

- The two-way real-time audiovisual technology must allow direct, contemporaneous interaction by sight and sound between the signatory and the witnesses.
- The interaction between the person signing the document and the witnesses must be recorded and preserved by the signer or his or her designee for at least three years.

• The signer must affirmatively represent either of the following: o That he or she is physically located in Michigan.
o That he or she is physically located outside of Michigan and the document or instrument is intended to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of Michigan or involves property located in Michigan or a transaction substantially connected to Michigan.

• The signer must affirmatively state during his or her interaction with the witnesses on the two-way real-time audiovisual technology what document they are executing.

LAST MINUTE CHANGES, PENDING (announced December 27, 2020)

Senate Bill 1234:

This bill amends the General Property Tax Act to adjust the procedures for obtaining a "poverty exemption" and, in certain cases, allows for extensions of the exemption without the need to reapply. This bill was sponsored by Senator Jime Runstad (R-White Lake)

Senate Bills 676 and 1137:

These bills amend the General Property Tax Act to create a process for a former owner to claim surplus proceeds from the sale or transfer of property. This is in accordance with the Michigan Supreme Court's recent ruling in Rafaeli LLC v Oakland County. The two bills were sponsored by Senator Peter Lucido (R – Shelby Township) and Runestad (R-White Lake).

In 2019 Pacific Legal Foundation began a class action suit that was headed toward the US Supreme Court which included Fafaeli LLC v Oakland County.

Rafaeli, LLC and Andre Meisner v Oakland County Docket No. 156849, November 7, 2019, decided July 20, 2020

FACTS: Rafaeli owed $8.41 in unpaid property taxes which grew to $285.81 after interest, penalties and fees. The county proposed and sold the property for $24,500. Ohanessian owed approximately $6,000. His property achieved $82,000 at auction. The county planned to keep the proceeds.

QUESTION BEFORE THE COURT: Was this taking a violation of the Takings Clause of the United State and Michigan Constitutions?

RESULT: Michigan's common law recognizes a former property owner's property right to collect the surplus proceeds that are realized from the tax-foreclosure sale of property, and this right is vested such that it is to remain free from unlawful governmental interference. Accordingly, when the government takes property to satisfy an unpaid tax debt, Michigan's Takings Clause requires the foreclosing governmental unit to return any proceeds from the tax-foreclosure sale in

excess of the delinquent taxes, interest, penalties, and fees reasonably related to the foreclosure and sale of the property as just compensation. To the extent the GPTA permits the government to retain these surplus proceeds and transfer them into the county general fund, the GPTA is unconstitutional as applied to former property owners whose properties were sold at a tax-foreclosure sale for more than the amount owed in unpaid taxes, interest, penalties, and fees related to the forfeiture, foreclosure, and sale of their properties. The trial court's reliance on the term "forfeiture" in the GPTA was incorrect, and the Court of Appeals erred by relying on Bennis to conclude that no taking occurred in this case.

House Bill 5481:

This bill amends Article 26A of the Occupational Code to align with recently enacted federal regulations concerning enacted federal regulations concerning Appraisal Management Companies. It was sponsored by Rep. Diana Farrington (R-Utica).

House Bill 5824:

This bill amends the State Equalization Act to allow a one-time extension for equalization of assessment rolls. It effectively codifies Gov. Whitmer's executive order 2020-87. The bill is tied barred with Senate Bill 5825, which has not yet been presented. It was sponsored by Rep. Jim Ellison (D-Royal Oak).

CHAPTER TWO – WATER, WATER, EVERYWHERE

I. INTRODUCTION

Michigan truly lives up to its reputation as a water wonderland. Bordered by four of the five Great Lakes. Michigan has over 10,000 inland lakes as well as innumerable rivers, streams, ponds, marshes, wetlands, and other natural and man-made bodies of water. Michigan has more registered boats than any other state. Large fishing and hunting resources are preserved and nurtured by (he Michigan Department of Environment, Great Lakes and Energy (EGLE) . Millions of tourists are lured each year to various resorts, campgrounds, cottages, hunting cabins, and other locales enhanced by and created as a result of water resources With 3,177 miles of Great Lakes shoreline it is easy to see why Michigan boasts a thriving recreational industry, and leads the nation with approximately one million registered pleasure boats. Water is a phenomenal resource, the demand for which has greatly grown.

Public and private demand for access to water is constantly increasing. EGLE seeks to enhance public access to the water for both Michigan citizens and tourists. In addition, developers constantly seek water and water frontage for use in industry and to enhance resort, retail, and commercial development.

At one time, waterways were important for transportation and power. As other power sources and more convenient transportation methods were developed, waterways and waterfronts fell into disuse and often were abandoned as undesirable areas or converted to other nonwater-related uses.

More recently, they have become desirable and valuable for recreation and leisure use and for their aesthetic enhancement of the quality of life in urban areas. Some cities are now seeking to rehabilitate waterfronts and to open springs and creeks that run through town but have been enclosed under concrete and culverts for years. Recreational fishing, hunting and boating activities alone contribute more than $3 billion annually to our economy.

With the increased demand for water frontage and access to water, its value has increased dramatically, which in turn has led to many efforts to buy up water frontage and develop it for specific projects. That goal is often at odds with the desire of the local governments and the EGLE to preserve natural areas and to protect the public's access to the state's water resources. These and other issues have made water law and riparian rights more and more prevalent in real estate transactions and litigation as opposing groups seek to use or redefine riparian rights, ownership of waterfront property, access to water, flowage rights along rivers and streams, and similar issues.

II. RIPARIAN RIGHTS

A. Definition

Land that includes or is bounded by a natural watercourse is defined as *riparian.* Riparian derives from the Latin word for the bank of a river or stream. It denotes an interest in a body of water. Shoreline property adjacent to lakes or ponds is sometimes referred to as *littoral* (meaning near the shore) property. However, the common law of riparian rights in Michigan does not differentiate between rivers and inland lakes. In this chapter, the word riparian is used interchangeably to refer to both lakefront property and property bordering a river or stream.

Once property is riparian, it retains that status. Thus, to determine if property is riparian one must look to the earliest official determination of that status by survey. Riparian rights are fixed from the date of the original government survey or as soon after as a reliable survey delineates the body of water. Properties that do not border water but have access to it by way of a grant of easement are not riparian properties and have only the rights conveyed by the easement, subject to the reasonable-use limitations of riparian law.

B. OWNERSHIP

Riparian rights are derived from and depend on ownership of land that abuts a natural body of water. Thus, riparian rights are part of the property possessed by riparian landowners and become property rights of those land owners

Riparian rights pass with the ownership of the land bordering water. They are not alienable, severable. divisible, or assignable apart from the land that includes or is bounded by a natural watercourse. Riparian rights attach to land only if it actually touches the water as a result of natural, not human-made, conditions.

Riparian owners own the submerged land to the middle of the stream or inland lake whether it is navigable or not. Therefore, whoever owns the shoreline owns to the center of the body of water. This is true even if there is a sandbar or unsurveyed island in the water between the shoreline and what would otherwise be the center of the body of water.

A description that states that the buyer has received title "to the shore" or "along the shore" conveys a riparian title and the owner of the shoreline owns the submerged land to the middle of

the lake or stream. A conveyance of the upland may state that the grantor reserves or excludes ownership of the submerged land by an explicit reservation of that interest. That may be possible as a division of real property. However, as ownership of the submerged land is considered an attribute of riparian ownership, it is not clear that such a severance will be upheld. Further, even if plat or survey lines follow along the shoreline, the shoreline owners still are riparian owners.

While nonriparian owners may not acquire riparian rights they may acquire riparian-like rights through easements or licenses. For example, a developer with 20 lots. 5 of them with frontage. may seek to create joint use of the waterfront for all the lots. The developer may reserve a strip across the entire waterfront and give access to it for the joint use of all lot owners. There have been a number of cases in which these instances of a common beach, waterfront park or promenade were created by developers. However, where common sharing and ownership have been challenged by waterfront owners, the courts have been reticent to actually vest riparian rights in the cumulative ownership of all the lots. Instead, the tendency has been to leave the riparian rights in the lots closest to the waterfront with some form of easement vested in the back lots.

2000 Baum Family Trust v Babel, 488 Mich. 136 (2010)

FACTS IN THE CASE: In 1909, Beach Road was created and dedicated to the county. The county had maintained it all these years. In the 1990s Baum Family Trust acquired a home across the street from Lake Charlevoix. For all those years, the back lot owners (Babel, et al) had been putting docks into Lake Charlevoix and accessing them from Beach Road. Baum Family Trust objected and began a class action with the other front lot owners against the back lot owners.

QUESTION BEFORE THE COURT: Does the front lot owners or the road own the riparian rights?

RESULT: The trial court ruled and the appellate court affirmed the road was the riparian right holder as they had been deeded fee title the property in the dedication, not simply as an easement. The State Supreme Court reversed. The court ruled that the road did have fee title, but not fee simple title. Should it ever be abandoned as a road, it would revert to the adjacent property owners, hence is should be treated as an easement

C. TYPES OF RIPARIAN USE

Riparian rights can generally be categorized as the right to (1) use the water for general purposes such as bathing, domestic use and fishing; (2) build a wharf or dock to enhance the usefulness of the water: (3) access navigable water; and (4) use accretions. Boating, swimming, fishing, water-skiing, ice-skating, and diving are among the many uses of the water available to a riparian owner. A riparian owner may access the entire waterway (including connecting waterways) for the exercise of riparian rights. Thus, any riparian owner may use any portion of the surface of the water or the water beneath the surface for general enjoyment so long as the use does not unreasonably interfere with the reasonable use of other riparian owners. Hunting and trapping are not considered incidental to the use of riparian interests; hence, the public does not have a right to use a waterway to trap or hunt.

D. REGULATION OF RIPARIAN USES

Riparian rights may be constrained or regulated but not eliminated by local ordinances, state regulations, or federal statutes. For instance, the Township Ordinance Act. MCL 41.181, gives townships authority to limit and regulate boat docking and launching. Further, under the Township Rural Zoning Act a township may protect bodies of water from destruction or impairment. A seasonal dock used for private recreational use does not require a permit from the EGLE.

E. THE SCOPE OF RIPARIAN RIGHTS

Riparian rights grant the owner access to the entire waterway (including connecting waterways) for the exercise of riparian rights. Thus any riparian owner may use any portion of the water's surface or the water beneath the surface for general enjoyment as long as the person does not unreasonably interfere with the reasonable use of other riparian owners. Boating, swimming, fishing, water-skiing, ice-skating, and diving are among the many uses of the water available to a riparian owner. The determination of reasonable use is based on the size, character, and natural state of the watercourse: the type and purpose of the proposed use: the use's effect on the watercourse: and the benefit to the user as compared with the injury to other riparian owners. If the state or a local government owns property on the shore of the waterway and permits access, the public has riparian use of the body of water.

Several terms are often used to discuss the movement of land along a waterway. An accretion is a gradual buildup of dry land caused by the force of the water. An avulsion is a sudden perceptible change in the land caused by the action of water, as when a river cuts a new channel. A reliction is a gradual increase in land caused by the withdrawal of water, as when a lake or stream recedes. Erosion is the gradual loss of land through the action of water. The right to land gained through accretion or reliction is a basic riparian right. The accreted portion belongs to the land where the accretion begins.

F. CLAIMS OF THE UNITED STATES IN NAVIGABLE WATERS

The United States retains a paramount right of navigation in all waters that the federal government designates as "navigable." This federal definition of navigable waters includes the Great Lakes, all rivers that can be traveled on by vessels, and certain lakes that open into the Great Lakes. The paramount right of the United States to use the water for navigation includes the right to use the land on either side of the waterway to facilitate navigation without compensation to the owner.

The riparian rights along a navigable body of water (except the Great Lakes) remain with the owners of the shoreline, including ownership of the submerged property. However, the riparian owner may not impair the navigability of the waterway. A dock or wharf may extend into the waterway only to the point of navigable use. For example, although no dock or wharf is permitted on the channel where the Grand River empties into Lake Michigan at Grand Haven, docks and wharves are permitted upstream along the same river where a part of the channel is not subject to navigable use. Further, the construction of any structure in a navigable body of water requires an Army Corps of Engineers permit so that the potential impact on navigation can he reviewed. Indeed, any construction that might affect water flowing into a navigable body of water is subject to scrutiny by the Corps of Engineers under the commerce clause of the U.S. Constitution.

This broad jurisdiction permits the Corps of Engineers to review applications for permits involving fill on creeks and rivers far upstream from the source of the actual navigable waterway. However, that review is usually made through the EGLE's permitting process when the EGLE reviews the proposed development in or along the waterway.

III. TYPES OF WATERWAYS

A. The Great Lakes

The state holds title to the center of each Great Lake bordering Michigan, subject to the navigation rights held by the United States. A riparian owner on the Great Lakes is generally considered to own only to the ordinary high-water line of the lake.

Title to the submerged property of the Great Lakes is held by the state of Michigan, and the "law of the sea" (admiralty law) applies on the Great Lakes.

The ordinary high-water mark for each of the Great Lakes for regulation purposes is set by the Natural Resources and Environmental Protection Act, Part 325, Great Lakes Submerged Lands,

MCL 324.32501 -.32516. The ordinary high-water mark is an elevation or datum line set by an official survey for each of the Great Lakes. The state owns title of the submerged land up to that line. Where the water has receded (relicted), additional shoreline is created. That shoreline below the ordinary high-water mark is still subject to the title of the state of Michigan. However, the adjacent riparian owner has the right to exclusive use of the beach as would a riparian owner of an inland lake where the reliction occurs. The reverse can happen if the water level rises above the ordinary high-water mark, as during the mid-1980s on some of the Great Lakes bordering Michigan.

In this instance, the shoreline owner continues to own to the ordinary high-water mark even

though some of the land is submerged. However, the ownership of the submerged land is subject to riparian use by all other parties with access to the Great Lakes and to the navigational use of the United States. Although the use of the submerged land is restricted, the ownership is not lost.

In Glass v Goeckel, 473 Mich 667, 2005 Mich LEXIS 1314 (July 29, 2005), the Supreme court addressed whether the public may walk along the Great Lakes shoreline, below the ordinary high-water mark. For years. Glass walked along the shoreline of Lake Huron near her home in Alcona County, staying between the actual water line and the ordinary high-water mark of the lake. In 1997, new neighbors, the Goeckels, bought the frontage that Glass was accustomed to walk along. The Goeckels objected to Glass's presence and obstructed the entrance of their property to interfere with her ability to walk along the shore. Glass sued, claiming that the state of Michigan held title to the dry shore between the water line and the ordinary high-water mark. The supreme court ruled that the public trust in which the state holds title to the Great Lakes extends to the ordinary high-water mark and that the public was entitled to walk along the state up to that high-water mark. The precise point of demarcation of the ordinary high-water mark will vary.

While a "regulatory" ordinary high-water mark is set by the Great Lakes Submerged Lands Act, that datum line is not the "ordinary high-water mark" for the purposes of title and the state's public trust. The court adopted a definition that places the high-water mark on the "shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic."

By 2003, several years of drought caused low water levels on the Great Lakes. Where the water receded, beaches became covered with unattractive vegetation. Until 2004, EGLE regulations barred removing this vegetation or otherwise grooming the Great Lakes shoreline without a permit. In 2003, the legislature acted on the desire of Great Lakes riparian owners to groom and maintain their beaches without a permit. Amendments to the Wetlands Protection Part and the Great Lakes Submerged Lands sections of the Michigan Natural Resources and Environmental

Protection Act now allow certain limited beach maintenance activities to be conducted along the Great Lakes shoreline without an EGLE permit, except in limited protected areas. Now a riparian owner may conduct beach maintenance activities between the ordinary high-water mark of the Great Lakes and water's current edge without an EGLE permit on non-compactible ground. This includes manual or mechanical leveling of sand that is free of vegetation, raking soil to remove debris without disturbing plant roots, constructing a temporary pathway to open water, mowing vegetation to a 2-inch height, and conducting small-scale hand-pulling of vegetation. While these activities may be conducted without an EGLE permit, some of these same actions still require a permit from the Army Corps of Engineers. EGLE/Army Corp of Engineers Joint Permit Application. Further, any actions beyond those permitted by the amendments require an EGLE permit.

B. INLAND LAKES AND STREAMS

Regardless of size. Michigan's inland waterways are governed by the same rules of law whether they are rivers, streams, lakes, or ponds. The same rules concerning riparian rights and ownership to the center of the waterway apply. If the property is separated from a lake or river solely by a public street or highway, the owner of the property on the other side of the street or highway has riparian rights in the body of water in every other instance the property must actually touch the water to be riparian. An easement does not give riparian rights. A riparian owner may permit a lessee, licensee, or grantee of an easement to use the owner's waterfront and the waterway for riparian purposes as long as the use does not unreasonably interfere with the rights of other riparian owners.

C. THE NAVIGABILITY TEST

The state of Michigan claims the right to full access to all navigable bodies of water for all its citizens. This does not mean the public can gain access to the navigable waters over private property but instead that if the water can lawfully be reached, that the public may use the water. In practical terms, this usually means recreational swimming, boating, and fishing. The navigability of a body of water determines the rights of the public and the riparian owner's right to exclude others from the water.

In Michigan, the navigability of a body of water used to be determined by the floating-log test. Under the test, water is likely to be navigable if commercial logs once floated in it or it is currently deep enough to float logs of commercial size. This test rests on the state's lumbering past. Again, when judging whether property is riparian, it must be remembered that the property is presumed to have had, or not had. a riparian character as of the date Michigan became a state. The issue of navigability derives from the same date. Commercial use in the 1830s (when Michigan became

a state) was determined by the ability to float a log downstream (to the mill. I suppose). The standard must be uniform and have consistency. Hence, the Michigan Supreme Court reiterated this standard in an extensive review in its *Bott* decision in 1982. Even if it seems outdated it has a logical consistency and is the standard. See ***Bott v Commission of Natural Res. 415 Mich 45, 327 NW2d 838 (1982).*** In addition to navigability, other determining factors may be the isolation or geographic placement of the body of water. Thus, a person who owns all the land surrounding a small inland lake or a lake at the end of a chain of lakes may have the sole right to use the lake even though there may be access through a channel. In such a situation, the court may find the body of water not to be navigable either because of a shallow approach channel that cannot float loss of commercial size or because of the private nature of the lake and its surroundings. In contrast where there is access to the lake via a channel, a court may find the factual circumstances of the lake make it accessible to the public through the channel. In some instances, this determination is obvious. In others, absent a prior court decision concerning the body of water, the answer is unknown.

IV. DIVISION OF SUBMERGED LAND AMONG RIPARIAN OWNERS

A. Introduction

The demarcation of the submerged land between riparian owners occasionally becomes an issue. However, the possibility of riparian versus riparian problems regarding the bottomland is often ignored. Instead, most of the focus on riparian use is on waterfront access and the use of the waterway. When considering recreational uses of a waterway, the division of submerged land is not a crucial issue. The use of the water is common to all riparian owners and no individual ownership of the water is recognized. However, there are situations when the demarcation of the submerged land's importance increases. On these rare occasions, the precepts decided over a century ago in a series of ice cases still govern today's litigation on submerged land. In the ice cases the division of lakes was the subject of much litigation. The ice industry sought to establish title to ice on lakes as part of their commercial enterprise.

More recently, the ownership of submerged land has been raised in disputes between riparian owners regarding how far a dock can extend out into the water and who owns oil gas or other minerals found beneath the waterway. A riparian owner must determine how the boundary lines extend into the waterway to avoid building the dock on a neighbor's bottomland Further a party who owns property along a shoreline has an enhanced claim to a proportionate distribution of oil or gas royalties by owning the submerged land under which the mineral resource lies Similarly sand, gravel, or any minerals within the submerged land are owned solely by the party with title to the submerged land. The common use granted to others with riparian or access rights includes only those rights associated with the use of the water itself, not the right to take items from the submerged land. Thus, the discovery of minerals under a waterway often calls for intricate negotiations (or litigation) to determine how the bottomland is to be divided.

B. OWNERSHIP OF SUBMERGED LAND OF INLAND LAKES

Michigan law recognizes three methods of divining a riparian landowner's interest in the submerged land of inland lakes, ponds, rivers, and streams. The first method used depends entirely on the shape of the waterway. For instance if a lake or pond is essentially round the property lines of the riparian owners are deemed to go to the center of the lake, making pie-shaped wedges. '

For noncircular bodies of water and rivers, a second method is used, designating a thread line or centerline following the center of the river or, in an oblong lake. between two end points where the lake forms a semicircle. Thus, for property along rivers or oblong lakes, the property line on the shore extends out to the thread line of the waterway. The general rule in Michigan has been that the submerged boundary line between adjoining riparian owners is determined by extending a line from the upland boundary between the property owners to meet the thread line at a right angle. This rule of law has been consistently applied over the years. Under this rule, the boundary line for the submerged land is often in some direction other than a direct extension of the shoreline boundary.

A different theory of the division of ownership interests, known as the doctrine of proportional ownership, may govern when reliction on a lake is involved. When the shoreline of a body of water recedes, the owners of the property along the water are entitled to a just proportion of land between the old and new shorelines. The doctrine of proportional ownership maintains the status of riparian ownership. Without the rule, the process of reliction could eventually cause a riparian owner's interest to diminish or disappear because of changing property lines. See The proportional rule of ownership of land gained by reliction preserves riparian rights. The basis for determining the proportion is the original shoreline as shown by the government or the first reliable private survey. A party whose entire property becomes submerged is not divested of the fee.

EASEMENT TO WATERWAYS

A. Introduction

While full riparian rights may not be severed from the riparian land, Michigan does permit the owner of the riparian property to grant an easement to back lot owners or others, allowing them to enjoy certain rights that are traditionally reserved to riparian owners. A riparian owner's grant to a nonriparian owner may not unreasonably interfere with the other riparian owners' use and enjoyment of their property. This might include the right to build a dock, moor boats, or sunbathe. Similarly, a dedication of land can grant riparian-like rights. Buyers of property conveyed with

reference to a recorded plat in their deeds may, depending on the applicable law, be presumed to accept the benefits and liabilities associated with a private dedication.

While a plat dedication or an express easement can give back lot owners and others access to the water, the rights are limited by the language of the con (dedication of waterfront lot to "the use of the owners of lots in this plat which have no lake frontage" is not a conveyance of a fee interest with riparian rights, but merely an easement to all back lot subdivision owners).

Easements and grants of ingress, egress, and access give the interior lot owners access to get to and go into the water but do not grant riparian rights. Without frontage on the waterway, a party does not have riparian rights. Thus, interior lot owners should not presume that they have a right to boating, docking, or mooring unless the wording in the easement specifically conveys those rights. Permissive use of water to anchor boats, docks, slides, etc. is not likely to ripen into a prescriptive right since the use is not adverse or hostile. An arrangement between parties permitting an interior lot owner access to a lake over a long period of time does not create a prescriptive easement. The use is not adverse. The simplicity of these common-law concepts is often lost in the vague factual circumstances regarding many years of use of the waterfront.

Easements may either be appurtenant or in gross. An easement appurtenant is created to benefit another tract of land. An easement in gross benefits a particular person and not a particular piece of land.

B. KEYHOLE OR FUNNELING ACCESS TO THE WATER

Developers often increase access to a waterway by creating easements to the water for the benefit of interior or back lot owners. Generally, these easements are deeded to back lot owners or they may be placed in the dedication portion of a subdivision plat. granted as "common areas" in a condominium. The name keyhole comes from occasions when the water access rights of back lot owners are sometimes given by a developer who owned nonriparian land adjacent to a waterfront lot. The developer then uses the waterfront lot—a keyhole to the water. The developer may create an easement over the waterfront lot or deed it to all the owners of the back lots, creating a keyhole through which numerous back lot owners may access the water. These devices enhance the value of the back lots and allow the developer to advertise that an entire plat or condominium has water access. However, the use of these keyhole lots is subject to the common law limitations on unreasonable interference with other riparian properties. The claim is often that the keyhole creates overcrowding of the waterfront or the water. Further, keyholing is now often limited by zoning regulations.

In many instances multiple uses of waterfront by back lot owners have arisen and existed for a number of years. In many people's minds, the right to the use has become an appurtenance to their inland lot. Legally this may or may not be true. If the water frontage lot is then sold to a new owner who does not want the back lot use to continue, a dispute and litigation often arise. If there is no written document that is dispositive of the issue (and often there is not), it becomes a factual issue of the use and related circumstances, which are usually sorted out only with greatdifficulty.

V. PUBLIC ACCESS TO WATERWAYS

A. Public Access by Road Dedication or Park Creation

Publicly dedicated streets that terminate at navigable waters are generally deemed to provide public access to the water. The scope of the right to access has often been disputed. The scope of the dedication determines the extent of the public's right to access, including the right to erect a dock or boat hoists or the right to sunbathe and picnic at the road end. Prior to Public act 56 of 2012, March 22, 2012 if a person wished to prevent others from building docks or erecting boat lifts over their bottom land they would have to take civil action. PA 56 addresses a number of citizen complaints about inappropriate use of public road ends designated for public water access. Codifying several court decisions, the bill makes it a misdemeanor to use road ends for placing boat hoists or boat anchorage systems, mooring or docking boats between midnight and sunrise and installing a dock or wharf. Only single-season docks authorized by local government and approved by the Department of Environmental Quality will be permitted. The misdemeanor is punishable by a maximum fine of $500 per day of violation.

The members of the public who are entitled to access to navigable waters have a right to use the surface of the water in a reasonable manner for such activities as boating, fishing, and swimming. The right to anchor boats temporarily is incidental to the public's right of navigation. The right of a municipality to build a dock at the end of a street ending at navigable waters is based on the presumption that the dedicator of the plat intended to give access to the water and permit the building of structures to aid in access. The establishment of a public access on a body of water by the state or a local government is subject to a reasonableness standard, as with any other riparian owners. Some lakes are obviously too small to be opened up to the full breadth of use by the public. Presumably, a review of this factor is included in the establishment of public access by the state or the local governing unit. Similarly, the EGLE periodically restricts certain riparian rights with regard to the use of a lake to avoid having the various users on the lake interfere with one another. Thus, motorboat and sailboat use may be restricted to certain times on a lake so that they will not interfere with each other. The EGLE may review the types of uses of a lake and establish appropriate governing regulations. See MCL 324.80108. If riparian property owners on a lake believe that government action to open public access unreasonably burdens their riparian use, they may seek judicial relief against the government action just as they may against a private property owner's actions.

B. THE SCOPE OF USE WHEN A PUBLIC ROAD ENDS AT THE WATER'S EDGE

There are many old plats in Michigan with roads dedicated to the public that end at the water's edge. The dedication is usually so limited it doesn't give any indication of the intent of the grantor. In 1993 the court of appeals held that streets and alleys that terminate at the edge of navigable waters are presumed to include an intention to give access to the water. Thus, the use of the surface and the construction of structures that aid in gaining access to the water, such as a boat ramp, are generally permissible.

The scope of the dedication determines the extent to which the right of public access includes the right to erect a dock or boat hoists or the right to sunbathe and picnic at the road end. The intent of the dedicator must be determined from the language used in the dedication and the surrounding circumstances..

The state of Michigan and a number of local governments have sought to use previously dedicated but unused road rights-of-way to create access to lakes and rivers. Normally the intended use is a boat ramp although at times other shoreline improvements such as picnic areas and board walks are also proposed. The dedications that provide the governmental argument are usually old plats that say little more than the road is "dedicated to the public." The first issue may be whether or not the dedication was ever accepted. Offers of dedication of a public road may be accepted in four different ways:

1. By presumption under the Land Division Act. MCL 560.255b.
2. Formally by resolution, including a McNitt resolution.
3. Informally through the expenditure of public money for repair, improvement, and control of the roadway.
4. Informally through public use.

If the government is found to have the right to claim and use the dedication to create access to the waterway, then the extent of the public's use becomes an issue. Although a dedication to the public of a road to the water's edge easily converts itself into an image of a boat ramp, other issues of the size of the boat ramp, parking, noise, user control, other shoreline use, and maintenance can quickly cloud the issue. The issue seems to be a never-ending source of litigation. This litigation of road-end issues has increased over the years. The nature of the litigation is epitomized by the nearly 10-year odyssey of the 12 consolidated cases making up Higgins Lake. The plat maps of a number of subdivisions included roads and alleys that ended at the edge of the lake and were dedicated "to the use of the public." The public sought use of these road ends for picnics, sunbathing, and general lounging. In the early 1990s, the township started a program to build public docks or boat launches at several of these road ends. In 1995, plaintiff, an association of Higgins Lake lakefront owners, sued to enjoin the township from constructing boat launches and

to enjoin the public from using the road ends for anything other than access to the water. In these cases the Township claimed that the roads ends going into Higgins Lake were public, that it had the right to regulate them and provide for extensive riparian use of the waterfront, and the township intended to allow one dock at the end of each road together with various shoreline uses such as sunbathing and picnicking. The appellate court determined that the township could have a wharf or dock at the end of the street as it apparently felt that was consistent with the grantor's dedication. It also allowed structures to aid in access at the wharf. The court rejected the claim that meaningful access must include shore activities such as sunbathing and lounging. This was a long and fractious series of litigation. The end result highlights the fact that to decide these cases, the courts must often decipher a number of conflicting claims, purposes, and factual situations extending for over a century.

C. THE PUBLIC'S USE OF NAVIGABLE WATERS

If a body of water is navigable, the public has a right to take fish from the body Members of the public may use the entire surface of a navigable body of water for boating, bathing, and swimming. With regard to hunting or trapping on the water, the public's right of use depends not only on whether the water is navigable, but also whether it is a Great Lake or an inland lake, river, or stream. Because the state owns all of the submerged beds of the Great Lakes, members of the public may hunt and trap in these areas. However, because the submerged portions of inland lakes and rivers belong to the riparian owners, there is no right to hunt or trap there. Hunting and trapping are not riparian rights.

VI. LAKE LEVELS

Inland lake levels may be set and maintained for the benefit of the riparian users. Any proceeding to set a lake level must be initiated under the Natural Resources and Environmental Protection Act (NREPA). Part 307. The issue of setting a lake level, whether on a natural lake or a man-made lake, is subject to the statutory scheme. Thus, if the property owners around a lake believe the lake level fluctuates too much, they may petition to have it controlled at their expense. While lakefront owners can petition for a lake level, only the county board of commissioners or the commissioners' agent may initiate an action to set a lake's level under the NREPA. MCL 324.30701 et seq. Private actions to set a legal lake level are not permitted.

If the commission receives a petition signed by two-thirds of the riparian property owners fronting on the lake. The county commission must file an action. Thus, if the property owners around an inland lake believe the lake level fluctuates too much. they may petition to have it controlled at their expense.

Ultimately, the circuit court will determine whether to set a permanent lake level. If the court determines that it is in the public interest to set a lake level, the court must also determine how the lake level will be maintained. This might include damming or pumping, because once a level is set it must be maintained by the county. A county may impose a special assessment district to spread the costs of maintaining the lake level to the benefited property owners.

The scope of NREPA Part 307 is not limited to public lakes. A governmentally initiated proceeding to determine the legal level of a private lake is not an unconstitutional taking of private property for public use. Id. A dam construction permit issued under the now-repealed Dam Construction Approval Act does not establish a legally enforceable lake level. Yee. Any proceeding to set a lake level must he initiated under NREPA Part 307. Id. The issue of setting a lake level, whether on a natural lake or a manmade lake. is thus an issue regarding the general welfare of the citizens and is subject to the statutory scheme.

There are advantages and disadvantages both to having a lake's level set and to having that level maintained with pumps or dams. Once the lake's normal level is established, it can be artificially maintained. This stabilization of water levels is the largest advantage and can protect property values and the lake environment. The water may be drawn down to minimize shoreline ice damage in the winter and to minimize flooding in the spring. The disadvantages are the costs associated with studies and surveys and with constructing, operating, and maintaining the control structures necessary for maintaining the legally established level.

VII. DAMS AND FLOWAGE RIGHTS

A. Dams

The role of dams in Michigan reflects the evolution of the State’s economy and society over the decades. Originally, dams were built to transport logs, generate electricity, or to run milling operations. More recently dams were built to provide reliable year-round water supplies for irrigation, domestic use, navigation, and recreational uses. Dams have also been built to provide flood control.

Generally, a permit to build a dam and thus impound water must be obtained from the EGLE. Other permits and reviews may be required by the county drain commissioner or road commission. If the dam could impact navigable waters of the United States, permit from the Army Corp of Engineers may also be required. There is some indication under NREPA Part 301, Inland Lakes and Streams, that if a dam was in existence before April 1, 1966, the state permit may not be necessary to operate it.

A party purchasing property downstream from a dam should make certain that the EGLE has made regular inspections of the dam to ensure its safety and compliance with the act. Many small dams on rivers and streams were constructed or are maintained EGLE and are subject to washouts in heavy rains or spring thaws. The EGLE is charged with controlling the construction, maintenance, and safety of these dams. However, a buyer might desire to make an independent investigation of the state's file related to an upstream dam before buying the property rather than rely solely on the presumption of the government's inspections.

B. FLOWAGE RIGHTS

A flowage right is the right to impound water and to use the force of its flow for power. In the past this right was important for mills and other enterprises. Today flowage rights are sought to create millponds to power dams for electricity or to enlarge a waterway and increase its shoreline. Depending on the nature of the property and the scope of the easement, clients must carefully consider whether allowing flowage will impede their use of the property.

In an unreported decision, the court of appeals ruled that Cheboygan County intended to abandon a flowage easement by failing to alter the Pigeon River in any way in furtherance of the explicit easement for over 60 years. The court ruled that while non-use for over sixty years might be insufficient to prove an intent to abandon. The county made its intentions clear by quitclaiming its interest in the property.

VIII. PURCHASING WATERFRONT PROPERTY

If you represent a buyer who intends to buy property in a floodplain or along a waterway and construct something on it, you should provide a contingency for sufficient time for your client to receive all the necessary permits and approvals for the waterfront development or use before closing the purchase. Make the purchase contingent on the receipt of these approvals and require the seller to reasonably cooperate in acquiring them.

At the outset, have your client check with the local township or municipality and the county to determine whether the proposed improvement will comply with all relevant ordinances. It-there are structures to be erected along a waterfront or a marina to construct, there may be ordinances specifically addressing those issues. Even if there is no such ordinance, the development will undoubtedly be required to undergo a site plan approval and perhaps a zoning change or variance.

If a buyer anticipates commencing an earth change that disturbs one or more acres of land or that is within 500 yards of a waterway, a soil and sedimentation permit from the county drain commissioner or road commission must be obtained. The statute is designed to control erosion

and pollution of waterways. If property subject to a soil and sedimentation permit is transferred, both the permit (including any obligations and conditions) and responsibility for any violations of the permit that exist on the date the property is conveyed are also transferred with the property. This also applies to partial transfers of property subject to a permit. If property subject to a permit under this part is proposed to be transferred, the seller must notify the buyer of the permit in writing, including a copy of the permit. The seller and buyer must sign the notice and the seller must submit the signed notice to the county or municipal enforcing agency before the property is transferred.

Review the requirements of the National Flood Insurance Program concerning the insurability of property in a floodplain. As a general rule, insurance for such property is only available through this program and only if the construction meets its requirements. Usually, the construction must be on property above the 100-year floodplain. The program permits the removal of property from the 100-year floodplain by placing fill on it to be able to construct on top of the fill. In this way, the property can be "removed" from the floodplain by raising it to an appropriate height.

Any fill or construction within a floodplain also requires a permit from the EGLE under Part 31 of NREPA, Water Resources Protection. The EGLE must review the construction to ensure that it will not pollute or pose a danger to any protected environments. If land located in a floodplain has been filled above the 100-year floodplain elevation, construction of a building that includes a basement may be permitted under certain circumstances. If a floodplain area has been filled or if the floodplain will be altered through the placement of the fill or the watercourse will be relocated or enclosed, a developer must apply for and obtain a letter of floodplain map revision from the Federal Emergency Management Agency before a local building permit can be issued or construction can begin. Part 301 and Part 303 also place restrictions on development in waterways and wetlands. If it is unclear whether land is a wetland, the party may request that the EGLE assess whether the parcel or part of the parcel is a wetland. The delineation is usually done by an environmental consultant hired by the applicant. That consultant's delineation is then reviewed by the EGLE. A finding that a parcel is not a wetland means that the EGLE has no jurisdiction under the Goemaere-Anderson Wetland Protection Act. That determination is binding on the department for three years from the date of the assessment. The 1979 Goemaere-Anderson Wetland Protection Act is state law. If one plans on taking anything out or putting anything into land within 500 feet of a named body of water, they need a permit from EAGL. The distance along the Great Lakes is 1,000 feet.

Along a lake or river that enters into the Great Lakes and that is navigable under United States statutes and regulations, an Army Corps of Engineers permit is required to make sure that navigable bodies of water are not impaired. Do not underestimate what might make a navigable body of water for these purposes. The test of navigability is different from that used under Michigan law (the floating-log test). The Army Corps of Engineers has authority over any

waterway that leads to a navigable waterway. Consequently, even development on a creek that leads to a navigable waterway may require an Army Corps of Engineers permit!

Waterfront property is popular in Michigan. It is a limited resource with ever-increasing numbers of people seeking to acquire it. Further, the state and local governments are becoming more aggressive about creating more access to waterways for the public. Because this land is expensive, they often try to create the access by opening up never-used access points. Many of Michigan's waterfront areas were subdivided under old plats with limited dedications. Many of these are from the late 1800s and early 1900s when the waterfront areas first became recreation locations with dedicated to the public that go to the waterfront. These efforts to develop the waterfront and add public access conflict with the goals of environmentalists who try to limit waterfront development to preserve natural resources and natural habitat. In addition, private parties are buying and improving waterfront in ever-increasing numbers. Finally, many of the cottages, roads and access points were built to match the topography or some other concept and do not follow the survey or plat lines, Waterfront use rarely matches the plat or dedication and a conflicting or imprecise use of the beach, access rights, moorings and docks often exists. Rarely does a piece of waterfront have a clean demarcation of lot lines and use.

The end insult of this mixture is a real estate lawyer's nightmare. The asset is valuable. Added to his is that the client is usually anxious to proceed before the chance to purchase the property is lost. Risk must be analyzed, and judgments made. Clients must be carefully informed.

IX. GROUNDWATER is found underground in aquifers. Sometimes this water comes to the surface naturally through a spring (an artesian well) or into a lake. Groundwater may also he brought to the surface via a well. Groundwater may be just a few feet beneath the ground's surface or hundreds of feet underground. Permits for drilling a groundwater well are regulated at the county or township level. Michigan residents who do not have access to municipal water systems get their water through a groundwater well. In fact, Michigan has more households served by private wells than any other state and has approximately 25.000 domestic wells drilled per year. The EGLE states that 2.6 million Michigan citizens are served by private household wells. Any client considering a move to the country and even to some suburbs must understand the issues of groundwater wells and the concomitant issues of septic systems and drainfields.

The EGLE has primary enforcement authority in Michigan for the Federal Safe Drinking Water Act under the legislative authority of the Michigan Safe Drinking Water Act. As such the division has regulatory oversight for all public water supplies, including approximately 1,500 community water supplies and 11.000 noncommunity water supplies. In addition, the program regulates drinking water well drilling. The EGLE also investigates drinking water well contamination and oversees remedial activities at sites of groundwater contamination affecting drinking water wells.

The issue of the removal of vast amounts of water with high-capacity wells for agricultural and commercial bottled water purposes periodically causes disputes. The typical high capacity well can withdraw more than 70 gallons per minute (100.000 gallons per day) from either surface water or groundwater. The concern is that the high capacity well either dries up or through the excessive withdrawal of water causes an aquifer to become contaminated with farm waste or other pollutants. In response to concerns about high-capacity wells, the legislature promulgated law and rules establishing procedures for the investigation and resolution of conflicts between high-capacity well users and neighboring low-capacity well users. These procedures are used when the owner of a low-capacity well, such as a domestic well, complains that a high-capacity well has interfered with the smaller well. For example, causing the well to fail or to cease providing potable water. The complaint is reported to either the EGLE or the Department of Agriculture. The department must respond within two working days and conduct an onsite evaluation within five working days. If the allegations are proven, the high-capacity well owner may be ordered to modify the pumping rate, duration, or liming of the groundwater withdrawal, or make modifications to the low-capacity owners' wells to prevent well failure due to groundwater lowering. The high-capacity user may also he ordered to compensate the other well owner.

X. SUMMARY

Always be aware of any impact the law may have on waterfront property when assisting your client or customer. Any involvement in the purchase, sale, or financing of a parcel with water frontage requires a review of the water and riparian issues that may be involved. In many instances, the division of the property and the accompanying rights are not clear. The potential ownership and use issues must be investigated and hopefully resolved at the time of the transaction. Subsequent litigation is always a poor substitute for prior review and preventative action. Also remember that only an attorney can give legal advice. While you may assist your client or customer in locating the appropriate government regulatory body to determine their rights to the water, there may come a point at which you should advise them to seek legal counsel.

President Biden as part of his platform vowed to restore the 2015 WOTUS (Waters of the United States) rules to the Federal Clean Water act.

ARTIFICIAL BODIES OF WATER

When a property has physical contact with an artificial body of water, such as a man-made lake or pond, the Michigan Supreme Court ruled the property is not “Riparian Land.” This was upheld again in the following case.

Pursell v Wertz No. 288858 (Michigan App. March 23 2010)

FACTS: Plaintiff and Defendant were neighbors who at one point had a very amical relationship. Plaintiff found this appealing and asked if they could go in together. They built a less than five acre pond. 2/3 of it was on the defendants property and 1/3 was on the plaintiffs. Their relationship deteriorated and on time when the Plaintiff came home , there was an eight foot tall fence on the property line.

QUESTION BEFORE THE COURT: Was the property owner who erected the fence across the pond liable for trespass and nuisance?

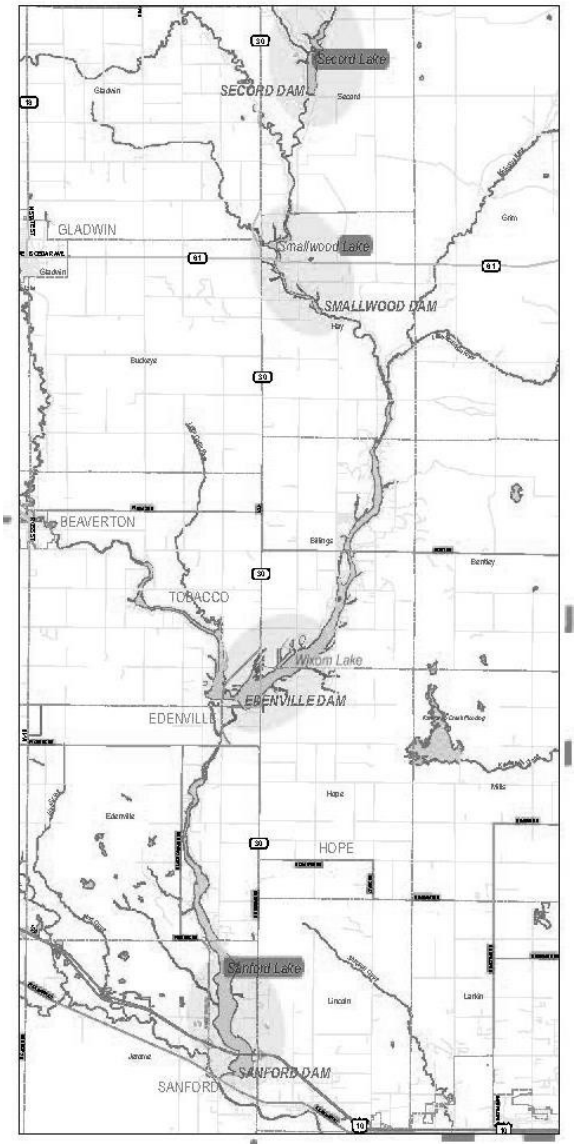
RESULT: No. Michigan court of appeals reversed the lower court's decision and stated there are no riparian rights on an artificial body of water.

TITTABAWASSEE & TOBACCO RIVERS DAM FAILURE

Four Lakes Task Force (FLTF) is the delegated authority working on behalf of Midland and Gladwin counties to help maintain and operate four dams and lakes in the region, so lake communities can enjoy the water long into the future. Sanford Lake Dam creates Sanford Lake; Edenville Dam – Wixom Lake; Smallwood Lake Dam – Smallwood Lake and Secord Lake Dam – Secord Lake.

Four Lakes Task Force (FLTF) was formed by Midland and Gladwin Counties in 2018 to establish and administer Michigan Legal lake Levels for the four lake system for the benefit of all the lake

communities. FLTF has enabled a change in the ownership structure of the dams to create a public entity to act on lake issues with resources and overall accountability on behalf of all stakeholders. FLTF is a "delegated authority" working on behalf of Midland and Gladwin Counties to administer and oversee the maintenance and operations of the four dams and lakes, so the lake communities can enjoy the water long into the future.



Prior to the May 19th, 2020 flood event, the Four Lakes Task Force (FLTF was evaluating the spillway capacity of the dams in the Four Lakes system. The Federal Energy Regulatory Commission (FERC) licenses and regulates hydroelectric projects and administers dam safety requirements for these projects, including spillway capacity requirements. Sanfor, Smallwood and Secord Dam within the Four Lakes system have FERC licenses.

The FERC license for the Edenville Dam to generate hydroelectric power was revoked in September 2018, which shifted jurisdiction of dam safety to the Michigan Department of Environment, Great Lakes and Energy (EGLE).

Four Lakes Task Force negotiated an access agreement with Boyce Hydro Power, and got a limited stay from the bankruptcy court, for the four dams the week of October 12, 2020.

The State of Michigan awarded $15 million to Four Lakes Task Force (FLTF) to aid in restoration efforts of the four lakes. Funding may be used for feasibility studies, engineering design, flood and environmental studies, site readiness, and construction to restore lake levels. This is in addition to the $2.5 million granted in September to support in recovery, erosion control and dam stabilization.

Estimated costs to repair the dams are Secord - $24 million, Smallwood - $14 million, Wixom - $208 million, Sanford - $92 million.

A special assessment will be placed on all waterfront properties. Backlot parcels with private easement/dedicated access to water can be calculated as 25% of front lot estimates.

Boyce Hydro filed for Chapter 11 Bankruptcy. Four Lakes Task Force will be paying $1.58 million for the four hydroelectric dams. The quasi-governmental task force expects to take control of the dams in December of 2020. That will give them time to take the appropriate measures to begin winterizing the dams before bad weather arrives. Before the dam collapsed, they had been negotiating a sale for $9.4 million. Four Lakes Task Force began the process in July via eminent domain.

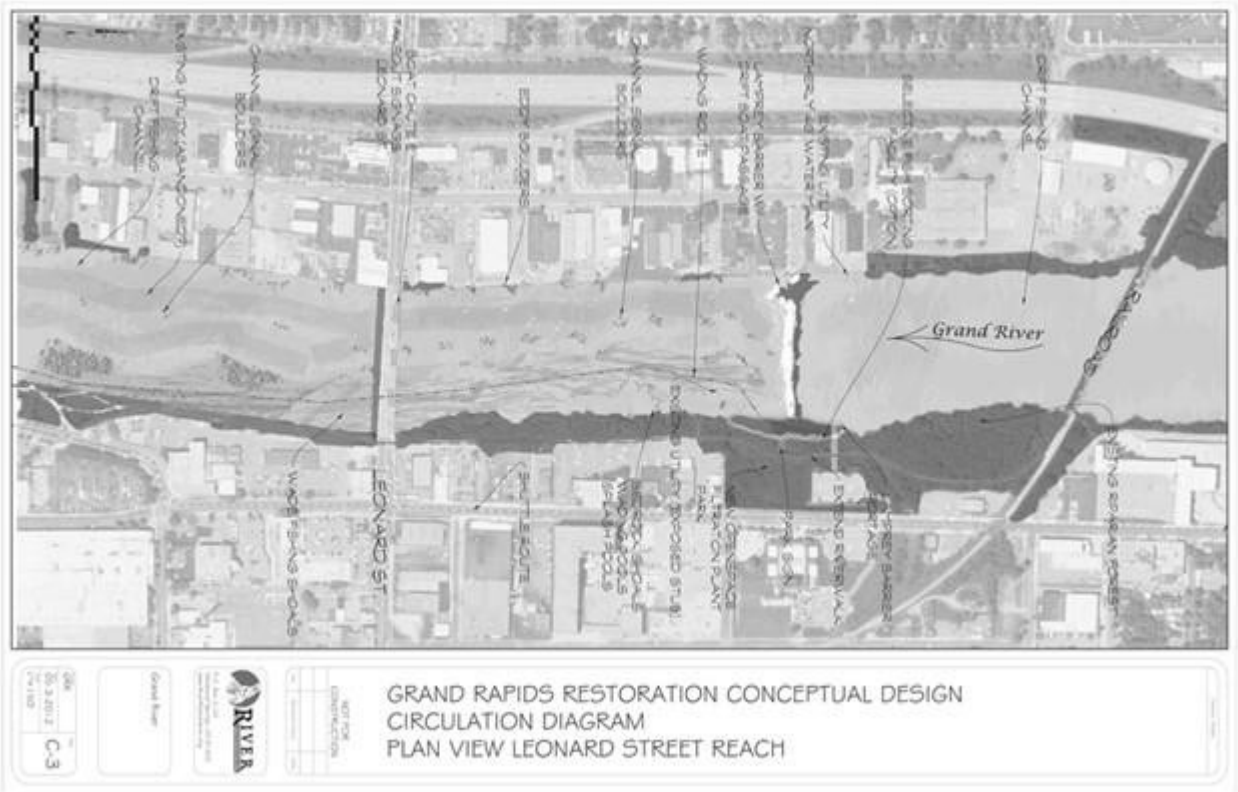
GRAND RAPIDS WHITE WATER PROJECT

Grand Rapids is a city with a legend written into its name. The rapids in the grand river were flattened by a series of dams following the Civil War. Grand Rapids is thriving and has become a tourist destination, its namesake feature is absent. The rapids with their magnificent eighteen-foot drop had become a lost legend.

Bringing the rapids back to the Grand River in a safe and environmentally responsible way requires careful planning and execution. The groups have worked closely with community partners, government agencies and river development experts. There will be two components to the restoration.

The Lower Reach from Bridge Street to Fulton will have new rocks and boulders installed and the four low dams will be removed to improve the aquatic habitat diversity and enhance recreation opportunities in the Grand River.

The Upper Reach from Ann Street to Bridge street will have a fifth low-head dam revealing a portion of currently=submerged limestone bedrock.



According to a study by the Anderson Economic Group, restoring the rapids will increase visitors by 500,000+ per year, create 80-100 new jobs and while the cost in capital investments is projected to be $250 M, the annual economic impact should be between $15 – 19 M per year. The Grand Rapids Whitewater site, however, estimates the total capital investment required by the non-profit is $44.6 M. The remainder of the monies is from various grants.

Ottawa people established villages in and around what is now Grand Rapids. They believed the mist from the rapids to be the earth releasing its spirit and named the river Owashtanong, which means “Far away water”, because of its length. Its echo could be heard for miles as it rebounded off the neighboring trees. The river served as both a cultural and economic source for centuries. Bringing back the rapids won’t just restore its echo; it would return the spirit of the river back to the region.

GRWW

Grand Rapids WhiteWater (GRWW) is a 501(c)3 nonprofit, formed as an outgrowth of the Green Grand Rapids initiative to champion the restoration of the rapids on the Grand River.

Started by Chip Richards and Chris Muller, the organization is led by Steve Heacock and Matt Chapman, and backed by an active board of directors.

If you are interested in contributing to restore an important piece of Michigan to its original condition, go to www.GrandRapidsWhitewater.org.

ENBRIDGE LINE FIVE

Line 5 refers to the 645-mile interstate pipeline running from Superior, Wisconsin to Sarnia, Ontario which carries oil and liquid natural gas products. Approximately four miles of Line 5 consists of dual pipelines lying on top of the lakebed across the Straits. They were constructed based on an easement granted by the State in 1953. The concrete tunnel as proposed, would be constructed underneath the lakebed and would accommodate utility infrastructure, including the new replacement segment of Line 5.

There are two active lawsuits involving Enbridge and the current Straits pipelines and efforts to move forward with the tunnel project.

One lawsuit involves a law that was passed by the Michigan legislature in December of 2018 which created the Mackinac Straits Corridor Authority (MSCA) and authorized it to enter into the Tunnel Agreement with Enbridge to build a new tunnel which would be owned by the Authority. In response to questions raised by the Governor, the Attorney General issued a formal legal opinion that the legislation was not properly enacted under Michigan's Constitution and should be considered void. Enbridge challenged that ruling. The lower court ruled that it had been properly enacted and that the agreements entered into pursuant to the law between the State and Enbridge were valid. That decision was recently affirmed by the Michigan Court of Appeals. Michigan Attorney General Dana Nessel has stated that the State intends to request the Michigan Supreme Court to review the decision.

A second suit was brought in June of 2019 by the Attorney General against Enbridge seeking to void Enbridge's use of the 1953 Line 5 easement and end its current use of the existing dual pipelines in the Straits. No decisions have been reached in that proceeding at this time.

The Great Lakes Tunnel Project is a proposed concrete utility tunnel approximately 18-21 feet in diameter joining and connecting the Upper and Lower peninsulas of Michigan at the Straits of Mackinac for the purpose of accommodating Enbridge's Line 5 pipeline. It could in the future also be used for other utility infrastructure, including, but not limited to, pipelines, electric transmission lines, facilities for the transmission of data and telecommunications.

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) announced today that its review of Enbridge Energy's permit applications to build a utility tunnel under the Straits of Mackinac and relocate the Line 5 oil pipeline has been extended until January 2021.

Enbridge has agreed to extend the timeline for EGLE's review of the proposed project's National Pollutant Discharge Elimination System Wastewater Permit (NPDES), bottomlands and wetlands permit applications so EGLE can more thoroughly consider the large volume of public comments, technical information, and recommendations from the State Historic Preservation Office. EGLE had previously expected to reach a decision on the applications during the first week of December 2020.

Under Michigan law, EGLE is the regulatory agency responsible for environmental permitting for the tunnel project, while the Michigan Public Service Commission (MPSC) has siting authority for pipelines that carry crude oil and petroleum products. Enbridge has sought authority from the MPSC to relocate a segment of Line 5 to a proposed tunnel and that matter is the subject of a contested case hearing that is expected to be ruled on in the summer of 2021.

Obviously, at the time of this writing there was much controversy, and it was undecided as to the direction we would proceed.

DRAIN PIPE

Ruiz v. County of San Diego, 47 Cal. App. 5th 504 (2020)

FACTS IN THE CASE: A storm drain pipe on plaintiffs' property rusted away, causing flooding that damaged their home. The underground pipe had been installed by the developer to replace an existing above-ground concrete channel, and was a part of a drainage system that carried water from both public and private properties. In 1959, the County had rejected the developer's offer to dedicate an easement through the pipe. Plaintiffs filed an inverse condemnation action seeking just compensation, arguing that by using the pipe for 50 years as part of the public drainage system, the County had accepted a drainage easement and had a concomitant to maintain the pipe. Plaintiffs also alleged that the County should be held liable because it acted unreasonably by discharging water through the plaintiffs' pipe without inspecting or maintaining the pipe. The appellate court held there was insufficient evidence to support a finding that the County implicedly accepted an easement through the pipe. A public entity's use of private land over a period of time may constitute implied acceptance of an offer of dedication if the entity takes steps to exhibit control over the property, such as assisting in improving, maintaining, or repairing an improvement on the land. In this case, the County had no right of access to the Ruiz pipe and had not participated in planning, constructing, maintaining, inspecting, or repairing the pipe. Also, by declining the offer of dedication, the County demonstrated it was not accepting any maintenance obligation. The court concluded that the facts of the case could not be distinguished from prior case law holding that public water flowing through the watercourse, without more, is insufficient to establish implied acceptance of a drainage system. The court also found that the evidence did not support the conclusion that the County acted unreasonably in allowing surface water to drain into the watercourse that included plaintiffs' pipe.

QUESTION BEFORE THE COURTS: A public entity may be liable for inverse condemnation if it makes unreasonable alterations to its upstream property that result in increased volumes of

water that cause damage to a downstream property. But liability is only for the proportion of the damage attributable to the public entity's conduct. Here, plaintiffs' expert testified that a "fair **amount" of the water in the watercourse originated from private, upstream owners, and the expert** did not conduct the hydrology. Could the county be held liable for the drainage.

RESULTS: The County of San Diego could not be held liable for damage caused by leakage from a privately-owned storm drain pipe on private property merely because water from public property drained through it..

WETLAND PROTECTION ACT OF 1972

***Tin Cup, LLC v US Army Corp of Engineers* NINTH CIRCUIT COURT OF APPEALS for publication No. 17-35889 D.C. No. 4:16-cv-00016-TMB**

FACTS: Richard Schok owns a pipe fabricating company in North Pole, Alaska. After decades of building a successful business, Richard decided to purchase property to relocate and expand his company. The new property was next to a junk car dealer, a scrap metal dealer, and a concrete product supply company. Not exactly the pristine wetlands one thinks of when hearing about the Clean Water Act.

Unfortunately for Richard, the Army Corps of Engineers decided that his property was a wetland under the Clean Water Act. The agency decided that the property (despite being bordered by other businesses) was adjacent to a navigable water body because the town of North Pole is located between two rivers. Even worse, the only "wetland" the Army Corps found on Richard's property was permafrost—land that's frozen all year long. The ground at 19" below the surface is never warmer than five degrees.

Pacific Legal Foundation represented Richard and his company and challenged the Army Corps' determination that frozen land is navigable water under the Clean Water Act. Unfortunately, the Federal District court ruled against him, and it looked like he couldn't follow through with his business plans.

QUESTION BEFORE THE COURT: Does the 2018 Waters of the United States, change which land is regulated under the Clean Water Act? The new rule is far from perfect, but it does make several improvements. Richard is one example of how the new rule can help small business owners.

The new rule changes how the Army Corps and the EPA determine whether a wetland is "adjacent" to a body of water and, therefore, can be regulated by the agencies. Specifically, the new rule says that, when a road or other barrier separates a wetland from a river or stream, that wetland will not be covered by the Clean Water Act. That means Richard's property, which is surrounded by other industrial businesses, is outside the Army Corps' jurisdiction.

RESULT: Based on the new rule, Richard asked the Army Corps to reconsider its determination that his property is covered under the Clean Water Act. Earlier this month, the Army Corps agreed that it could not regulate the property. While the Army Corps still views permafrost as a "wetland," it can no longer regulate the permafrost on Richard's property.

***County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020).**

Facts in the case: For quite some time, the County of Maui was allowing wastewater to enter the groundwater after which it would eventually flow to the Federally Navigable Ocean. While the Federal Clean Water Act does prohibit discharge into a Federally Navigable body of water without a permit. Case law had not been addressed in which the flow was indirect. The EPA issued guidance to the court, but while not binding may have some weight on the final court decision.

Question before the courts: Does the fact that the polluted water eventually made it to the ocean, based on the EPA's issued guidance, does this give them jurisdiction on the discharge.

Result:

In April 2020, the Supreme Court issued its decision in Maui, holding that the Clean Water Act "requires a permit when there is a direct discharge from a point source into navigable waters or when there is the *functional equivalent* of a direct discharge."

As recognized by the Court, the "functional equivalent" test will need to be applied on a case-by-case basis to determine if a National Pollution Discharge Elimination System (NPDES) permit is required. The Court provided a non-exhaustive list of factors to consider in making that determination. The two most important factors, the Court said, are the time and distance that a pollutant travels between the point source and navigable water. 140 S. Ct. at 1476–77. Other relevant factors noted by the Court include:

- the nature of the material through which the pollutant travels;
- the extent to which the pollutant is diluted or chemically changed as it travels;
- the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source;
- the manner by or area in which the pollutant enters the navigable waters; and
- the degree to which the pollution (at that point) has maintained its specific identity.

The issuance of the draft guidance unfolds against the backdrop of the transition to the Biden Administration. The new administration could decide to revoke or modify any prior guidance on applying *Maui*. And it could add to the analysis of the "functional equivalent" test by looking to jurisprudence in the water rights context, i.e., the law governing the transformation from groundwater to surface water. Further, many states already have well-developed groundwater discharge permit programs, and it would seem efficient to account for such programs in any EPA guidance. In light of these contingencies, regulated entities, states, and courts must navigate an uncertain path on a case-by-case basis.

CHAPTER 3 – MA, HE'S ON MY SIDE OF THE CAR!

Anyone who has had children or a child and a dog, knows exactly what I am talking about, boundary disputes, easements, right of ways, encroachments. That title started out as the working title, but this year has been so different that WE decided to leave it be.

Easements. An easement is the right of a person or entity to use the land of another for his or her benefit. The property receiving the benefit of the easement is called the dominant estate or dominant tenement. The property over which the easement runs is the servient estate or tenement. There are two basic types of easement:

Easement Appurtenant. *An easement appurtenant is what happens when there are two pieces of property side by side in which one property owner has use of a portion of the other property usually for the purpose of ingress and egress. An easement appurtenant will run with the land.*

Examples of easement appurtenant are a driveway over the neighbor's property, an underground easement bringing the waterline across a neighbor's property to get to the subject property.

EASEMENTS:

Easement in Gross. *With an easement in gross there is no dominant estate, simply the servient. An example of an easement in gross is a road or a railroad track or the power line. There are different ways to create and reasons for creating easements.*

- *Easements may be created by express grant or reservation. An easement may be negative or affirmative.*
- *Easements may be created by agreement or may be an implied easement.*
- *An easement may be created by prescription. This is similar to adverse possession, however rather than actually possessing the property, the possessor simply uses it.*
- *An encroachment is the unauthorized use of the subject property by the adjacent property owner. It may be a tree branch or a building or a fence that is across the line. If it is allowed to continue, it could ripen into either an easement by prescription or actual adverse possession.*

There are ways to terminate an easement.

► *Merger* – Dominant estate buys the servient or vice versa.

► *Abandonment accompanied by end of purpose* – If the easement was for a particular purpose such as ingress and egress and it was no longer needed for that purpose, this would constitute abandonment accompanied by end of purpose.

► *Agreement* – The two property holders agree to end the easement

CHAPTER 3 – MA, HE'S ON MY SIDE OF THE CAR!

A limited right to use the property for another, usually for a specific purpose is called a ***license.*** It could be a permission slip to go on a property such as permission to post a notice or go hunting.

John & Marie Burn v Douglas and Jenelle Poropat, et al, unpublished Michigan Court of Appeals, May 16, 2019 No. 342045

FACTS IN THE CASE: In a bench trial from 1990, the Burns' predecessors were ordered a prescriptive easement for the purpose of providing a driveway for ingress to their property and to provide for parking and all other activities reasonably associated with driveways in residential areas. In 2015 the Burns purchased the property and installed a second garage and a cement driveway onto the prescriptive easement. In September of 2016, they proposed to modify the driveway and encroach ten feet further unto the Poropat's property as it would "better facilitate the intent of the easement and insure the safety and welfare of all visitors and invitees to their home. The Poropats then installed landscape boulders in the driveway and refused to remove them.

QUESTION BEFORE THE COURT: Does the plaintiff, have the right to pave the property and use it for their driveway? Thereby increasing their actually easement use by ten feet.? Plaintiffs argued that paving their new driveway into the easement, installing a basketball court and water by their new garage were permissible improvements.

RESULT: The trial court noted the gravel driveway had been in its same state for at least 57 years without problems. An easement holder does not have the right to occupy and possess that land as does the fee owner. So long as the Poropats do not interfere with the Burns right of ingress and egress, they may landscape and maintain their property as they see fit.

EASEMENT BY NECESSITY:

Matthey and Mark Gronda v Hawkins, Ross, Jacques, LeClair et all, NO 350255 Michigan Court of Appeals No. 350255 Iosco County.

FACTS IN THE CASE: In the 1930s. the McDonnels owned a large parcel of property. Between 1939 and the mid-1950s, they divided and sold the property. The resulting hunting and recreational land parcels varied in size between 160 and 320 acres. A private road named Knute Road was created and connects to a public road know as Old US 23. The Grondas acquired parcel one. For over 50 years, plaintiffs and its predecessors accessed parcel one by traverseing federal lands. The federal permit expired and the United States Forestry Service (USFS) closed the trail.

QUESTION BEFORE THE COURT: Could the Grondas force an easement by necessity over Hawkins property? Hawkins proposed a compromise trail along his southern border which would have been 1214 feet.

RESULTS: The court determined the route proposed by the Grondas would be near Hawkins cabin, hunting areas, near ponds and deer blinds, open feeding areas campfires sites, camper sites and much other outdoor recreational activity. The court did indeed rule the Grondas would be granted an easement by

necessity, but it would have to be along either the southern or northern boundaries of the Hawkins property and not through the middle thereby violating privacy.

EASEMENT IMPROVEMENTS BY THE SERVIENT ESTATE:

Andrew and Annette Plocienniczak, Robirt and Kathleen Morritz v James Duer III and Lake Michigan Senior Living, LLC, Michigan Court of Appeals 10/22/2020, #349131 Mason County.

FACTS IN THE CASE: Defendant wanted to build four assisted-living facilities whouch would each house six residents and their spouses if the spouses were not also in need of care. There would be one caregiver per property and one overall supervisor. The easement to the land was a 25 foot wide two-track road which was only graded to 10 or 12 feet wide.

QUESTIONS BEFORE THE COURT: First of all could up to thirteen people live together and be considered a family? Secondly could Duer and his LLC pave the full 25 foot easement for the purpose of ingress and egress?

RESULTS: Courts have long held the definition for a family to be a group of people who intend to live together for a period of time. The easement holder's uses of the easement is limited to the purpose for which it was granted and must impose "as little burden as possible to the fee owner of the land," but the easement holder nevertheless enjoys "all such rights are incident or necessary to the reasonable and property enjoyment of the easement."

DOES A GATE INFRINGE UPON THE DOMINANT'S RIGHT OF USE OF THE EASEMENT?

Ralph and Sue Smith v Joseph W Straughn and Joseph W. Straughn Revocable Trust, Michigan Court of Appeals, January 28, 2020 #345391, Cass Circuit Court.

FACTS: Joseph W. Straughn was broken into and installed a gate at the base of his property, parcel C. The easement which covered Parcels A, B, C, D, and E. Parcel E was on US_12 with all the other parcels being landlocked and further north of E. Plaintiff neither gave permission nor objected. The roadbed was 14-foot wide and the gate opened to 19.5- feet and was not locked. The plaintiff complained the gate required them to get out of their car to open. Straughn offered to install an electric motor on the fence, but the Smiths declined.

QUESTION BEFORE THE COURT: Did the fence and gate impeded the Smiths from their use of the easement?

RESULT: The easement was silent regarding the installation of fences, neither prohibiting them nor reserving the right to install them. Defendant, as prevailing party may tax costs.

FROM ANOTHER STATE

Leonard v. Pantich, 2020 WL 5049098 (N.J. Super. Ct. App. Div. Aug. 27, 2020).

FACTS: Plaintiff purchased her property in 2006, and obtained a survey that showed that defendant's fence encroached on the rear of her property. She later obtained a $600 settlement from her title insurance company for this encroachment. In 2010, she sent defendant a letter asking defendant to remove his fence,

but he refused. In 2015, defendant "replenished" his stone driveway located near the front of the parties' properties. Although defendant claimed the location of the driveway did not move, plaintiff claimed the driveway was extended across the property line into her property. In 2018, plaintiff brought this action for quiet title regarding both the fence and the driveway.

QUESTION BEFORE THE COURT: Could the defendant adverse possession or a prescriptive easement. After a bench trial, the trial court issued a decision in favor of plaintiff. It held that the fence encroached onto plaintiff's property by under a foot and the driveway encroached by 3-4 feet, and that defendant had not adversely possessed the same. The defendant then wanted to argue that the element of hostility began when she informed to move the fence. Of course, that was 2010 and fifteen years had not expired in 2018.

RESULT: The defendant only mowed the area near the fence in no fashion put in any substantial improvements.

1. If someone uses the property of another for a statutory period of time (fifteen years in Michigan), one may actually acquire ownership. The use must be:

- Continuous
- Notorious
- Hostile
- Exclusive

In Michigan, tacking on may be permitted in some cases. For example: Property owner Joan built a storage shed on Sue's adjacent lot. It remained in use for eight years. Joan sold her property to Edward. Seven more years went by. By law in Michigan, Edward may be able to tack Joan's eight years onto his seven for a total of fifteen. An action in court called a "quiet title suit" would still be required to gain ownership.

Another method in which a property boundary line may be moved is acquiescence. The adjacent property owners simply accepted what appeared to be the boundary as the true boundary. Once again, the period if fifteen years.

Kenneth L. White v William J and Marianne Ochalek, Michigan Court of Appeals, Alcona County June 11, 2020

FACTS: The boundary line between the adjoining lots abutting Hubbard Lake plaintiff bought the property to the west in 1990 and defendants bought theirs in 1998. There was a triangular-shaped piece of land measuring 29 feet and 8 inches between the boundaries of their properties. Each parties' deeds probide they own 100 fee of water frontage. To solve an erosion problems neighbors got together and installed a seawall. In 2001they installed a davit arm to use for their watercrafts. In 2011, plaintiff unilaterally moved the arm to its current location.

QUESTION BEFORE THE COURT: Could the plaintiff's use of the property ripen to either adverse possession or acquiescence? The Ochaleks wrote a letter to the plaintiff in 2010 stating, "The Ochaleeks have no issue with your use and enjoyment of the water and sea wall, so long as you do not create an

ownership interest. Technically, the installed lights are a trespass, and a continuing one on the Ochalek's property."

RESULT: The plaintiffs use lacked the required fifteen years and the element of hostility was absent as the Ochaleks had granted permission. The court also ruled that acquiescence did not occur, because both parties had acknowledged they were aware of the true boundaries.

PREMISES LIABILITY:

Keeping it Safe

"Premises liability" relates to the responsibility of landowners and other possessors of real property to exercise the appropriate level of care to protect persons who enter onto that property. Michigan courts have been reassessing some of the principles of premises liability law which have existed for many years, primarily because this area of law is one of the most litigious. This concept deals with everything from "slip and falls" to attractive nuisances to intentional acts to liability for the actions of criminals and other third parties.

It is important for the real estate licensee to have a rudimentary knowledge of this subject by virtue of the licensee's possible exercise of control over real property during the course of agency - perhaps while showing a property or while "managing" it in the absence of the owner.

Liability factors include:

- Control of the property

- Knowledge of unreasonable risks
- Assumption of liability for certain risks (e.g. a provision in a lease assigning responsibility for repairs)
- Ownership of the premises
-

Legal status of the person who is injured. The standard of care owed to the injured person may vary depending upon his/her legal status. Other factors include the type of activity being conducted on the premises, warnings of hazards and the age of the injured person.

►***Invitees.*** An invitee is either a public invitee or a business visitor. A *public* invitee is a person who is invited to enter or remain on premises as a member of the public, for a purpose for which the premises is held open to the public. A *business* visitor is a person who is invited to enter or remain on the premises for a purpose directly or indirectly connected with business dealings with the possessor of the premises. An invitation may be either expressed or implied. It is the duty of the possessor of the premises to exercise reasonable care for the protection of an invitee. She must warn the invitee of dangers of which she knows or has created and must inspect the premises to discover possible dangerous conditions of which she does not know. She must take reasonable precautions to protect the invitee from dangers that are foreseeable. *However, the possessor is not an insurer of the safety of an invitee, and her duty is only to exercise reasonable care for an invitee's protection.* The mere existence of a defect or danger is not enough to establish liability unless it is shown to be of such a character or of such duration that it would have been discovered by a reasonably careful person.

►***Licensees.*** A licensee is a person who, other than for a business purpose, enters on another's premises with the express or implied permission of the owner or person in control of the premises. *A social guest is a licensee, not an invitee.* A possessor of premises is *liable for physical harm* caused to a licensee by a condition on the premises *if, the possessor:*

- knew or should have known of the condition and realized that it involved an unreasonable risk of harm to the licensee
- failed to exercise reasonable care to make the condition safe, or to warn the licensee of the condition and the risk involved; especially if the licensee did not know or have reason to know of the condition and the risk involved.

►***Trespassers.*** *A trespasser is a person who goes on the premises of another without an express or implied invitation, for his or her own purposes and not in the performance of any duty to the owner.* It is not necessary that in making such an entry the trespasser have an unlawful intent. If a possessor of premises did not know, and in the exercise of ordinary care could not have known of the presence of a trespasser on his premises, *he owes the trespasser no duty to either make the premises safe or warn the trespasser of conditions existing on the premises.* After a possessor of premises is aware of the presence of a trespasser, or if in the exercise of ordinary care he should have known of the trespasser's

presence, he is bound to use ordinary care to prevent injury to the trespasser arising from active negligence.

Ownership or Possession of Premises

Exercise of Dominion and Control. Historically, liability has been based upon possession, control or dominion over the premises. The general rule is that the individual who exercises dominion and control over the premises is liable for persons injured there. However, ownership can also form the basis for potential liability. Some cases have even held the previous owner of a property liable for injuries that occur after transfer of the property where the predecessor had special knowledge of a defect in the premises.

Theories of Liability

The Courts have developed several theories of liability with respect to Injuries suffered on the premises of another.

Negligence is defined as:

- Breach of a duty owed to a person which causes injury.
- To avoid a claim for negligence, the Defendant must show that he/she exercised "reasonable care" for the protection of the injured person, to protect him/her from "foreseeable harm".

Keep in mind, you may be expanding your workplace to more than just the place where your sign is located.

SIDEWALK MAINTAINENCE:

Donna Logan v City of Southgate, unpublished October 29, 2929 #348644 Wayne County

FACTS: Plaintiff was walking her dog and watching another dog-walker a couple of blocks away. Her foot caught on a raised sidewalk which was five inches higher than the neighboring slab. When she fell, she hit her head and broke her arm requiring surgery and therapy. If the raise is at least two inches ad has been that way for at least 30 days, there could be an obligation for the municipality to repair the defect. The county argued in response that the defect was open and obvious.

CHAPTER 3 – MA, HE'S ON MY SIDE OF THE CAR!

QUESTION BEFORE THE COURT: Was the five inch gap open and obvious and therefore should have been noticed by the plaintiff?

RESULT: The appellate court affirmed the lower courts decision and held the municipality was not liable as "uneven sidewalks are a common occurrence in Michigan", and the plaintiff should have noticed. Defendant having prevailed in full may tax costs.

ENVIRONMENTAL ISSUES:

Jill Powell, Gail Banovic, Bonita Norfleet, Demetrious Kennerly, Sharon Roane and Microslaw Fietko v Revitalizing Auto Communities Environmental Response Trust and Racer Properties, LLC , For Publication August 13, 2020 #34690 Oakland County

FACTS: Plaintiffs filed this class action on behalf of the USPS workers at the Metoroplex Processing and Distribution Center in Pontiac, Michigan. The property on which the Metroplex was built had been a storage facility for General Motors to hold hazardous chemicals. GM retained an access easement to properly conduct cleanup and remediation. After GM filed for bankruptcy in 2009, Motors Liquidation Company became the owner of the property and was to handle any existing and prior environmental liability claims. In 2011 The bankruptcy court established the defendant , RACER trust. The ground does contain petroleum- based toxins. Plaintiff maintain they have been exposed to hazardous levels of methane and other toxic gasses since August 2015.

QUESTION BEFORE THE COURTS: Because the leasehold agreement with GM only held them liable for existing pollution on the property and USPS was to assume liability for future pollution, and testing in 2016 did show elevated levels of benzene, could RACER be held liable for the clean-up?

RESULT: The appellate court reversed the trial court verdict and remanded back to trial court to determine the amount of damages. Plaintiffs, having prevailed, may tax costs.

TRIBAL LAND

Beth Eva and John G. Smith v Stephen E. and Maureen E. Landrum, for Publication, October 29, 2020 #347402 Baraga County

CHAPTER 3 – MA, HE'S ON MY SIDE OF THE CAR!

FACTS : There are three major tribal groups in Michigan today: the **Chippewa (Ojibwe**), **Ottawa** (**Odawa**), and **Potawatomi** (Bodawotomi). They comprise what is called the Three Fires Council. Although these three tribes have similar cultures and share the same territory, there still are some historical differences. Since 1934 Tribal trust land is under the jurisdiction of the Secretary of the Interior. There are three basic categories of land tenure in held by Native Americans: tribal trust lands, allotted trust lands, and fee lands. Tribal trust lands are held in trust by the United States government for the use of a tribe. The United States holds the legal title, and the tribe holds the beneficial interest. This is the largest category of Indian land. Tribal trust land is held communally by the tribe and is managed by the tribal government. Tribal members share in the enjoyment of the entire property without laying claim to individual parcels. The tribe may not convey or sell trust land without the consent of the federal government. Tribes may acquire additional land and have it placed in trust with the approval of the federal government. The property in question was placed in the Trust when it was owned by Mark Perrault who was Indian. Upon his passing the property went to his wife who was not Indian. She later sold the property to a non-Indian.

QUESTION BEFORE THE COURT: Typically disputes on tribal lands cannot be litigated in state court but have to go to federal court. While the property was within the boundaries of the tribal land, once it was owned fee-simple by a non-Indian, would the rule apply? The question presented in this quiet title action is whether a state court has subject-matter jurisdiction to decide an easement dispute in favor of a non-Indian on land owned by a non-Indian when the land is located on an Indian reservation. The trial court concluded that it did not, and therefore entered a final order granting defendants' motion for summary disposition.

RESULT: Now that the land is non-Indian fee land, the presumption is against tribal jurisdiction, and resolution of the easement dispute between non-Indians on non-Indian land. Indian fee lands will have no meaningful impact on the tribe's authority over the reservation and its members. State court jurisdiction exists to decide this matter. For these reasons, we reverse the trial court's order granting defendant's motion for summary disposition, and remand for further proceedings. We do not retain jurisdiction. No costs to either party.

CHAPTER 4 – PRACTICING SAFE REAL ESTATE

With more and more agents practicing real estate from home, extra care measures need to be implemented. If you have people's private information in your computer and you have "enable file sharing" turned on, you are putting them at risk when you use your computer in a free public WiFi location. CNet has a great article on turning off your sharing and installing a VPN in your computer. Are you one of the 151.5 million people who had your personal identifying information hacked at Equifax? Certifid had detailed instructions and links as to how to put a credit freeze on your credit report at all four (yes, there are four) credit reporting companies. Jupiter Research indicates that Cyber Fraud has hit 2 Trillion Dollars. If I were to stack dollars at one per second, it would take 12 days to stack one million. It would take thirty-two years to stack a billion and it would take three-thousand two hundred years to stack a trillion.

If you get hacked at the local coffee shop or open an attachment in an email which is infected, you may allow the hackers full access to your data and your email. The latest scam that is going around today, is one in which the bug is planted, and the hacker patiently waits until you have a cash buyer that is worthwhile. They then, either email the buyer posing as you or posing as an employee of the title company and tell the buyer how much money to wire and where to wire it. There was pending litigation in Colorado in which a retired couple who worked all of their lives to buy the dream home for retirement and lost $300,000 and are living in their son's basement. Of course, they are suing the title company, the banks, the broker and the agent. Nobody warned them about the possible scam. There has been at least a half dozen of these attacks in Michigan. If you can afford it, you need to get a secure email portal.

If you cannot, you need to tell your clients that you will never email them with the wiring information. If you must email them, inform them they need to verify the validity of this with you via telephone before proceeding. The Importance of Data Security and Privacy Most real estate businesses — brokerages, associations, and MLSs — keep sensitive, personal information in their files. Brokers and agents collect personal information for a variety of reasons, including:

• Social Security numbers in order to perform credit checks on renters or to complete a short sale transaction;

• Bank account information and Social Security numbers contained in mortgage documents and closing statements;

• Personal checks given as earnest money;

• Credit card information to make various payments for inspections or appraisals; or

• Drivers' license numbers as a safety precaution when agents leave the office with a new client for the first time. Often, this personal information is collected because the agent is trying to help a client, but in reality, the agent may be helping himself and his broker to legal risk. Associations may collect members' credit card or bank account information in relation to payments for educational courses, RPAC contributions, or other goods and services. Also, associations are employers, so they may also collect employees' Social Security numbers and health information. If personal information falls into the wrong hands, it can lead to fraud, identity theft, or similar harms. State legislatures realized the potential for this harm and have enacted laws to help protect

consumers' personal information. Given the cost of a security breach and the potential reputational harm, safeguarding personal information is just plain good business.

KNOW THE LAWS: It is important for you to know the laws regarding data security and privacy that affect your organization. The purpose of most data security regulation is to encourage businesses to protect personal information under their control in order to avoid misappropriation of that information. Some states have enacted laws that require businesses to have a written information security program in place, dispose of personal information that serves no business purpose, and notify individuals when their personal information may have been accessed because of a security breach. Most state and pending federal legislation allows businesses to take a reasonableness approach to implementing a security program by taking into account the particular business's size, scope of business, amount of resources, and nature and quality of data collected or stored. Currently, there are no federal laws regarding data privacy that specifically apply to real estate associations or brokerages. However, the GrammLeach-Bliley Financial Modernization Act applies to businesses that qualify as financial institutions pursuant to the Act. Some associations and brokerages may also be subject to the Identity Theft Red Flags and Address Discrepancy Rules (Red Flags Rules) contained in the Fair and Accurate Credit Transactions Act of 2003 (FACTA).3 The Red Flags Rules require all creditors, and those that regularly arrange for credit to be provided, to establish policies and procedures to protect against identity theft. Although a comprehensive, federal data security law does not exist right now, several federal bills that address data security and privacy have been proposed and debated in Congress, and legislation may be forthcoming. These bills contain many elements commonly found in existing state laws, so compliance with state laws should be a good step toward compliance with any future federal legislation. The National Conference of State Legislatures (NCSL) maintains a list of state data security and privacy laws and pending legislation. This website is an extremely helpful resource to determine which states maintain such laws and where those laws are codified. According to NCSL, 29 states have some type of law regarding the proper disposal of personal information4 and 47 states, D.C., Puerto Rico, and the Virgin Islands have laws regarding notification requirements in the event of a security breach. The various state laws regarding data security have many common elements but some differences as well. For example, each state has its own definition of "personal information." In Massachusetts, "personal information" is defined as: A resident's first name and last name (or first initial and last name) in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number (or credit or debit card number) with or without any required security code, access code, personal ID number or password that would permit access to a resident's financial account. Gramm-Leach-Bliley Financial Modernization Act (P.L. 106-102, 113 Stat. 1338) (1999). Fair and Accurate Credit Transactions Act of 2003; Pub. Law 108-159 (Dec. 4, 2003); 117 Stat. 1952. To learn more about the Red Flags Rules and how it may affect your organization, check out: https://www. ftc.gov/tipsadvice/business-center/privacy-and-security/red-flags-rule National Conference of State Legislatures, "Data Disposal Laws," available at: http://www.ncsl.org/default.aspx?tabid=21075. National Conference of State Legislatures, "State Security Breach Notification Laws," available at: http://www.ncsl.org/default. aspx?tabid=13489. For the purpose of this chapter, "personal information" will be interpreted broadly to mean any information that can be used to uniquely identify, contact, or locate a single

person, or can be used with other sources to uniquely identify a single individual. In regard to compliance, it is necessary for businesses to consult applicable law and advisable to consult legal counsel.

IDENTITY THEFT PROTECTION ACT (EXCERPT) Act 452 of 2004 445.72a Destruction of data containing personal information required; violation as misdemeanor; fine; compliance; "destroy" defined. Sec. 12a. (1) Subject to subsection (3), a person or agency that maintains a database that includes personal information regarding multiple individuals shall destroy any data that contain personal information concerning an individual when that data is removed from the database and the person or agency is not retaining the data elsewhere for another purpose not prohibited by state or federal law. This subsection does not prohibit a person or agency from retaining data that contain personal information for purposes of an investigation, audit, or internal review. (2) A person who knowingly violates this section is guilty of a misdemeanor punishable by a fine of not more than $250.00 for each violation. This subsection does not affect the availability of any civil remedy for a violation of state or federal law. (3) A person or agency is considered to be in compliance with this section if the person or agency is subject to federal law concerning the disposal of records containing personal identifying information and the person or agency is in compliance with that federal law. (4) As used in this section, "destroy" means to destroy or arrange for the destruction of data by shredding, erasing, or otherwise modifying the data so that they cannot be read, deciphered, or reconstructed through generally available means. 445.72 Notice of security breach; requirements. Sec. 12. (1) Unless the person or agency determines that the security breach has not or is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state, a person or agency that owns or licenses data that are included in a database that discovers a security breach, or receives notice of a security breach under subsection (2), shall provide a notice of the security breach to each resident of this state who meets 1 or more of the following: (a) That resident's unencrypted and unredacted personal information was accessed and acquired by an unauthorized person. (b) That resident's personal information was accessed and acquired in encrypted form by a person with unauthorized access to the encryption key. (2) Unless the person or agency determines that the security breach has not or is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state, a person or agency that maintains a database that includes data that the person or agency does not own or license that discovers a breach of the security of the database shall provide a notice to the owner or licensor of the information of the security breach. (3) In determining whether a security breach is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state under subsection (1) or (2), a person or agency shall act with the care an ordinarily prudent person or agency in like position would exercise under similar circumstances.

(4) A person or agency shall provide any notice required under this section without unreasonable delay. A person or agency may delay providing notice without violating this subsection if either of the following is met:

(a) A delay is necessary in order for the person or agency to take any measures necessary to determine the scope of the security breach and restore the reasonable integrity of the database.

However, the agency or person shall provide the notice required under this subsection without unreasonable delay after the person or agency completes the measures necessary to determine the scope of the security breach and restore the reasonable integrity of the database. (b) A law enforcement agency determines and advises the agency or person that providing a notice will impede a criminal or civil investigation or jeopardize homeland or national security. However, the agency or person shall provide the notice required under this section without unreasonable delay after the law enforcement agency determines that providing the notice will no longer impede the investigation or jeopardize homeland or national security.

(5) Except as provided in subsection (11), an agency or person shall provide any notice required under this section by providing 1 or more of the following to the recipient: (a) Written notice sent to the recipient at the recipient's postal address in the records of the agency or person. (b) Written notice sent electronically to the recipient if any of the following are met: (i) The recipient has expressly consented to receive electronic notice. (ii) The person or agency has an existing business relationship with the recipient that includes periodic electronic mail communications and based on those communications the person or agency reasonably believes that it has the recipient's current electronic mail address. (iii) The person or agency conducts its business primarily through internet account transactions or on the internet. (c) If not otherwise prohibited by state or federal law, notice given by telephone by an individual who represents the person or agency if all of the following are met: (i) The notice is not given in whole or in part by use of a recorded message. (ii) The recipient has expressly consented to receive notice by telephone, or if the recipient has not expressly consented to receive notice by telephone, the person or agency also provides notice under subdivision (a) or (b) if the notice by telephone does not result in a live conversation between the individual representing the person or agency and the recipient within 3 business days after the initial attempt to provide telephonic notice. (d) Substitute notice, if the person or agency demonstrates that the cost of providing notice under subdivision (a), (b), or (c) will exceed $250,000.00 or that the person or agency has to provide notice to more than 500,000 residents of this state. A person or agency provides substitute notice under this subdivision by doing all of the following: (i) If the person or agency has electronic mail addresses for any of the residents of this state who are entitled to receive the notice, providing electronic notice to those residents. (ii) If the person or agency maintains a website, conspicuously posting the notice on that website. (iii) Notifying major statewide media. A notification under this subparagraph shall include a telephone number or a website address that a person may use to obtain additional assistance and information.

(6) A notice under this section shall do all of the following: (a) For a notice provided under subsection (5)(a) or (b), be written in a clear and conspicuous manner and contain the content required under subdivisions (c) to (g). (b) For a notice provided under subsection (5)(c), clearly communicate the content required under subdivisions (c) to (g) to the recipient of the telephone call. (c) Describe the security breach in general terms. (d) Describe the type of personal information that is the subject of the unauthorized access or use. (e) If applicable, generally describe what the agency or person providing the notice has done to protect data from further security breaches. (f) Include a telephone number where a notice recipient may obtain assistance or additional information. (g) Remind notice recipients of the need to remain vigilant for incidents of fraud and identity theft.

(7) A person or agency may provide any notice required under this section pursuant to an agreement between that person or agency and another person or agency, if the notice provided pursuant to the agreement does not conflict with any provision of this section.

(8) Except as provided in this subsection, after a person or agency provides a notice under this section, the person or agency shall notify each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in 15 USC 1681a(p), of the security breach without unreasonable delay. A notification under this subsection shall include the number of notices that the person or agency provided to residents of this state and the timing of those notices. This subsection does not apply if either of the following is met: 2018 Michigan Comprehensive Legal Update 23 (a) The person or agency is required under this section to provide notice of a security breach to 1,000 or fewer residents of this state. (b) The person or agency is subject to 15 USC 6801 to 6809.

(9) A financial institution that is subject to, and has notification procedures in place that are subject to examination by the financial institution's appropriate regulator for compliance with, the interagency guidance on response programs for unauthorized access to customer information and customer notice prescribed by the board of governors of the federal reserve system and the other federal bank and thrift regulatory agencies, or similar guidance prescribed and adopted by the national credit union administration, and its affiliates, is considered to be in compliance with this section.

(10) A person or agency that is subject to and complies with the health insurance portability and accountability act of 1996, Public Law 104-191, and with regulations promulgated under that act, 45 CFR parts 160 and 164, for the prevention of unauthorized access to customer information and customer notice is considered to be in compliance with this section.

(11) A public utility that sends monthly billing or account statements to the postal address of its customers may provide notice of a security breach to its customers in the manner described in subsection (5), or alternatively by providing all of the following: (a) As applicable, notice as described in subsection (5)(b). (b) Notification to the media reasonably calculated to inform the customers of the public utility of the security breach. (c) Conspicuous posting of the notice of the security breach on the website of the public utility. (d) Written notice sent in conjunction with the monthly billing or account statement to the customer at the customer's postal address in the records of the public utility.

(12) A person that provides notice of a security breach in the manner described in this section when a security breach has not occurred, with the intent to defraud, is guilty of a misdemeanor punishable as follows: (a) Except as otherwise provided under subdivisions (b) and (c), by imprisonment for not more than 93 days or a fine of not more than $250.00 for each violation, or both. (b) For a second violation, by imprisonment for not more than 93 days or a fine of not more than $500.00 for each violation, or both. (c) For a third or subsequent violation, by imprisonment for not more than 93 days or a fine of not more than $750.00 for each violation, or both. (13) Subject to subsection (14), a person that knowingly fails to provide any notice of a security breach required under this section may be ordered to pay a civil fine of not more than $250.00 for each

failure to provide notice. The attorney general or a prosecuting attorney may bring an action to recover a civil fine under this section. (14) The aggregate liability of a person for civil fines under subsection

(13) for multiple violations of subsection (13) that arise from the same security breach shall not exceed $750,000.00. (15) Subsections (12) and (13) do not affect the availability of any civil remedy for a violation of state or federal law. (16) This section applies to the discovery or notification of a breach of the security of a database that occurs on or after July 2, 2006. (17) This section does not apply to the access or acquisition by a person or agency of federal, state, or local government records or documents lawfully made available to the general public. (18) This section deals with subject matter that is of statewide concern, and any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to regulate, directly or indirectly, any matter expressly set forth in this section is preempted.

FTC: FIVE KEY PRINCIPLES TO A SOUND DATA SECURITY PROGRAM The Federal Trade Commission has set forth the following five key principles for businesses to follow when creating a data security program.

1 Take stock. Know what personal information you have in your files and on your computers.

2 Scale down. Keep only what you need for your business.

3 Lock it. Protect the information that you keep.

4 Pitch it. Properly dispose of what you no longer need.

5 Plan ahead. Create a plan to respond to security incidents. Take Stock Perform an information inventory to discover what type of information your business maintains and why; who maintains or has access to the collected information; how the information is collected; and whether a user or consumer may opt-out of your collection of the information. The more thorough your inventory, the better equipped you'll be when creating the written data security program and the better protected your organization will be. In order to track what information your business is collecting, talk to representatives in your information technology staff, human resources office, accounting personnel, outside service providers, and independent contractors. Association executives and brokers should also inventory all computers, laptops, flash drives, disks, home computers, mobile devices, and other equipment to find out where sensitive data is stored. Scale Down Once you've performed an information inventory and understand what type of information your business collects and how and why, it's time to consider whether or not you need to continue collecting or retaining such information. Here's the rule: If your association or brokerage does not have a legitimate business need for the personally identifying information — then don't collect it. If there is a legitimate business need for the information, then keep it only as long as it's necessary. Once that business need is over, then properly dispose of it. If you must keep information for business reasons or to comply with the law, then develop and adhere to a document retention policy to identify what information must be kept, how to secure it, how long to keep it, and how to dispose of it securely when you no longer need it. Refer to the tips for creating a Document Retention

Policy provided in the section titled "Pitch It." If your association or brokerage must collect credit card information, the FTC offers a few tips for maintaining security:

• Only print the truncated credit or debit card number on consumer receipts and do not include the card's expiration date.

• Don't retain the credit card account number or expiration date unless you have an essential business need to do so.

• Check the default settings on your software that reads credit card numbers and processes the transactions. Sometimes it's preset to keep information permanently, so change the default setting to make sure you're not keeping information you don't need. 10 Federal Trade Commission, "Protecting Personal Information; A Guide for Business," available at: http://www.ftc.gov/infosecurity/. Lock It Now you've taken stock and know what personal information your organization collects, how it is collected, and why. You've scaled down and know what personal information is necessary for you to continue collecting and what information you can avoid collecting in the future. Now it's time for you to protect the personal information you maintain. The FTC recommends four key elements for your protection plan: physical security, electronic security, employee training, and the security practices of contractors and service providers.

CHECKLIST FOR PROTECTING PERSONAL INFORMATION The following checklist contains tips and recommendations for protecting personal information. For more guidance on protecting personal information, check out the FTC's plain language, interactive tutorial at www.ftc.gov/infosecurity. Pitch It According to the FTC and many state laws, proper disposal of personal information is an important step in any data security program. Implementation of a Document Retention Policy that is reasonable and appropriate will help prevent unauthorized access to personal information. But the question remains: What constitutes "proper disposal"? In general, personal information is properly disposed if it cannot be read or reconstructed. The FTC recommends that a business burn, shred, or pulverize paper records and use wipe utility programs or otherwise destroy electronic records. Simply deleting files from the computer using the keyboard or mouse commands usually isn't sufficient. Also, make sure employees who work from home follow the same procedures for disposing of personal information. Like all data security policies, there is no "one-size-fits all" model for document retention. NAR has created a "Checklist for Creating a Document Retention Policy." The following checklist provides a brief description of the process an association or brokerage should undertake in creating a Document Retention Policy. Following that is a list of different types of documents and some recommended time frames for how long the association or brokerage should maintain these records. This checklist is not intended to be comprehensive or even authoritative; rather, it is intended to serve as a guide for associations and brokerages in creating their own policies. State law will determine how long an organization needs to maintain its records. Remember, a Document Retention Policy adopted and followed by the brokerage, association or MLS will likely reduce the costs and burdens of any future litigation. 2018 Michigan Comprehensive Legal Update 25 Issues to Consider When Creating a Document Retention Policy

FORMAT USED TO MAINTAIN DOCUMENTS: Generally, there are no requirements on the type of format that must be used to maintain documents and other information. When the hard-copy originals are not legally necessary, reducing paper documents to an electronic format may be advantageous because it will save physical space. Note, however, that an increase of electronic storage could also increase discovery cost and exposure if litigation arises.

PRIVACY CONSIDERATIONS AND PROPER DOCUMENT DESTRUCTION Certain types of records, such as employment records, are governed by state or federal privacy laws. Therefore, you must be familiar with those laws and also any rules or other restrictions governing the destruction of these documents.

OTHER LEGAL CONSIDERATIONS The legal requirements for each company will vary based on a variety of factors. For example, certain employment statutes require minimum numbers of employees in the work place before they apply to a business owner. IRS audits are generally initiated within three years, but the IRS can audit a return seven years later if negligence was involved and indefinitely in cases of tax fraud. Each company must be aware of the laws that apply to their situation Issues to Consider When Creating a Document Retention Policy A number of issues will arise during the creation of a Document Retention Policy. A few are listed below:

FORMAT USED TO MAINTAIN DOCUMENTS Generally, there are no requirements on the type of format that must be used to maintain documents and other information. When the hard-copy originals are not legally necessary, reducing paper documents to an electronic format may be advantageous because it will save physical space. Note, however, that an increase of electronic storage could also increase discovery cost and exposure if litigation arises.

PRIVACY CONSIDERATIONS AND PROPER DOCUMENT DESTRUCTION Certain types of records, such as employment records, are governed by state or federal privacy laws. Therefore, you Plan Ahead. It is advisable and may be necessary to have a written data security program in place and a policy that addresses what to do in the event of a breach. Remember, your organization may be subject to the laws of multiple states if it collects personal information from residents of multiple states. So, it is important to know which laws you must adhere to. Although each state data security and breach notification law is different, they contain some common elements. For example, many laws require businesses to designate an employee to coordinate and implement the data security and breach notification program. Such laws also set forth the definition of “personal information” and the requirements of breach notification, such as who must receive notification and the timing, format, and content of such notification. Most laws also include provisions regarding a business’s liability for failure to comply, and some allow for a private right of action to allow individuals to sue businesses for actual damages that might result from not receiving timely notice of a security breach. Please remember that the information contained herein is not intended to be comprehensive or even authoritative; rather, it is intended to serve as a guide for real estate businesses in creating their own policies must be familiar with those laws and also any rules or other restrictions governing the destruction of these documents.

OTHER LEGAL CONSIDERATIONS The legal requirements for each company will vary based on a variety of factors. For example, certain employment statutes require minimum numbers

of employees in the work place before they apply to a business owner. IRS audits are generally initiated within three years, but the IRS can audit a return seven years later if negligence was involved and indefinitely in cases of tax fraud. Each company must be aware of the laws that apply to their situation. Privacy Policies: A privacy policy is a document that discloses the ways your business collects, shares, protects, and destroys personal information. Often, the privacy policy is made available on a business's website; although that practice is only required for certain types of businesses.

PERSONAL SAFETY The family of Arkansas real estate agent Beverly Carter, who was murdered in 2014 after being kidnapped from a rural property outside Little Rock, has brought a wrongful death and negligence lawsuit against her brokerage. The lawsuit, filed by Carter's husband, Carl, and their two sons, Chad and Carl Jr., alleges that the company failed in its duty to properly train Carter to avoid life-threatening situations in the course of her real estate work. The lawsuit is not being brought to recover money, but to make certain what happened to their wife and mother does not happen to another. Brokers, you probably had better consider some safety training for your agents, so you are not in a similar lawsuit. Working in real estate can be dangerous. It's common for agents to meet strangers in isolated locations at odd hours, which can be the perfect setting for an attack. According to the Bureau of Labor and Statistics, there were 77 work related deaths to real estate, rental and leasing agents per year. What is the best way to protect yourself? Arm yourself with a healthy level of mistrust and a smart approach to safety. Consider your profile: Avoid using photos that display expensive jewelry. Don't give out your home address. Don't give out your home phone number. Private showings/open houses

1. Let at least one personal contact and your office know where you are at all times.

2. Don't agree to a private showing unless you've already met a client in your office.

3. Keep your home tours safe and secure with these 18 real estate agent safety tips.

4. Have clients complete an information form (name, copy of driver's license, vehicle information) during open houses and prior to scheduling private showings.

5. Bring a co-worker along.

6. Don't leave a client in your blind spot. Let the client proceed in front of you during a private showing.

7. Drive through the neighborhood prior to a private showing or open house. Be on the lookout for safety concerns.

8. Identify each of a home's exits prior to a showing or open house. Keep exit doors unlocked.

9. Take a self-defense class.

10. Don't allow a client to ride in your car unless you know them well.

11. Don't wear expensive jewelry.

12. Leave your purse in the trunk of your car.

13. Dress professionally.

14. Buy a personal security app for your cell phone, and always keep your cell phone in your hands.

15. Buy a personal security app for your cell phone, and always keep your cell phone in your hands.

16. Be ready to defend yourself. Travel with pepper-spray.

17. Trust your instincts. If something doesn't feel right, remove yourself from the situation. Don't worry about offending a client. Your safety is paramount.