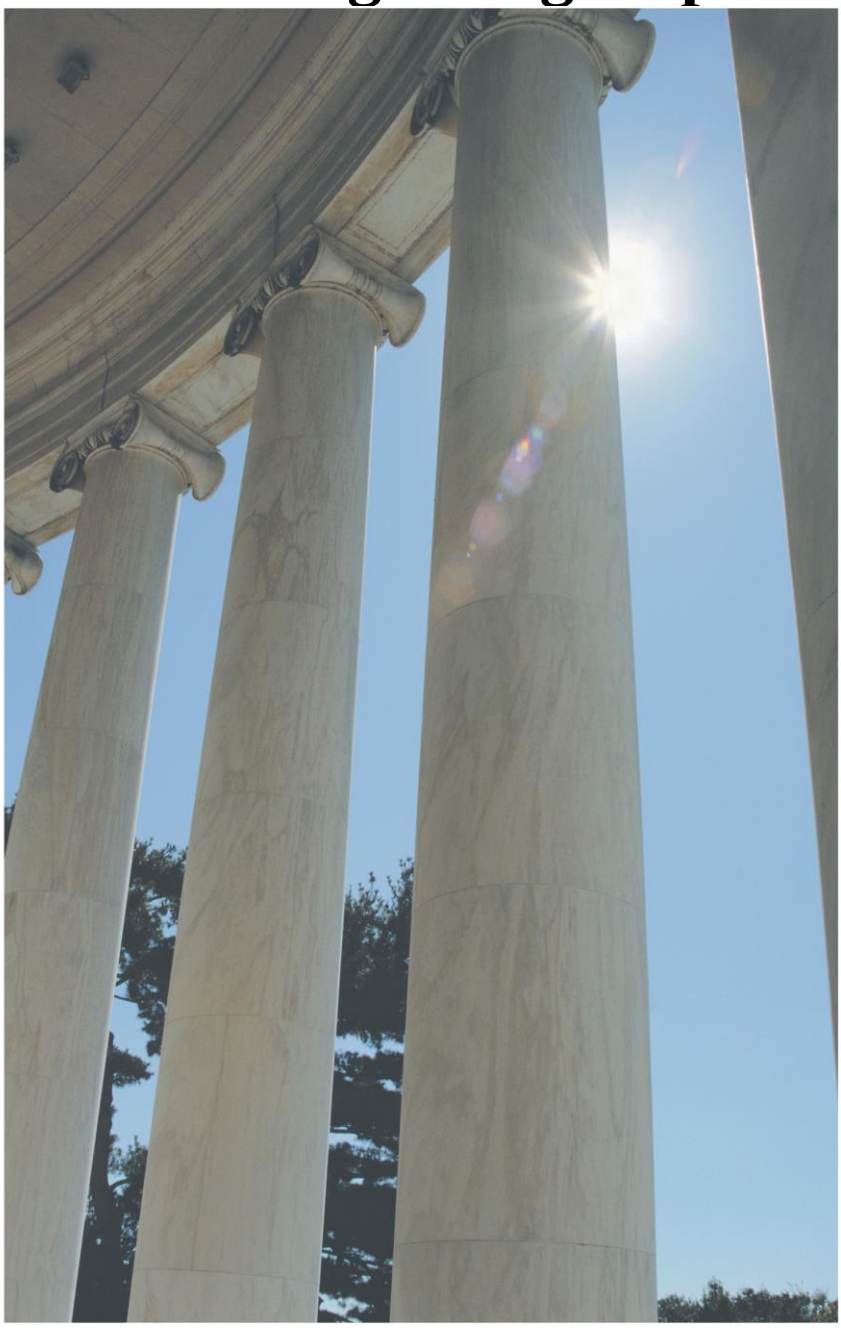
# 2022 6 Hour Michigan Legal Update

THE INSTITUTE
The Source for Continuing Education, LLC



## Real Estate Continuing Education Course

2022 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

# 2022 6 Hour Michigan Legal Update

**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 2022 Michigan Comprehensive Update satisfies six(6) clock hours of the 18 clock hours necessary to renew your license for your three (3)-year license cycle.

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.

All subject matter contained herein is intended for educational purposes only and does not necessarily provide an exhaustive summary of each statue or regulation presented. Consequently, attendees should not use it as a substitute for legal counsel or for the advice of another competent outside expert. The author, instructor, course sponsor, and publisher are not responsible for an attendee's misuse of or sole reliance upon the subject matter as presented. 

# Table of Contents

# 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 may be the expiration date of the license.

All of the salesperson or associate brokers must obtain eighteen hours of continuing education every three-year cycle. The two hours of legal update will still be required to be taken each year before the anniversary date of their cycle.

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

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 begins 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.

In 2017, the Bureau of Professional Licensing (BPL) started a project to migrate over 700,000 licenses to a new licensing platform called MiPLUS. We are happy to report this project was completed in October of this year. We would like to this opportunity to thank you for your patience and support during this multi-year transition.

We are happy to have the benefits MiPLUS offers which include an online account and an electronic application. As soon as your license is issued or renewed, you will receive an electronic copy of your license via email. Electronic copies of licenses are also stored in your MiPLUS account and can be accessed at any time.

Due to the functionality of MiPLUS, **paper copies of licenses will no longer be automatically mailed upon issuance or renewal beginning January 1, 2022**. Instead, licensees will be able to choose if they'd prefer to have a copy of their license mailed to them during the application or renewal process.

Not only does this change benefit licensees because an electronic copy is immediately available, but this change will have a positive impact on our environment by saving up to 300,000 pieces of paper each year.

To access your MiPLUS account, please visit www.michigan.gov/miplus. If you have any questions, please contact us at bplhelp@michigan.gov or 517-241-0199.

**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.

# CHAPTER 1 – CHANGES IN LAWS AND RULES

**Public Act 159 of 2020** These 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.

## Public Act 253 of 2020:

This bill amended 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. )

## Public Act 255 of 2020:

This law amended 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.

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. They are still working on several other cases around the country and are inline to present arguments before the US Supreme Court.

***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 to Oakland County 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 to Genesee County. 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.

# CHAPTER 1 – CHANGES IN LAWS AND RULES

## Landmark U.S. Supreme Court Ruling Prohibits Sexual Orientation And Gender Identity-Based Discrimination In Employment (US)

*"Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."*

In a landmark ruling issued on June 15, 2020, the U.S. Supreme Court held that an employer who fires or otherwise discriminates against an individual simply for being gay or transgender does so "because of . . . sex," in violation of Title VII of the Civil Rights Act of 1964. Writing for the majority, Justice Gorsuch, joined by Chief Justice John Roberts and the Court's four liberal Justices, ruled that it is unlawful under federal law for employers to discriminate against employees based on sexual orientation or gender identity.
Three separate decisions came before the Court on appeal, but in each case, the employer was alleged to have fired an employee because of their sexual orientation or gender identity.

- In *Bostock v. Clayton County, Georgia*, the employer fired a county employee for "unbecoming conduct" after he began participating in a gay recreational softball league.
- In *Altitude Express v. Zarda*, the employer fired a skydiving instructor days after he mentioned that he was gay.
- In *G. & G.R. Harris Funeral Homes Inc. v. EEOC,* a funeral home terminated a transgender employee's employment after six years of employment following her announcement that she would begin living openly as a woman.

The three cases resulted in different outcomes, with the Second and Sixth Circuits finding (in *Zarda* and *R.G. & G.R. Harris*) that Title VII prohibits discrimination on the basis of sexual orientation and gender identity, and the Eleventh Circuit disagreeing (in *Bostock*)

The Supreme Court resolved this Circuit split by holding that Title VII's prohibition against sex-based discrimination in employment necessarily, by its plain language, includes claims of sexual orientation and gender identity-based discrimination. Title VII makes it unlawful for an employer to discriminate against any individual "because of such individual's race, color, religion, sex, or national origin." The Court explained that the ordinary meaning of the term "because of" incorporates the traditional standard of "but-for causation," meaning that so long as the plaintiff's sex was one but-for cause of the adverse employment action, that is sufficient to trigger application of Title VII.

The Court provided an illustration of how it is impossible to discriminate against a person for being homosexual without also discriminating against that individual based on sex:
Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge.
The Court provided a similar example to illustrate this in the context of gender identity to show that the individual employee's sex plays an "unmistakable and impermissible" role in the adverse employment decision. Further, the Court asserted the role that intent plays in these decisions is unavoidable. "Just as

sex is necessarily a but-for *cause* when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably *intends* to rely on sex in its decision-making."

The Court analyzed, but ultimately rejected, the employers' various arguments why Title VII should not apply to sexual orientation or gender identity discrimination. Most notably, the employers argued that few people in 1964 would have expected Title VII to apply to discrimination against homosexual and transgender individuals, and therefore Congress likely did not intend such an application. Justice Alito, joined by Justice Thomas, penned a lengthy dissent, asserting that discrimination because of "sex" is different from discrimination because of "sexual orientation" or "gender identity," and that the role and duty of the Court is to interpret statutory terms to "mean what they conveyed to reasonable people *at the time they were written.*" Since, Justice Alito concluded, reasonable people in 1964 would not have interpreted "because of sex" to include sexual orientation and gender identity, he opined that the Court was wrong to do so now. Justice Kavanagh dissented separately. He acknowledged the significance of the Court's ruling for the LGBT community but maintained that Title VII was never intended to protect against LGBT discrimination and that, under the Constitution's separation of powers, the responsibility to amend Title VII belongs to Congress. These arguments were considered but rejected by the majority, which held that legislative intent or conventional use of the term "sex" in 1964 is irrelevant where the text itself is unambiguous and the result certain when applied to the facts. The majority acknowledged the employers' argument that this decision will extend beyond Title VII to other federal or state laws that prohibit sex discrimination or invalidate sex-segregated bathrooms, locker rooms, and dress codes, but the Court reiterated that the only issue it was deciding was that an employer who fires someone simply for being homosexual or transgender has violated Title VII. The Court also put off for another day the resolution of how its present decision regarding sexual orientation and gender identity discrimination may impact certain employers' religious liberty, as none of the employers in the cases before the Court raised such an argument before the Court in these cases.

If you enjoy reading about the history of Case Law, we highly recommend "*Because of Sex"* by Gillian Thomas. It historically tracks one law, ten cases and fifty years of the history of discrimination. She may need to write a new chapter.

Prior to the Supreme Court's decision, some states and municipalities had adopted protections against sexual orientation and/or gender identity discrimination in the workplace, but it remained legal to discriminate on these bases in most jurisdictions. As of June 15, 2020, however, discrimination on the basis of sexual orientation or gender identity illegal by all employers covered by Title VII, extending workplace discrimination protection to the approximately 11 million Americans who identify as LGBT. Although many questions remain—such as how this decision will affect other laws and how the Court will resolve future questions regarding religious expression—it is now illegal for covered employers to make employment decisions based on an individual's sexual orientation or transgender status.

Nearly every employer maintains an equal employment opportunity policy, which sets forth the employer's commitment to compliance with the law by acknowledging that it will not discriminate on the basis of an employee's (or applicant's) race, color, national origin, religion, gender, or sex. With the Court's decision, employers should promptly review and (if necessary) consider revising their anti-discrimination policies to clarify that prohibited discrimination on the basis of sex also includes sexual orientation and gender-identity based discrimination.

In January 2021, President Biden issued Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, that extends federal laws that

prohibit sex discrimination to include sexual orientation and gender identity. Based on this order, HUD's Office of Fair Housing and Equal Opportunity willfully enforce the Fair Housing Act to address discrimination inclusive of sexual orientation and gender identity; this applies to FHAP and FHIP agencies as well. This forum will outline how sexual orientation and gender identity are covered by the Fair Housing Act, establish what constitutes a prima facie case of discrimination, provide some training to improve cultural competency in this field, and specify testing and investigative tools that may be utilized to investigate cases that allege discrimination based on sexual orientation and gender identity.

One would think that would be the end of this discussion. Not so. An LGBTQ-focused health clinic in Detroit and the Catholic church in Michigan have been given permission to weigh in on opposite sides of a court case challenging a state civil rights policy.

The case is pending before the Michigan Supreme Court, which has allowed the Corktown Health Center in Detroit and the Michigan Catholic Conference to file amicus briefs.

The Michigan Department of Civil Rights says it can investigate claims of discrimination based on sexual orientation and gender identity. It says that's because the Elliott-Larsen Civil Rights Act outlaws sex discrimination, which states:

"The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right."

But a wedding venue, Rouch World, and Uprooted Electrolysis, a hair removal clinic, say the state cannot force them to serve same-sex and transgender clients under Michigan's civil rights law. The challenge notes the Legislature has refused efforts to expand the law to specifically cover sexual orientation and gender identity.

Though not direct parties, the Michigan Catholic Conference and the Corktown Health Center asked to file support briefs, each on a different side in the case.

Corktown's brief says the ability to deny LGBT people employment has sweeping implications, including access to employer-provided health insurance: "A reading of the Elliott-Larsen Civil Right Act that permits discrimination in employment and discrimination in the provision of health services against lesbian, gay, and bisexual people not only runs counter to the purpose of the Act and to federal precedent, it also adversely impacts access to health care."

The Michigan Catholic Conference brief says the Department of Civil Rights' interpretation is an amendment that expands the intent and scope of the law without action by the Legislature, saying, "The Department's interpretation—now being offered over 50 years after the enactment of the (Elliot-Larsen Civil Rights Act) — departs from the plain meaning of that law … In doing so, it leaves religious communities in its wake. This Court should reject the unlawful interpretation and allow Michiganders, through their elected representatives, to craft solutions that fully and fairly account for the rights, liberties, and consciences of all in our state."

Many parties have asked to file support briefs in the widely watched case and those are still being submitted.

Oral arguments in the case have not yet been scheduled but should take place sometime in 2022.

# CHAPTER 2 - PROPERTY MANAGEMENT & RENTALS

**House Bill 4722** would amend the Zoning Enabling Act to prohibit a county, township, city, or village from adopting or enforcing zoning ordinance provisions that have the effect of prohibiting short-term rentals. The bill would provide that the rental of a dwelling is a permitted residential (and not commercial) use of property that is not subject to special permits or procedures. A local government could adopt certain specified zoning ordinances and practices if consistently applied to rentals and other residences. Within parameters described below, a local government could limit the number of short-term rentals owned by the same person and limit the total number of short-term rentals as a percentage of all residences.


The bill also would allow the continued enforcement of certain ordinance provisions in existence on July 11, 2019. Specifically, under the bill all of the following would apply, for purposes of zoning, to the rental of a dwelling, including a short-term rental:

• It is a residential use of property and a permitted use in all residential zones.

• It is not subject to a special use or conditional use permit or procedure different from those required for other dwellings in the same zone.

• It is not a commercial use of property. Short-term rental would mean the rental, for up to 30 consecutive days, of a single-family residence, a dwelling unit in a one- to four-family house, or a unit or group of units in a condominium. A county, township, city, or village would be prohibited from adopting or enforcing zoning ordinance provisions that have the effect of prohibiting short-term rentals. However, the bill would expressly not prohibit a zoning ordinance provision that is applied on a consistent basis to rental and owner-occupied residences and regulates any of the following:

• Noise.

• Advertising.

• Traffic.

• Any other conditions that may create a nuisance.

The bill also would expressly not prohibit a county, township, city, or village from doing either of the following:

• Inspecting a residence for compliance with or enforcement of an ordinance that is not a zoning ordinance, that is for the protection of public health and safety, and that does not have the effect of prohibiting short-term rentals.

• Collecting taxes otherwise authorized by law. House Fiscal Agency HB 4722 (H-11) as passed by the House Page 2 of 2 However, a local government could limit the number of dwelling units in its jurisdiction that are used for short-term ownership and are owned in whole or in part by the same individual or individuals or legal entity—as long as that limit is not less than two units. A local government also could limit the total number of dwelling units used for short-term rental in its jurisdiction—as long as that limit is not less than 30% of the number of existing residential units and as long as it applies without regard to the location of the dwelling units.

**Short term rentals**

Anyone familiar with *"Rich Dad, Poor Dad"*, by Robert Kiosaki knows that learning to live life in the "Laid Back Lane", can usually maximize their bank account. Real estate is usually considered to be a good investment as, even during tough economic times, tends to retain its value.

When investing in real estate for vacation rental purposes, owners have to decide what they want to do with their property.

Many factors can help owners and managers weigh up whether they should opt for long or short-term vacation rentals. Most of the time, this decision is made easily and depends on the nature and the location of the property itself and the investor's goals. There are, however, several advantages and disadvantages to these two rental strategies.

# CHAPTER 2 - PROPERTY MANAGEMENT & RENTALS

**Let's familiarize ourselves with the definition of a short-term rental.**

A short-term rental (commonly referred to as a vacation rental), is the leasing out of a furnished property on a short-term basis. Depending on the owner, rental location and many other factors, these properties are rented by the week or by the night. Many owners of short-term vacation rentals rent their property for the majority of the year when they are not using it themselves.

They have become a hugely popular alternative to hotels in the last 20 or so years, most notably with the surge of sharing economy websites such as HomeAway, Airbnb and Vrbo. While long-term rentals offer consistent income and are generally easier to manage, there are several advantages to consider for a short-term rental instead:

**1. Higher rental income potential**
Not only can one set fluctuating rates depending on the area's seasonal activity. One can also set a minimum length of stay for the more popular times of the year.

**2. More flexibility**
For owners who rent their properties short-term, there is a lot more flexibility involved for them. They can specifically block off calendar periods to keep free for your personal use without inconveniencing anyone.

**3. Less wear and tear**
In general, vacation rental contract lengths range from a few days to a few weeks maximum. Receiving guests in short bursts like these ensure that guests are simply visiting your property, and so won't be thinking about redecorating or rearranging furniture.

**4. Tax rules, breaks and deductions**
Many vacation rental owners are entitled to certain tax breaks and deductible expenses. Be sure to check your local authority's rules and regulations on this.

A. If you rent out your house for 14 days or fewer during the year, you don't have to report the rental income on your tax return. And there's no limit to how much you can charge. The house is considered a personal residence, so you deduct mortgage interest and property taxes just as you do for your primary home.

B. If you rent out your house for more than 14 days, you become a landlord in the eyes of the IRS. That means you must report your rental income. But it also means you can deduct rental expenses. It can get complicated because you need to allocate costs between the time the property is used for personal purposes and the time it is rented.

C. If you use the place for more than 14 days or more than 10% of the number of days it is rented -- whichever is greater -- it is considered a personal residence. You can deduct rental expenses up to the level of rental income. But you can't deduct losses.

D. The definition of "personal use" days is fairly broad. They may include any days you or a family member use the house (even if the family member is paying rent). Personal days also include days on which you have donated use of the house -- say, to a charity auction -- or have rented it out for less than fair market value.

E. If you limit your personal use to 14 days or 10% of the time the vacation home is rented, it is considered a business. You can deduct expenses and, depending on your income, you may be able to deduct up to $25,000 in losses each year. That's why many vacation homeowners hold down leisure use and spend lots of time "maintaining" the property; fix-up days don't count as personal use. Very importantly, rentals of less than 30 (thirty days) are subject to sales tax in the state of Michigan.

**Challenges of short-term vacation rentals**
When managing a vacation rental, you will have to consider looking into local laws, property maintenance and slow seasons.

# CHAPTER 2 - PROPERTY MANAGEMENT & RENTALS

**1. More maintenance and upgrades.** When your business is vacation rentals, you need to maintain a great general upkeep of the property, or you could receive some negative reviews. Not only does this include things such as regular cleaning, maintenance such as drain unclogging and paint fixes, it also considers changing technologies and modern inventions. You'll need to update your rental amenities every so often to include all the essentials and more for a pleasant stay – and this can come with a hefty price tag.

**2. Not guaranteed income.** One frustration many vacation rental owners face is the effect of seasonality on their business. While their high season is fully booked, off-peak bookings are scarce which can ultimately cause them to lose money. While rates can be adjusted to compensate for this seasonality (cheap deals off-peak and more expensive during peak times), income and bookings are not always guaranteed

**3. Competition from surrounding properties.** Unlike the housing market, whereby apartments and houses are swamped with interest by renters, the vacation rental or short-term market sees many more homes listed than travelers searching. This may put some owners at a disadvantage (again, depending on location and availability) because competition for vacation rentals could be rife in your area.

**4. Too many things to manage.** While for some owners, vacation rentals are a retirement hobby-turned-vocation, for others they're a full-time job. There are plenty of tasks to keep you occupied throughout every guest's stay. From ensuring calendar availability is correct to facilitate a smooth booking process, plus a simple and easy check-in and check-out, and not to mention cleaners, gardeners and the rest – vacation rentals can be hard work if you don't have the right tools.

**How to market your short-term vacation rental**

The way you communicate and advertise your vacation rental might be vastly different when it comes to the time frame you're looking to target. If you mainly cater to weekenders and one-day stays your message is going to be different than a host that is aiming for monthly stays. So how can you attract the right crowd to your short-term vacation rental?

**Make it clear in your listing description**

Many hosts are live-in, meaning that their vacation rental is also their primary home. With that said, a lot of these owners opt for a quiet week without many bookings and host the majority of their stays during the weekend. If you fall into this category, it might be best to state it clearly in your listing description.

Having something like, "Cozy Cape Cod Cottage Perfect for a Weekend Escape" lets guests know right away what type of trip your vacation rental caters to. Adding any verbiage surrounding short-term rentals, overnight stays, or weekend trips in your listing description communicates to guests that your vacation rental is perfect for a short-term getaway.

**What is a long-term rental?** Unlike short-term vacation rentals, long-term accommodation typically refers to that which is leased for periods of one month or longer. Whether it's an entire home or just one room for rent, in general, renters pay the homeowner each month and typically take care of other expenses such as utility bills.

**Advantages of long-term rentals.** There are certain advantages of investing in long-term properties; here are a few of the major advantages:

**1. Consistent income.** One of the key advantages of renting property on a long-term basis is a monthly income that is reliable. This can help take the pressure off new homeowners who have a lot of other expenses to worry about. Additionally, long-term renters are generally responsible for paying monthly and quarterly utility bills for electricity, gas, water and even the internet.

**2. Easier to manage.** Whether the owner chooses to hire a property manager or manage the property themselves, it will require less time than a short-term rental. Not as much promotion is required as there is not frequent rental turnover.

**3. Less turnover.** When renting to long-term guests, there is less to worry about when it comes to administrative tasks such as paperwork, key handover, and even marketing. Once the renter signs the lease, the landlord knows who long to expect them to stay. They only need to worry about filling the house again once it is vacated.

**4. There may be no need to furnish.** Some (though not all) long-term guests come with their furniture in tow. This can make the decision easy when thinking about leasing unfurnished property. Not only will there be a guaranteed monthly rent payment coming in, but the expense of new furnishings is saved.

**6. The landlord can charge a high-security deposit.** Concern about the finer details of renting, such as insurance, rental agreements and security deposits, can be a worry. For long-term rentals, one can usually charge quite a high-security deposit, which will be returned to the guest at the end of the tenancy unless in case of property damage. These deposits can give owners a lot of peace of mind when it comes to renting out their properties.

**Challenges of long-term vacation rentals**

Some of the challenges worth noting are less earning potential and higher occupancy rates. Some other cons include:

1. **Less earning potential.** Vacation rental properties that are rented over a longer period of time are usually discounted by as much as 40%. Charging premium rates for peak season are not always feasible.

**2. The owner has less flexibility.** Unfortunately, in the world of long-term rentals, there are no spontaneous trips to that mountain lodge or July 4th getaway to the beach hut for celebrations. With a tenant in your home, one can't ask them to leave for a weekend here and there. This can be a huge turnoff for many owners who are renting out their property simply to gain some extra income in the months and weeks it's not used.

**3. Less control over the property.** Most of the time, nothing goes wrong during a rental stay. There is, however, a big difference between the short-term and long-term options when it comes to checking up on the property.

For short-term rentals, owners benefit from being able to inspect the property between each guest, to check everything is in working order and that nothing is broken or damaged. For long-term rentals, however, it's a bit more complicated. Ordinarily one would likely have to give considerable notice (from 24 hours to one week) before dropping by for routine maintenance and security checks.

**4. Restrictions in the neighborhood/city.** Depending on the property type and its location, there will be different laws, restrictions and licenses you need to take into account before leasing it out long term, which can often be stricter and more costly than short term renting.

**5. The lengthy process to find the right tenant.** When someone is going to stay in a home for a long time, you want to make sure they're a good fit. But when you consider the time you'll spend vetting and checking references before drawing up the contract, this can soon turn into a very long process. In contrast, for short-term renting it's generally a much easier process.

**Difference in rates.** Just like you can't have a varying daily rate for a long-term vacation rental, you certainly can't have a varying rate for long-term rentals. Long-term rental rates are typically priced month to month and are baked into the lease agreement. You might have more room for profit with a long-term vacation rental than you would with a standard long-term rental property.

Even when you consider location, seasonality, and property type, most owners find that using their investment property as a vacation rental is their best option. The opportunity to make a profit for the amount of labor required is significantly more beneficial than renting to tenants, for most cases.

## NEW EVICTION NOTICE REQUIREMENT EFFECTIVE MAY 3, 2021

The CDC order to prevent landlords from being able to obtain the writ of eviction if the tenant files the declaration with the court.

CFPB (Consumers Financial Protection Bureau) has issued a new rule notice rule which must accompany all eviction notices. FDCPA (Fair Debt Collections Practices Act). CFPB felt property managers and landlords should have to comply with this new rule. The rule requires this be on paper and not in an email.

*It is recommended that this wording is either put on your usual Seven Day Notice to Quit and/or the Thirty Day Notice to Terminate Tenancy, or, attached to your notice as you may not have enough room on your notice.*

*You should not have this in a small font. It needs to be conspicuous.*

**Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal law.**

**Learn the steps you should take now:**

- **Visit** www.cfpb.gov/eviction
- **Or call a housing counselor at 800-569-4287**

In Michigan, under Summary Procedures act, there are only three types of legal eviction. This is the Michigan law which allows the landlord to evict the tenant and regain possession of the premises.

a. *7 day notice to quit for cause* – The seven day notice is used when the tenant is late on the rent or in violation of building rules. With the seven day, if the tenant pays, the tenant stays.

b. *30 day notice to terminate tenancy* – The thirty day notice is used if the tenant is in breach of contract or if the lease is terminated and the landlord wishes to regain possession of the premises.

c. *24 hour notice to vacate premises* – If the lease provides for this and the tenant is illegally in possession of a controlled substance and the landlord files a police report, the landlord may serve the tenant with a twenty-four hour notice to vacate the premises.

Should you go straight into the eviction process? Perhaps not. Possibly, the tenant is totally not aware of the monies that are available. Most tenants do not want an eviction on their record.

# CHAPTER 2 - PROPERTY MANAGEMENT & RENTALS

The following is a direct quote from Pacific Legal Foundation, *"The government really doesn't like losing in court. But instead of accepting and enforcing the court's decision, it often tries to justify ignoring the broader implications of a ruling, by applying it only to the case at hand.*

*Back in March, Pacific Legal Foundation struck a major blow to the Centers for Disease Control and Prevention (CDC) with their win in Skyworks v CDC-which held that CDC did not have the authority to enforce a nationwide eviction moratorium that banned landlords from evicting tenants during the pandemic.*

*This proved to be the first in a series of decisions in quick succession that ruled that CDC was overstepping its bounds—and ultimately culminated with the Supreme Court's decision in August, 2020 that removed all doubt as to the illegality of the eviction moratorium.*

*We should all breathe a sigh of relief that the eviction moratorium litigation played out this way, because if CDC had prevailed in its argument that it could impose any regulation that the CDC director thought necessary to control the spread of COVID-19, we could very well be facing federal business closure restrictions and various other mandates or prohibitions infringing our liberties.*

*As the Sixth Circuit Federal Court of Appeals put it, the government's interpretation of the Public Health Service Act would have granted "the CDC Director near dictatorial powers for the duration of the pandemic, with authority to shut-down entire industries as freely as she could ban evictions."*

*"The Department of Justice respectfully disagrees with the March 10 decision of the district court in* Skyworks v. CDC *concluding that the moratorium exceeds CDC's statutory authority… In any event, the decision applies only to the particular plaintiffs in that case. It does not prohibit application of the CDC's eviction moratorium to other parties. For other landlords who rent to covered persons, the CDC's eviction moratorium remains in effect."*

*This was typical of DOJ. In fact, DOJ has a publicly available memorandum outlining their general policy of always arguing that a loss like this is limited to the parties to the case.*

*But the absurdity of that argument is that the government could continue enforcing patently unlawful regulation—on pain of ruinous penalties or threat of criminal conviction. So, in the government's view, it can continue to coercively compel compliance with an unlawful regulation unless everyone under the sun brings suit and prevails—which is of course impossible for individuals (and many small businesses) of limited means.*

*By the time CDC renewed its eviction moratorium in early August, there were four federal district courts holding that CDC lacked statutory authority, an opinion from the Sixth Circuit Court of Appeals affirming that view, and strong signals from both the Eleventh Circuit Court of Appeals and the U.S. Supreme Court that CDC was overstepping its authority.*

*So the great weight of authority was at that time clearly on the side of the landlords. However, unless you were covered by an existing judgment, it was still inadvisable to violate the eviction moratorium. That is why we sought an emergency injunction on behalf of our clients in Chambless v. CDC—which was then pending on appeal before the Fifth Circuit. And if the Supreme Court had not made its views unmistakably clear in its August 26, 2021, decision, landlords would likely still be in limbo nationwide.*

*Needless to say, this was all very frustrating for landlords who were excitedly watching CDC lose case after case but disheartened to see that the government was (until the end of August) unrelenting in its enforcement of this unlawful moratorium.*

*There are bright scholars on both sides of this debate. But, for my part, I think the better view is that when a court rules that regulation is unlawful, it should be understood as "set aside" on a universal basis—not just to the parties in that suit—because if a regulation is unlawful, then it can have no legal effect against anyone.*

*So, ultimately, we decided this was an important issue to press, and we sought clarification from the District Court in* Skyworks *as to whether its March 10 decision had vacated the CDC moratorium only as to our clients (as the government argued), only for landlords in the Northern District of Ohio, or universally. The court ruled that the decision only vacated the moratorium as to our clients. But if the CDC had not waved the white flag, we would have pressed this issue further on appeal because it is a hugely important open question of practical importance to anyone dealing with contested regulation. Indeed, it is an issue we will have to fight another day.*

*But for now, we can take pride in knowing we played an integral part in dismantling the CDC unlawful regime—and likely preempting other nationwide orders from CDC. Yet there is no rest in the ongoing fight for liberty. Indeed, we have a lot of work to do to rein in the administrative state."*

# CHAPTER 3 – CASE LAW

## SELLERS DISCLOSURE

This act applies to the sale of one to four family residential properties. The form must be filled out by the seller, not the agent. Failure to provide a filled-out sellers disclosure form could result in the buyer voiding an otherwise binding agreement. In addition to the condition of the property, the form inquires if the property is near a farm operation, gun range, land fill or airport. There are actually sixteen exceptions. We are summarizing them into five.

- *Government:* this covers Federal, State and City
- *Family:* Parents, children, grandchildren, spouses
- *Builder*: First time offering, new construction by a licensed builder that has never been occupied.
- *Foreclosure*: Bank REOs, borrower giving deed in lieu of foreclosure to lender, mortgage foreclosure auction.
- *Subject to court order, the person selling is not the owner*: Receiver or trustee in a bankruptcy, guardian or conservator if the owner is a minor or incapacitated person, executor, administrator, personal representative in an estate while it is still in the process of probate.

***Jordan v Rynbrandt, unpublished Michigan Court of Appeals, March 11, 2021 No. 350289, 350781***

**FACTS IN THE CASE:** Lisa Jordan purchased a residential property from Victoria Rynbrandt in 2015. Rynbrandt stated on the seller's disclosure that she had no knowledge of any flooding problems. Jordan knew of a nearby swamp and agreed to waive inspection and accept the property "as is". There was substantial evidence that Jordan was aware of the flooding problem when she completed the seller's disclosure.

**QUESTION BEFORE THE COURT:** The offer to purchase was written before Jordon was given a seller's disclosure. Does the fact that it was given after the purchase agreement void her recourse against the seller? Does the fact there was a swamp nearby cause the fact there may be flooding a patent defect?

**RESULT:** The courts ruled that although the lack of a disclosure before the purchase agreement would have given Jordan a right of recission, it was during the inspection period and before the right to inspection was waived that the fraudulent disclosure was given. The court affirmed the lower court decision as it related to the flooding, but vacated the portion where she was awarded compensation for an underground storage tank, termites and flooding.

# CHAPTER 3 – CASE LAW

## CONTRACT LAW

*A contract is an agreement between two or more legally competent parties to do or not to do something.* In order for a contract to be valid, certain requirements must be met. They are the ***Three V's of Contract Law:***

1. **Valid**

***Legally competent parties:*** For a contract to be valid, the people making the agreement must be of legal age in the state in which the contract is executed. They must be sober, sane and mentally competent to agree to do what the contract proposes. Although not strictly speaking a competence issue, parties to a contract need to be acting freely and voluntarily and be under no undue influence or duress. influence or duress.

***Mutual agreement:*** This is sometimes referred to as mutual assent or meeting of the minds. This requires an offer and acceptance. The offer must be clear and definite in all material facts and the acceptance must be exactly as offered.

***Lawful object:*** This is sometimes referred to as legality of object or lawful objective. If the object of the offer is not legal the contract would be void.

***Consideration:*** The consideration could be money or something else of value, such as love and affection among family members or a promise to perform.

2. **Voidable**

A voidable contract is one in which one of the parties is legally competent and the other is of some limited contractual capacity. A contract with a minor or someone under duress or under the influence of alcohol or some other controlled substance would be voidable by the person of limited capacity.

3. **Void**

A void contract is one that does not meet the requirements to be valid, is not in writing where required, or is entered into by someone with no contractual capacity, such as someone declared incompetent by the court.

***Lechner v Schwartz, unpublished Michigan Court of Appeals March 11, 2021 No. 35057***

**FACTS IN THE CASE:** The Schwartz home was for sale and Tony Lechner wrote an offer to purchase on behalf of Stephen Sinclair et al the property. The purchase agreement provided a sales

price of $40,000 and that there was to be a commission of 2.5% on the sale. It stated the closing should be no later than 7/8/2019 unless mutually agreed in writing. It also contained a "Time is of the Essence" clause. The buyers were unable to close on the sale of their home and Lechner called Schwartz and explained the delay and requested an extension to August 2, 2019. Schwartz then signed a listing with another real estate firm. Schwartz then called that firm and explained the earlier purchase agreement was back in effect. The other firm stated there would be no problem letting the seller off the hook. An appointment was made for the buyers to come to the house and measure for furniture. Lechner handed Schwartz a one-line addendum to extend the closing date. Schwartz refused to sign. The buyers stuck around and then wrote a new purchase agreement which had a closing date of August 1, 2019. That agreement additionally stated that it constituted the "entire agreement between" the parties and that the agreement "superseded all prior understandings and agreements, written or oral." They were unable to close until August 15, 2019. Schwartz obtained an injunction stating unjust enrichment and the $11,000 was place in escrow pending the outcome.

**QUESTION BEFORE THE COURT:** Did the agreement to pay a commission have to be in writing in the form of a listing? Did the second purchase agreement void the first?

**RESULT:** Lechner was not a party to the purchase agreement and the agreement did not state who should pay any commission. There was no enforceable contract between Lechner and either of the parties.

## PROPERTY RIGHTS

***Pelham v Bates, Michigan Court of Appeals, unpublished November 18, 2021 No. 355638***

**FACTS IN THE CASE:** Pelham owns three parcels of property in Lenawee County. Parcels 1 and 2 are next to each other. Parcel 3 is north of Parcel 2 and separated by a railroad right-of-way. An easement by necessity was created in 1954 that was not limited to a specific area. (An easement by necessity may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel. The party asserting the right to the easement need only show that the easement is reasonably necessary, not strictly necessary to the enjoyment of the benefited property.

**QUESTION BEFORE THE COURT:** Could Bates limit the easement to two ten-foot easements instead of the entire railroad right-of-way?

**RESULT:** In order for plaintiff to reasonably enjoy the benefited property, he must have the right to access the entire length of the former railroad right-of-way owned by defendant, but such access must place "as little burden as possible [on] the fee owner of the land."

# CHAPTER 3 – CASE LAW

***Blackman Pace Apartments, LLC v Glenn Kunselman, Unpublished Michigan Court of Appealse July 22, 2021, No. 354895 Jackson Circuit Court***

**FACTS:** Blackman Place Apartments, LLC has owned lots A, B and C (75 acres) since 2019 on which i t intends to develop an apartment complex. It sought to construct the entrance to the complex from Regency Parkway. Glenn Kunselman, who owns the roadway as well as lot Y at its culmination, fought Blackman Place's efforts and Blackman Place brought suit to determine its rights. The deed for lot A included "a 66-foot easement for ingress, egress and public utilities" across the area that would become Regency Parkway. The owner of parcel A granted the prior owner of parcel B "a 10-foot right-of-way for the installation of water and sewer lines," but parcel B's prior owner never used the easement. *Id*. The document granting the easement naturally did not mention parcel C as neither party to the transaction owned it. In 1985 the owner of B acquired C and wanted to run a water and sewer line over A. Both the trial court and this Court held that parcel C was not benefitted by the easement. This Court described the easement as an easement appurtenant, which "attaches to the land and is incapable of existence separate and apart from the particular land to which it is annexed." *Id.* at 588. This Court further noted that "[t]he owner of an easement cannot materially increase the burden upon the servient estate or impose thereon a new and additional burden." *Id*.


**QUESTION BEFORE THE COURT:** Do lots B and C share the benefit of the easement? Also rather than using it as the ten foot wide easement, could it be used as ingress and egress to Regency Parkway.

**RESULT:** All the deeds in Blackman Place's chain of title describe lot A being benefitted by a Regency Parkway easement and lots B and C being benefitted by a Kingsbrooke Drive Easement. Extending the lot A easement to lots B and C goes against the plain language of the deeds. The circuit court in this case did not analyze these questions in any depth, ruling without real explanation that lots B and C do not abut Regency Parkway and therefore are not entitled to use the easement across Regency Parkway. However, we agree with the result reached.

**MICHIGAN PROPERTY TAXES**

In 1893, the State of Michigan enacted the General Property Tax Act (Public Act 206 of 1893) as the main source of revenue for local governments. The basis of the general property tax is real and personal tangible property value that is not otherwise exempt. Beginning in 1995, the property tax base was changed from state equalized value (SEV, equal to 50 percent of true cash value) to taxable value. Unlike SEV, each year the taxable value of a property increases by no more than five percent or the rate of inflation, whichever is less, until the property is transferred. There are exceptions. A transfer between spouses, or from parent to child or child to parent either by a deed or a conveyance at death does not uncap the taxable values so long as it is maintained as a residence. The taxable value cap does not apply to additions or new construction. Every year, the State Equalization Bureau estimates the total assessed value all of the properties and apportions the numbers to each taxing body. The end of December, each government unit submits to the state the total assessment of their district. If the

number did not meet what was anticipated, a factor may be applied to the assessed value. That is why sometimes the SEV is greater than the assessed value. For example, if the township were 10% under assessed and a property had a market value of $200,000, it would be assessed at $100,000 but would have an SEV of $110,000.

Michigan statute and constitution provide for numerous property tax exemptions. These include property owned by religious and nonprofit organizations, educational institutions, government property, and certain agricultural property. Homes owned by 100% disabled veterans are totally exempt, also.

***West Michigan Annual Conference of the United Methodist Church v City of Grand Rapids, Published, Feb. 25, 2021, No 352703***

**FACTS:** The General Property Tax Act excludes a "parsonage" from being subject to property taxes. The law defines a parsonage as property owned by a religious society and occupied by an ordained minister who either serves a particular congregation or who otherwise works as a minister on behalf of the religious society. The minister in question did not have a designated congregation but performed administrative duties as the "District Superintendent" which consists of 91 individual churches.

**QUESTION BEFORE THE COURT:** Could fact that the pastor did not minister to a designated church prevent the home from being called a parsonage?

**RESULT:** MTT correctly applied the general definition of "parsonage" as the home of a parson. Contrary to the respondent's argument, the statute does not require the pastor to minister to a particular congregation. The MTT's order granting summary disposition to petitioner is affirmed. Petitioner, as the prevailing party, may tax costs pursuant to MCR 7.219.

Exempt personal property includes inventories, nonbusiness property, special tools, and air and water pollution control equipment. In addition, new personal property located in designated areas may be exempt from the general ad valorem property tax by local option.

Properties which qualify as Principal Residence Exemptions are excused from paying the up to eighteen mills school operating millage. To qualify for a PRE, a person must be a Michigan resident who owns and occupies the property as a principal residence. The PRE is a separate program from the *Homestead Property Tax Credit*, which is filed annually with your Michigan Individual Income Tax Return.

Beginning with the 2021 foreclosures, those who hold title or equity interest in property at the time of foreclosure, may file to claim leftover proceeds, if any are available, associated to those parcels which sell for more than the owing delinquency. Claiming potential proceeds begins with filing the below form 5743 Notice of Intention to Claim Interest in Foreclosure Sales Proceeds **with the Foreclosing Governmental Unit (FGU)** by the July 1 immediately following the effective date of the foreclosure. The FGU will respond by January 31 following the foreclosure auctions, with a form 5744 Notice to Claimant to File Motion with the Circuit Court. Provided there actually are surplus proceeds remaining for the property, the claimant may then file a motion with the circuit court between February 1 and May 15, following the notice from the FGU. The courts will then set a hearing date and time to determine claim payments.

**TAX PRORATION**

| *COLUMN A* | *COLUMN B* | *COLUMN C* |
|---|---|---|
| *Statutory Year 365 days* | *Prospective (advance)* | *Calendar Year* |
| *Banker's Year 360 days* | *Retrospective (arrears)* | *Due Date Basis* |
| | | *Fiscal Year* |

# CHAPTER 3 – CASE LAW

By default in the state of Michigan, if the method of proration is not mentioned, the taxes shall be prorated in advance and Due date. Several choices must be made.

► *In Column B, we choose the direction in time the payment covers. Prospective means that the bill comes at the beginning of the period and covers the period that is about to be. If you close sometime within that period, think of it as still being time left on the meter. The buyer should pay for the time he or she will have use and enjoyment of the property. So, with prospective, we debit the buyer and credit the seller.*

► *If we chose retrospective, at the end of the year, the buyer will be paying the entire years' worth. The seller should contribute the share for the time they had use and enjoyment of the property. With retrospective, at the closing, we debit the seller and credit the buyer.*

► *In Column C, we choose the period the tax payment covers. Some taxes and expenses cover from January 1st to December 31. They are referred to as Calendar year.*

► *Sometimes we do the proration on a Due Date Basis. In Michigan, these may be July 1st to July 1st of the next year or December 1st to December 1st.*

► *In some parts of the state, common practice includes breaking down each tax to its Fiscal Year. This is not very common.*

The words, "As Per Local Custom" are not appropriate as illustrated in the following case:

***Chicago Title Insurance Company v East Arm, LLC, unpublished November 25, 2003, No. 242372***

**FACTS IN THE CASE:** The purchase agreement stated the property taxes would be prorated as "per local custom." The closing was December 16, 1999. The title company called East Bay Township and were informed that calendar year in arrears was the method. Calendar year method (the method employed at closing in this case). Here, taxes, summer and winter, are treated as covering the calendar year in which they are billed. Thus, in the case at bar, with a closing date of December 16, 1999, the seller was responsible for approximately 11-1/2 months of the taxes billed in 1999, while the buyer (defendant) was responsible for only ½ month of the taxes billed in 1999. The seller contacted the title company and informed them the purchase agreement was silent as related to the proration, hence, it should be done Due Date in Advance. Under this method, the taxes are deemed to cover the twelve-month period beginning with the date they are billed. Thus, in communities with two tax bills per year (summer and winter), there may have to be two prorations. If this method were applied to the case at bar, the seller would be responsible for approximately 5-1/2 months of the summer taxes billed in 1999 (July 1 to December 16) and ½ month of the winter taxes billed in 1999 (December 1 to December 16).

Defendant would thus be responsible for 7-1/2 months of the summer taxes and 11-1/2 months of the winter taxes. The seller contacted the title company and informed them the purchase agreement was silent as related to the proration, hence, it should be done Due Date in Advance. The title company paid the seller the

**QUESTION BEFORE THE COURT:** The trial court had ruled the words "as per local custom" did not constitute an agreement as to how the taxes should be prorated. Does the paperwork which both buyer and seller signed at closing, entitled "An agreement as to tax proration constitute an addendum to the purchase agreement?

**RESULT:** The appellate court reversed the trial court decision and remanded the case back to trial court with instructions to enter summary disposition in favor of the defendant. Defendant may tax costs.

When helping a buyer buy, there are many things that may need to be taken into consideration. Is the property currently not registered as a Principal Residence and the buyer plans to move in? Is one of the parties a 100% disabled veteran? Has the Taxable Value been capped for a long time? Failure to pay property taxes in Michigan will result in foreclosure once the taxes are two years delinquent.

Mortgage bankers lend mortgage monies. They approve or reject loan applications submitted to them. They warehouse these mortgages until there are enough to sell to the secondary mortgage market. That returns money back to them and they can then make more loans. The mortgage banker continues to service the loan. They collect the payments, handle foreclosures, escrow for taxes and insurance. When the primary lender sells to the secondary mortgage market it is called assignment of mortgage.

*The three main buyers in the secondary market are Fannie Mae, Freddie Mac, Ginnie Mae*

- *FANNIE MAE. Federal National Mortgage Association, FNMA was established by Congress in 1938 with its purpose initially to buy FHA loans, it went private in 1968.*
- *FREDDIE MAC. Federal Home Loan Mortgage Corporation, FHLMC was created by Congress in 1970 and privatized in 1989.*
- *GINNIE MAE. Government National Mortgage Association, GNMA was created by Congress in 1968 to fill in the gap created when Fannie Mae was privatized. It is the only one of the three that is truly a government agency. It is part of HUD (Housing and Urban Development). Ginnie Mae buys most of the VA and FHA loans.*

There are two types of mortgage foreclosure, judicial and non-judicial also called advertisement.

**FORECLOSURE TIMELINE**

Day 2-36**:** The mortgage payment is due on the 1st. If the mortgage is not paid on the 1st, it is considered delinquent on the 2nd. If the payment is late, late charges are assessed for each missed payment. The Lender/Servicer must make LIVE contact with the homeowners who missed their payment to inform the homeowner about loss mitigation options.

Day 45**:** The Lender/Servicer must assign a single point of contact to homeowner AND provide written notification of delinquency and loss mitigation options.

During the time between Day 45 and Day 121: The borrower can work with a lender to obtain a loan workout, a modification or other loss mitigation option.

Day 121**:** If all attempts to resolve default are unsuccessful and a hardship application is not received, the foreclosure process begins. The Sheriff's sale date is scheduled and then published in the county newspaper for four (4) consecutive weeks with details of the debt. Notice of the sale date gets posted on the property within two (2) weeks of the first publication.

# CHAPTER 3 – CASE LAW

Sheriff Sale Held: The "Sheriff's Deed" lists the last date the property can be redeemed. Up until the Sheriff Sale has occurred, the homeowner may still submit a loss mitigation application.

Six (6) months: The Redemption Period starts day of Sheriff Sale – Six (6) months is most common. If the amount claimed to be due on the mortgage at the date of foreclosure is less than 2/3 of the original indebtedness, the redemption period is 12 months. Farming property can be up to twelve (12) months.

***Montilla v. Fed. Hous. Fin. Agency*, 20-1673 (1st Cir. June 8, 2021) and *Sisti v. Federal Home Loan Mortgage et. al*., 20-2025 (1st Cir. June 8, 2021)**

**FACTS IN THE CASE:** While these two cases did occur in Rhode Island, their non-judicial foreclosure process is similar to Michigan. Appellants brought suit in federal court alleging that Fannie Mae and FHFA are government actors and that the nonjudicial foreclosure sales violated their Fifth Amendment procedural due process rights.

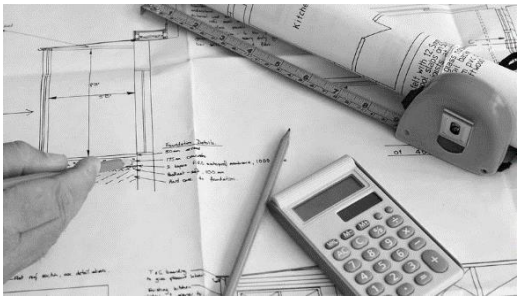
**QUESTION BEFORE THE COURT:** The legal community in Rhode Island has been monitoring multiple decisions which left in question whether Fannie Mae, Freddie Mac and FHFA would be established as government actors in the state thereby prohibiting them from completing foreclosures non-judicially as is typically permitted in the jurisdiction.

**RESULT:** We hold that, in its role as the GSE's conservator, FHFA is not a government actor because it has 'stepped into the shoes' of the private GSEs." The Court also declined to categorize, Freddie Mac and Fannie Mae as government actors despite the length of FHFA' conservatorship. "FHFA's temporary conservatorship over the GSEs does not constitute permanent authority. FHFA controls the GSEs for the limited purpose of 'reorganizing, rehabilitating, or winding up the[ir] affairs.'… The statutory language confirms, as other courts have held, that a conservatorship has 'an inherently temporary purpose.'… Given the conservatorship's limited purpose, Congress is not required to assign a definite endpoint to FHFA's conservatorship to make the government's control temporary." *Id* at 16-17. . The *Sisti* decision adopted the decision reached in *Montilla* without further commentary.

# CHAPTER 4 - SIZE MATTERS

## Measuring Houses and Counting Rooms Using the ANSI Standards

It would be wonderful if we had a national standard of how to measure houses. Well, guess what? There is one! It has been written by ANSI, American National Standards Institute in 1996. American National Standard Z765-1996 was developed through a process of consensus among a wide variety of participants. These included the American Institute of Architects, the Appraisal Foundation, the Building Owners and Managers Association, the Manufactured Housing Institute, the National Association of Realtors, Fannie Mae, Freddie Mac, HUD and others. There is, however, no Michigan law which demands that we adhere to this. Anyone using these standards must apply them entirely, and not just pick out the parts they like or agree with. The standards are intended for both attached and detached single family residences, but not for apartments or multi-family residences. The ANSI standards base floor area calculations on the exterior dimensions of the building at each floor level and include all interior walls and voids. For attached units, the outside dimension is the center line of the common walls. Internal room dimensions aren't used in this system of measuring. The ANSI standards define "finished area" as "an enclosed area in a house suitable for year-round use, embodying walls, floors, and ceilings that are similar to the rest of the house." Measurements must be taken to the nearest inch or tenth of a foot, and floor area must be reported to the nearest square foot. Garages are specifically excluded.



Home buyers are becoming more and more knowledgeable about the value per square foot of properties. For decades, architects, builders, real estate agents, lenders and appraisers have been using whatever methods they found appropriate to measure domiciles. ANSI is a generally accepted method of measuring homes.

In commercial real estate, where floor area is bought, sold and rented by the square foot, no one would tolerate this kind of vagueness and uncertainty. For more than a century, BOMA International has set the standard for measuring commercial buildings. In 1915, BOMA published its first office standard, Standard Method of Floor Measurement. Throughout the years the standard has been revised to reflect the changing needs of the real estate market and the evolution of office building design. Today, BOMA International is the American National Standards Institute (ANSI) secretariat for a suite of commercial area measurement standards.

Some real estate professionals cling to the myth that if they don't make any claims about floor area, they will avoid liability. But some buyers think this is just another way that real estate salespeople are trying to trick them. Without knowing the floor area, the home buyer is not provided with the accurate information to make an informed decision as to value. Appraisers can't make the correct adjustments to comparable sales and lenders have less accurate estimates of market value on which to base their loans. Now there is no excuse. Remember, the size of a dwelling is the second most important indicator of value.

## How to Measure a House

Measuring a house is not that hard. For most houses, it's an easy one-person job. All you need is a little practice and a good tape measure and a letter-sized tablet of graph paper. Measuring tapes graduated in tenths of a foot instead of inches are most appropriate. A lazar measuring devise can also be very handy. An adjustable gauge for measuring unusual corner angles (such as the "Mite-R-Gage" by Nowlin, Inc.) A computer program such as "Apex" or "Winsketch" and a medium-size standard screwdriver.

# CHAPTER 4 - SIZE MATTERS

Always start by measuring the outside of the house. Pick a corner and move counter-clockwise around the home so the numbers on your tape will be right-side-up. Measure the exterior of the house to the nearest inch or tenth of an inch. Measure from the exterior face of the walls. Include any features that are on the same level as the floor, such as chimneys and bay windows. Do not include the thickness of any corner trim pieces or greenhouse windows that don't have a corresponding floor level.

If you can't get close to a wall because of landscaping or other obstacles, use your screwdriver to anchor

the tape measure on the ground away from the wall. Draw the dimensions on the graph paper as you go, with each square representing one foot. If you measure correctly you should arrive at the exact point of beginning on your graph paper. If not, re-measure. Draw a separate floor plan for each level in the house. Don't assume that each floor is identical. Check for floors that overhang or are recessed. When you are finished measuring the outside of the house, go inside and decide what to include and what not to include on each level.

If there is an attached garage, exclude it. It's not part of the finished floor area. Use the interior wall surface of the garage next to the house as the outside wall of the house. If there are stairs, include them on every level they serve. When there are openings to the floor below, subtract the opening from that level. For split-level designs, measure each level. You can lump multiple floor surfaces into one level if they are within two feet of each other. Exclude any areas, such as porches and converted garages, which are not finished or heated the same as the rest of the house. You will need to measure the excluded areas and refer to them in your remarks

**Basements and Below-Grade Floor Areas** The ANSI standards make a strong distinction between above-grade and below-grade floor area. The above-grade floor area is the sum of all finished square footage which is entirely above ground level. The below-grade floor area includes spaces which are wholly or partly below ground level. Disregard the old rules of thumb that allow you to include below-grade areas if they are less than five feet below grade or if less than half the area is below grade. If the house has any areas below the natural grade, measure that whole level separately. Even if the below-grade areas are fully finished, they are not part of the finished, above grade floor area according to ANSI standards.

Attics, Lofts and Low Ceilings Level ceilings must be at least 7 feet high, and at least 6 feet 4 inches under beams, ducts and other obstructions. There is no height restriction under stairs. If a room has a sloped ceiling, at least one-half of the finished floor area must have a ceiling height of at least 7 feet. Otherwise, omit the entire room from the floor area calculations. If a room with a sloped ceiling meets the one-half-of-floor-area-over-7-feet requirement, then include all the floor space with a ceiling height over 5 feet.

Lofts and finished attics must be accessible by a conventional stairway or other access to be counted. If you can only reach the loft by climbing a ladder, it's not part of the finished floor area regardless of the ceiling height. Detached Rooms, Guest Cottages, Granny Units and ADUs (ancillary dwelling units). According to the ANSI standards, finished areas which are not connected to the main residence by a finished hall or stairway must be listed separately. If you have to leave the house to get to the room, it's not part of the finished floor area. These detached living areas are called various things: "detached bedrooms," "guest cottages," "family care units (granny units)," "guest quarters" and "dwelling units." A detached bedroom is a separate structure containing one room only without a kitchen or bathroom. It must be designed for and intended to be used as a sleeping or living facility for family members. It must be used in conjunction with the main house which includes a kitchen and a bathroom. Detached bedrooms can't be located farther than 150 feet from the main house and can't exceed 500 square feet in floor area. A guest cottage is like a detached bedroom with a bathroom, but no kitchen. It can't exceed 640 square feet in floor area and must

be a permanent structure, not a trailer or mobile home. It can't have a kitchen, wet bar or any provision for appliances for the storage or preparation of food. It must be clearly subordinate and incidental to the main house. Guest cottages can't be rental units. They must be used without compensation by guests of the occupants of the main house. A family care unit (sometimes called a granny unit) is determined more by use than design. It is the temporary use of a building, structure or trailer to provide housing for immediate family members who require daily supervision and care; or caregivers for the people who reside in the main residence. A full dwelling unit is a single unit providing complete, independent living facilities for one or more people, including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit can have only one kitchen.

## Room Counts, Bedrooms and Bathrooms

The real estate profession often describes houses by their total room count, the number of bedrooms and the number of bathrooms they contain. For example, the shorthand convention "5/2/1.5" describes a house with 5 rooms, 2 bedrooms and 1.5 bathrooms. Local custom determines the definition of a "room." In general, a room is a kitchen, a bedroom, a living room, a dining room, a family room, an office, or a den. Rooms do not have to be divided by walls so long as there is space for the designated function. In some market areas, a home with a Great Room that encompasses the kitchen, dining and living rooms will have the Great Room counted as three rooms even though there are no walls to separate those areas. Lofts used as bedrooms are seen by the market as acceptable bedrooms and even though they may not have full privacy, they can be counted as a bedroom. Bathrooms, laundry rooms, sunrooms, closets, storage rooms and entries are not usually considered to be rooms.

What is the difference between a den and a bedroom? If the den can function as a bedroom, there may be no difference at all. What is the difference between a dining area and a dining room? If you could add walls and it would remain functionally the same, a dining area can be called a dining room. A bedroom is any room that you can fit a conventional bed into. Usually the local zoning, building or health codes establish minimum requirements for bedrooms. In general, bedrooms should be at least 90 square feet in size, with at least one bedroom in the house 120 square feet in size. Bedrooms should have an egress window, natural light, and ventilation. If a sleeping room is lacking a door, built-in closet or egress window, it should be referred to as a non-conforming bedroom or a den. They can be listed in the MLS but it should be disclosed they are non-conforming in the remarks.

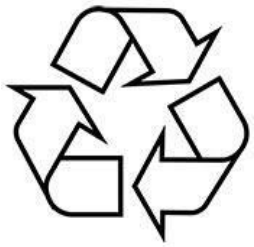
Bedrooms should have direct access to a hallway, living room or other common area. You should not have to walk through one bedroom to get to another. A bedroom should have a closet, but this is optional. Local custom also defines the bathroom. In the Michigan market area, a full bathroom will include a toilet, a sink, and a tub, tub/shower unit or a shower. A bath with only a shower is still seen by the market as a full bath; not a ¾ bath. A half bath may have a toilet and a sink or a toilet only.

As more real estate listings are posted on the Internet, it's likely that consumers will expect some national standards for measuring houses and counting rooms. Also, the new EDI (electronic data interchange) technology being adopted by lenders will require some common standards. Realtors who measure houses correctly and accurately will help raise the standards of the profession and improve consumer confidence.

*Thanks to Thomas F. Cronin, Appraiser and Associate Broker for Traverse Real Estate for his wisdom.*

# CHAPTER 5 - ENVIRONMENTAL ISSUES

**Brief History**



Human activity has been a problem to the environment for thousands of years. Lead pipes polluted water supplies in early Roman times. The Industrial Revolution, during the late 18th and 19th centuries, used mining and smelting processes that created tailings and wastes that had significant impact on the environment and real estate.

The Energy revolution of the 19th and 20th centuries created an expanding demand for fossil fuels, Internal combustion engines and power plants contributed to air pollution. Nuclear energy created problems in facilities and with the storage of waste.

The Chemical revolution of the 1930s and 1940s brought about the creation of synthetic materials as substitutes for natural materials.

The Consumer revolution of 1960s brought greater disposable income which spurred consumption of more energy, production of more goods, and the creation of more waste products.

The Environmental revolution began in 1960s.

► The *Comprehensive Environmental Response Cleanup and Liability Act* (CERCLA) of 1980 was written into law; commonly known as the Superfund. CERCLA outlines the order of responsibility for pollution to 1. The owner, 2. The polluter, 3. The transporter of the pollutant, 4. Anyone who attempted to mitigate the pollution and did not do so effectively.

**Environmental Site Assessment.** This is defined as a report on potential or existing environmental conditions. It includes the presence of hazardous substances, contamination, and environmental risks. These are sometimes performed by the owner, but typically they are performed by a trained and experienced environmental consultant. The assessment is usually done in phases, sometimes with a pre-Phase 1 analysis, called a "transaction screen process". The phases of an Environmental Site Assessment are:

***Phase I.*** *This is a preliminary report that investigates the history of the subject and neighborhood. Inquiries are made regarding owner/operator, governmental and agency documents and records. A chain of title search is generally performed. The Securities and Exchange Commission requires registered companies to disclose material information that a reasonable investor would believe significant.*

*The Department of Transportation requires that all hazardous material must be reported, and all hazardous spills be recorded.*

*The Army Corps of Engineers issues dredge and fill permits and conduct inspections. Surveys, site plans and aerial photos can show the location of storage tanks, ponds, transformers, vehicle maintenance areas and topographical features.*

***Phase II.*** *This involves actual site testing, which includes monitoring wells, soil probes, and their analysis. Phase II is undertaken if the Phase I investigation finds evidence of possible surface or subsurface contamination of past or present violations of environmental laws and regulations. It is during this time that the presence or absence of contamination can be confirmed. Investigators can also identify the types and amounts of hazardous substances present, identify locations, and estimate the rate of migration. Soil and groundwater testing can be done as well.*

***Phase III.*** *This phase includes an engineering study of the means of correction (remediation) for the site, including estimates of the costs and time involved. It more precisely determines the degree and extent of*

*contamination (including groundwater contamination) and determines the type of clean-up or control techniques that are appropriate, including costs. Note that the recommended cleanup/control techniques must be approved by the appropriate regulatory agency.*

**Remember, liability for contamination clean-up is as follows: 1) the owner 2) the polluter 3) the hauler 4) the clean-up crew.**

There are many substances that can potentially create environmental risks, and impact property values:

**►Natural materials**
Radon (radiation in the ground)
Sulfur or salt in groundwater
Bacteria contamination (animal and human waste)
Smoke from forest fires
Lava and ash from volcanoes
Crude oil (that seeps naturally)

**►Fossil fuels**
Burning of coal, gasoline, natural gas, diesel oil Leaks and spills of refined or unrefined materials

**►Building construction and/or maintenance materials**
Asbestos used in insulation, heating and/or ventilation systems
Lead-based paints
Cleansing solvents

**►Industrial process by-products**
Mine tailings
Heavy metals
Smelting or refining processes residues
Chemicals used for industrial processes

**►Energy production by-products**
Spent nuclear fuel
Electromagnetic fields
PCBs from transformers

**►Agricultural pesticides and/or fertilizers**

**►Wastes stored in landfills and dumps**

**►Noise, vibration, and/or odors**

**Brinkwood Land Equities Ltd v Hilo Brokers Ltd, No 30466 (Haw App Mar 14, 2012 – Unpub)**.

**FACTS:** Plaintiff buyer entered into a $1.915 million purchase agreement with Defendant seller on a four-acre parcel of undeveloped land in Hilo, Hawaii, and deposited a $25,000 nonrefundable earnest money deposit with a local title insurance agency.

Defendant furnished Plaintiff with a number of required disclosures, including Hawaii's mandatory *Seller's Real Property Disclosure Statement*. Under Hawaii's seller disclosure law, a seller must disclose "any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential property being offered for sale."

Approximately one month before the scheduled closing, Plaintiff sent a fax to Defendant seller and Defendant listing broker cancelling the purchase agreement and demanding a refund of the earnest money deposit. One of the reasons cited by Plaintiff for cancelling the agreement was that Plaintiff had learned that the area near the property was "populated by drug dealers and hookers." When the cancellation and refund request was denied, Plaintiff filed a lawsuit alleging that Defendants misrepresented the property by failing to disclose that it "was in a neighborhood where drug dealers and prostitutes frequented."

**QUESTION BEFORE THE COURT:** Did the seller and listing broker have a duty to inspect and disclose information about adverse off-site social conditions that could affect the value of the property?

**RESULT:** No. The Hawaii Intermediate Court of Appeals found that there was no Hawaii statute or case that supported Plaintiff's theory that a seller or broker has a duty to inspect or disclose information about adverse off-site social conditions. In fact, the Court based its decision on a New Jersey Supreme Court case in which that court determined that the seller had a duty to disclose the existence of an adverse off-site physical condition, but declined to extend the disclosure duty to conditions that weren't "rooted in the land." *Strawn v Canuso*, 140 NJ 43; 657 A2d 420 (1995).

**Fong v Sheridan, No. A144286, 2016 WL 1626221 (Cal. Ct. App. Apri. 21, 2016).**

**FACTS:** A real estate professional told the purchasers that a strange odor on the property was "sea air", but the buyer later discovered buried oil and septic tanks on the property. The real estate professional, acting as a dual agent, told the buyer the odor could easily be remediated by changing things like sheetrock. The buyers continued to notice the smell for two years and then found a buried septic tank and a buried oil tank on the property. During the removal of the oil tank a spill took place which caused additional property remediation efforts. The Buyers moved out during remediation, which eventually included removal of the entire house from the property. The buyer filed lawsuit against the seller, the licensee and the broker. The broker and licensee settled with the buyer for $275,000.

**RESULT:** The trial court ruled against the Seller and awarded the Buyer $91,635 however, because the Buyers had already settled for $275,000 from the real estate professional, the court awarded the buyer nothing and held them liable to the sellers, as prevailing party, for $456,000 in attorney fees and another $21,000 in costs. On appeals the Buyers submitted evidence supporting an award of $750,000, therefore the appellate court did not find the seller to be prevailing and remanded the case back to trial court to determine the amount of the damages.

**Hazardous substances are typically transported through air, soil, ground water, surface water and plants and animals. Transportation takes place via many mechanisms including but not limited to the following:**
Erosion of contaminated soil by wind or water
Surface water moving from higher to lower ground
Raindrops that have collected contaminants from the air
Rainwater percolation through the soil into groundwater
Radiation in the air that is moving
Dust that is wind borne
Movement via the food chain

These substances can move at varied speeds and distances, depending on factors such as climate conditions, soil type, wind and air patterns, the geology, hydrology and topography of the site. It is very common for hazardous substances to be transported from one site to another. Environmental risk can also be created by direct contact with hazardous substances that have not been transported. The most frequently encountered hazardous substances are:

# CHAPTER 5 - ENVIRONMENTAL ISSUES

► **Lead.** The negative effects to human health are many. The material can accumulate in the body and cause neurological, digestive or reproductive disorders. The most likely places that humans will be in contact with these contaminants are at industrial sites that process the metals, or in older residences and commercial buildings *(built prior to 1978)*. Remediation involves lead pipe removal and replacement, encapsulation, abatement, containment of contaminated groundwater, and/or adding compounds to the water supply to reduce or eliminate the lead.

Prior to 1978, lead was added to paint for color and durability. It was also added to some other surface coatings, such as varnishes and stains. In 1978,
the ***Consumer Products Safety Commission*** banned the sale of lead-based paint for residential use. In practice, this means that homes built in 1978 could still have used lead-based paint, because existing supplies of paint containing lead would still have been available.

***How are we exposed?*** Through normal hand-to-mouth activities, children may swallow or inhale dust on their hands, toys, food or other objects. Children may also ingest paint chips. Adults can swallow or breathe dust during work activities.

When workers perform activities, such as scraping and sanding by hand, or use a power sander or grinding tool, dust is created. The dust goes into the air that they breathe.

If workers eat, drink, smoke or put anything into their mouths without washing up first, they may swallow the lead contaminated dust present.

Even a floor that looks clean can have lead contaminated dust on it. Only a laboratory test can tell you for sure if an area is contaminated with lead. Normal cleaning methods will not pick up all the dust in a work area. Sweeping is not enough. You need to use water, detergent and a HEPA (High Efficiency Particulate Air) vacuum to clean up dust effectively. Once dust is released, it is easily tracked around, inside and outside the work area. And an exterior painting job can contaminate the inside of a home as the dust, chips and leaded soils are tracked inside.

**What is required:**

Sellers and landlords must disclose known lead- based paint and lead-based paint hazards and provide available report to buyers and tenants.
Sellers and landlords must give buyers and renters the EPA/CPSC/HUD pamphlet titled: *"Protect Your Family From Lead in Your Home"*.
Home buyers will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense if desired. The number of days can be changed by mutual consent.
Sales contracts and leasing agreements must include certain language to ensure that disclosure and notification actually take place. Sellers, lessors and real estate agents share responsibility for ensuring compliance.

**Roberts v Hamer, 655 F3d 578 (6th Cir 2011).**

**FACTS:** Plaintiff and her boyfriend entered into a lease agreement with Defendants to rent an apartment. Before entering into the agreement, Defendants failed to provide Plaintiff with a mandatory disclosure form regarding the potential presence of lead-based paint in the apartment building. Defendants also failed to provide the precautionary pamphlet detailing how to protect against the dangers of lead-based paint as required by the *Residential Lead-Based Paint Hazard Reduction Act of 1992 (RLPHRA)*.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

During the term of the lease, Plaintiff and her boyfriend conceived two children who at some point suffered from physical and mental health problems that were later determined to be the result of high levels of lead present in the apartment. Plaintiff, on behalf of her children, sued Defendants for violations of the *RLPHRA.* Defendants argued that Plaintiff's children lacked legal standing to assert a claim under the *RLPHRA.* Plaintiff contended that her children were third-party beneficiaries of the lease, making them de facto lessees with the right to sue.

**QUESTION BEFORE THE COURT:** Do a tenant's minor children have legal standing to bring an action against a landlord who violates the *RLPHRA*?

**RESULT:** No. The U.S. Federal Court of Appeals for the Sixth Circuit held that the language of the *RLPHRA* "expressly limits private recovery to a 'purchaser or lessee' of target housing, and no one else. …We decline to expand the cause of action or to infer an implied one where Congress has expressly created one. …Congress created a cause of action for purchasers and lessees, not those who happen to benefit from the sales and leases, yet are not, themselves, purchasers or lessees."

► **Mold.** The term "toxic mold" is not accurate. While certain molds are toxigenic, meaning they can produce toxins (specifically mycotoxins), the molds themselves are not toxic, or poisonous. Hazards presented by molds that may produce mycotoxins should be considered the same as other common molds which can grow in your house. There is always a little mold everywhere - in the air and on many surfaces. There are very few reports that toxigenic molds found inside homes can cause unique or rare health conditions such as pulmonary hemorrhage or memory loss. These case reports are rare, and a causal link between the presence of the toxigenic mold and these conditions has not been proven.

A common-sense approach should be used for any mold contamination existing inside buildings and homes. The common health concerns from molds include hay fever-like allergic symptoms. Certain individuals with chronic respiratory disease (chronic obstructive pulmonary disorder, asthma, COPD) may experience difficulty breathing. Individuals with immune suppression may be at increased risk for infection from molds. If you or your family members have these conditions, a qualified medical clinician should be consulted for diagnosis and treatment. For the most part, one should take routine measures to prevent mold growth in the home.

When mold spores drop on places where there is excessive moisture, such as where leakage may have occurred in roofs, pipes, walls, plant pots, or where there has been flooding, they will grow. Many building materials provide suitable nutrients that encourage mold to grow. Wet cellulose materials, including paper and paper products, cardboard, ceiling tiles, wood, and wood products, are particularly conducive for the growth of some molds. Other materials such as dust, paints, wallpaper, insulation materials, drywall, carpet, fabric, and upholstery, commonly support mold growth.
In most cases, mold can be removed from hard surfaces by a thorough cleaning with commercial products, soap and water, or a bleach solution of no more than 1 cup of bleach in 1 gallon of water. Absorbent or porous materials like ceiling tiles, drywall, and carpet may have to be thrown away if they become moldy. If you have an extensive amount of mold and you do not think you can manage the cleanup on your own, you may want to contact a professional who has experience in cleaning mold in buildings and homes. It is important to properly clean and dry the area as you can still have an allergic reaction to parts of the dead mold and mold contamination may recur if there is still a source of moisture.

► **Radon.** An odorless and colorless radioactive gas that percolates through cracks in soil or rock. It can accumulate in confined spaces such as basements or crawl spaces. The health risk is an increased risk of lung cancer. High levels of radon have been found in every state. The best way to remediate for radon is through ventilation (install small fan or vent for moderate levels), prevent infiltration altogether, suction (releasing the gas for the soil by depressurization), or a combination of air circulation and installation of a positive ion generator.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

► **Asbestos.** Usage peaked in 1973, just before the EPA issued a ban. The most common places to find asbestos are:

Insulation for steam pipes and boilers, roof shingles, roofing felt, siding, ceiling tiles, flooring, popcorn ceilings, paper products, wall coverings, caulks and adhesives.

The environmental impact depends on the friability (the extent to which the material can be crushed by hand) of the asbestos. Vibration, erosion or water can also loosen asbestos, but the most likely reason for exposure is inadvertent disturbance during remodeling or demolition work. If asbestos is airborne or waterborne, it may be readily ingested. *The effects on health are extreme!* The small fibers penetrate the lungs when inhaled, and the body cannot expel it.

Lung cancer and Mesothelioma are associated with asbestos exposure. Remediation involves:

Enclosure - constructing a barrier around the material
Encapsulation - spraying or painting a sealant over the material
Removal - required by the EPA under certain conditions

► **Vermiculite.** Vermiculite is a mineral ore that has been expanded to produce the familiar light granules that are sometimes used as loose fill insulation. Only a few vermiculite ores contain asbestos. However, between 1960 and 1990, 70 percent of the world's vermiculite ore came from a mine in Libby, MT, and was marketed as Zonolite. That particular ore is contaminated with tremolite, one of the six asbestos mineral forms. Consequently, if you have vermiculite insulation in any of your buildings, it is likely to be an asbestos-containing material (ACM). Vermiculite is a common attic and wall insulation that should be sampled during an asbestos inspection. If your vermiculite contains asbestos, a management plan must be developed. The plan must take into account the location of the vermiculite and the potential for human exposure.

► **Petroleum Based Contaminants.** Other hazardous substances with potential for negative exposure are petroleum products, gasoline, or diesel fuel. Underground storage tanks are a key source of petroleum, gasoline and diesel fuel contamination.

Some states have enacted laws requiring state agencies to be reimbursed for costs associated with hazardous waste remediation. Many states, including Michigan, now require local filing of federal liens for remediation under CERCLA. The EPA estimated in 1988 that up to 25% of all underground storage tanks in the United States may be leaking. Most leakage problems are caused by corrosion, spills and overflows, structural failure and improper installation.

Sights which may potentially be a facility are sites that are or were used in petroleum refining, storage and service stations, automobile repair facilities, rail, truck and or boat facilities. Manufacturing plants producing metals, fertilizer and/or pesticide manufacturers, farms, wineries, breweries or food processing plants, airports, salvage yards and medical laboratories are also possible sites.

Visual clues that indicate an underground storage tank are pumps, and pipes, oil stains, soil stains and discoloration, and discolored and dying vegetation. Other signs include; motor fuel that is pooling in basements, wells or sewers, noxious odors, sheens on rivers, ponds or lakes, a hesitating pump system, or rattling and irregular flow from a pump.

Many older and newer USTs now have EPA-approved leak detection systems, and the EPA has reports on their tightness and condition. The types of USTs *exempted* form RCRA (Resource Conservation and Recovery Act of 1976) regulation include:

► Tanks on farms or residences that hold less than 1,100 gallons and store motor fuels for any non- commercial use.
► Tanks containing heating oil for use on site.
► Septic tanks and/or wastewater systems.
► Storage tanks on the floor in basements.

*USTs installed after 1988 must have a certified installation, spill and overflow prevention devices, and corrosion protection.* USTs installed before 1988 must have spill and overflow prevention devices and leak detection systems.

**Niecko v Emro Marketing Company (1992 WL 208522), Sixth Circuit, Michigan 1992**

**FACTS:** In 1987, Niecko purchased property in Jackson, Michigan from Emro Marketing Co. for $46,000 with the intent of selling it to the McDonalds Corporation: The purchase agreement read:

*"It is expressly agreed that Seller makes no warranties that the subject property complies with federal, State or Local government laws or regulations applicable to the property or its use. Buyer has fully examined and inspected the property and takes the property in its existing condition with no warranties of any kind concerning the condition of the property or its use.*

*……including but not limited to, soil conditions, zoning, building code violations, building line, building construction, use and occupancy restrictions, availability of utilities and that Buyer is purchasing the same 'as is'; that he assumes all responsibility for any damages caused by the conditions of the property upon transfer of title."*

1989 Nieko and the McDonalds Corporation agreed to a purchase agreement contingent upon a satisfactory environmental audit. The audit revealed contamination which Niecko removed at the cost of approximately $130,000. McDonalds then completed the purchase of the property for approximately $110,000.

**QUESTION BEFORE THE COURT:** Is Emro Marketing liable for the cost of cleanup for failing to disclose the existence of underground storage tanks which were the cause of contamination?

**RESULT:** The district court dismissed the claim of Niecko and the 6th Circuit Court affirmed the decision. Niecko was well aware the property had been used as a gas station and was given ample opportunity to inspect. The defects in the property should have been easily discoverable with any reasonable inspection. "The Plaintiffs were either lazy or careless in their purchase of the property and are now seeking ways to force Emro to pay for their lack of judgement. The Plaintiffs have failed, however, to show anything other than poor business sense.

**City of St. Louis v Michigan Underground Storage Tank Financial Assurance Act Policy Board, 215 Mich. App. 60 (1996)**

**FACTS:** The City acquired a parcel of property formerly used as a gas station and contracted with an excavator to clean up the site. During removal of the tanks in October of 1989, the contractor advised the City of its obligation to report a "release". On December 5, 1989, the City called the State Fire Marshal. A claim was made by the plaintiff for funds to help with the cleanup. The claim was denied by the fund administrator because the "release" was not reported within twenty-four hours of discovery.

**QUESTION BEFORE THE COURT:** Was the City of St. Louis entitled to "MUSTA" funds when they did not turn themselves in within twenty-four hours of discovery of a "release"?

**RESULT:** The Court of Appeals affirmed the decision of the administrative law judge which initially heard plaintiff's appeal because plaintiff had failed to strictly comply with the requirements of the Michigan Underground Storage Tank Financial Assurance Act.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

**Wright v Rub-A-Dub Wash, Inc., 740 So. 2d 891 (Miss. 1999)**

**FACTS:** From 1990 forward, Rub-A-Dub Wash, Inc. (tenant) operated a car wash on subleased property owned by several individuals (The Owners). The sublease stated that the tenant could not sublease without the consent of the Owners. It also stated the Owners' consent could not be unreasonably withheld. In 1994, the Tenant entered into a contract to sell the car wash to a third party**.** The sale required the Tenant to assign its lease to the buyer. The Tenant requested the Owners approve the assignment of sublease. The Owners stated they would only approve the assignment if the Tenant of the buyer agreed to do whatever is necessary to satisfy both state and federal authorities about the condition of underground gas storage tanks on the premises. Neither the Tenant nor the buyer would agree to the Owner's terms, and so the sale of the Tenant's business collapsed. The gas tanks were installed in 1973 when an earlier tenant built the car was on the property. After installation, and sales, three different tenants occupied the property.

In 1988, before the second sale of the property, the Owners entered into a new lease with the new Tenant. The lease specifically disavowed any ownership of the tanks by the Owners. The Tenants acknowledged that the tanks had leakage problems. The Tenants never sought permission from the Owners to use them.

**QUESTIONS BEFORE THE COURTS:** Were the Owners of the land the owners of the tanks? Did the fact that the Tenant never requested permission to use the tanks affect the Owners' liability? And most importantly, could the Owners withhold permission for an assignment of lease pending determination of ownership of the tanks or would they be liable to the tenants for failing to consent to the assignment of lease, thereby preventing a sale of the car wash business.

**RESULT:** The state Supreme Court sent this back to the trial court which did indeed rule them to be the owners and as such reliable for cleanup of pollution should any exist and found them not guilty of "unreasonably" withholding approval of the transfer of lease.

**Price v High Pointe Oil Company Inc, 493 Mich 238; 828 NW2d 660 (2013).**

**FACTS:** Plaintiff owned a home with an oil furnace and an oil tank located in the basement. Defendant was a fuel oil company that serviced Plaintiff's tank and, at her request, maintained the tank on its "keep full" list.

At some point, Plaintiff replaced her oil furnace with a propane furnace, and sold the old furnace and oil tank to a neighbor, who removed both from Plaintiff's basement. Before installing the propane furnace, Plaintiff telephoned Defendant and cancelled its services. Thereafter, no fuel deliveries were made to Plaintiff's home for over a year.

Approximately one year later, while Plaintiff was at work, Defendant attempted to deliver fuel oil to the home because Plaintiff's name was inadvertently once again placed on Defendant's "keep full" list. Although the oil furnace and tank had been removed from the basement, the fill pipe located outside of the home had remained unchanged. Defendant pumped approximately 400 gallons of fuel oil into the basement before realizing there was a problem and calling "911."

An environmental consulting company assessed the damage and determined that many of Plaintiff's personal items were too heavily contaminated to be salvaged and, because fuel oil had leaked into the soil from the basement, the entire home had to be demolished, and the site had to be excavated and cleaned up. Plaintiff moved in with her parents for several months, spent another 19 months in a duplex she rented, and eventually moved into a new house that she had constructed on the same site.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

All of Plaintiff's financial losses were paid by her insurer, Defendant, and Defendant's insurer, and she incurred no out-of-pocket costs associated with the incident. Regardless, Plaintiff filed suit against Defendant for negligence. She requested not only economic damages for the harm caused by Defendant's conduct, but also non-economic damages for annoyance, inconvenience, pain, suffering, mental anguish, emotional distress, and psychological injuries caused by the destruction of her home.

The trial court ruled that Defendant was negligent, but disallowed Plaintiff's claims for economic damages because she incurred no out-of-pocket costs. However, the court allowed Plaintiff to proceed with her claim for non-economic damages, and the jury awarded her $100,000. Upon appeal by Defendant, the Michigan Court of Appeals affirmed the ruling and damage award.

**QUESTION BEFORE THE COURT:** Can a homeowner recover non-economic damages for the negligent destruction of real property?

**DECISION:** No. The Michigan Supreme Court stated, "…[D]espite the fact that throughout the course of our state's history, many thousands of houses and other real properties have doubtlessly been negligently destroyed or damaged, and despite the fact that surely in a great many, if not a majority, of those cases the residents and owners of those properties suffered considerable emotional distress, there is not a single Michigan judicial decision that expressly or impliedly supports the recovery of noneconomic damages in these circumstances."

The Court also acknowledged the uncertainty for real estate-related businesses regarding the potential scope of their liability for accidents caused to property resulting from their negligent conduct if they were also liable for non-economic damages:

> "…[T]hose businesses that come into regular contact with real property … would be exposed to the uncertainty of not knowing whether their exposure to tort liability will be defined by a plaintiff who has an unusual emotional attachment to the property or by a jury that has an unusually sympathetic opinion toward those emotional attachments."

There are distinctions between contamination, environmental risk and impact. Every use of a hazardous substance does not necessarily result in contamination.

For example, formaldehyde used in liquid form (embalming, salons) is not a risk. There can also be safe levels of contamination that do not necessarily impact the real estate industry. The potential impact for the real estate industry is increased expenses of operation, including legal and administrative costs as well as containment and or remediation costs limited ability and opportunity to sell the property, may affect marketing time, may affect rental income, will probably affect the availability and terms of financing and capitalization and discount rates will probably be affected

**Hazardous materials are defined as any substance that has one of the following characteristics:**

- corrosive
- combustible
- flammable
- chemically reactive
- poisonous

**Toxic substances are a subset of hazardous materials and are those substances that may be lethal at specified dosages.**

# CHAPTER 5 - ENVIRONMENTAL ISSUES

The purpose of environmental laws is to protect public health, safety, and welfare, which is accomplished through three basic functions:

► Monitoring, controlling, and/or eliminating sources of hazardous substances and contamination

► Cleaning up existing contamination

► Allocating responsibility for cleanup costs

► **Farm Products.** Fertilizers, pesticides and herbicides. When improperly managed, activities from working farms and ranches can affect water quality. Unless prohibited by other state or local laws, agricultural producers can dispose of solid, non-hazardous agricultural wastes (including manure and crop residues returned to the soil as fertilizers or soil conditioners, and solid or dissolved materials in irrigation return flows) on their own property.

Agricultural irrigation return flows are not considered hazardous waste. Agricultural producers disposing of waste pesticides from their own use are exempt from hazardous waste requirements as long as they triple rinse the emptied containers in accordance with the labeling to facilitate removal of the chemical from the container, and dispose of pesticide residue on their own agricultural establishment in a manner consistent with the disposal instructions on the pesticide label.

► **Heavy metals (lead, mercury).** Toxic metals, including "heavy metals," are individual metals and metal compounds that negatively affect people's health. In very small amounts, many of these metals are necessary to support life.
However, in larger amounts, they become toxic. They may build up in biological systems and become a significant health hazard.

The most common sources are from industrial processes, smelting, paints, pipes and soldering. The environmental impact is soil and groundwater contamination, harmful dust (lead and asbestos for example), and lead chips and lead lined plumbing fixtures that contaminate water and can then be ingested. Common sources of exposure include mining, production, and transportation of mercury, as well as mining and refining of gold and silver ores. High mercury exposure results in permanent nervous system and kidney damage.

► Cleaning **solutions.** Dry cleaners are likely to have an adverse impact to the environment. Although there have been advances in dry cleaning equipment technology (secondary containment and limited access to chemicals), it is estimated that 75% of dry cleaners have discharged contaminants to the environment. Therefore, owners of properties with a dry-cleaning tenant need to investigate the environmental quality of the subsurface environment to ensure that current and past dry-cleaning operations have not resulted in contamination.

**Bowman v Greene, No. 308282 (Mich App Nov 5, 2013 – Unpub).**

**FACTS:** A developer purchased an abandoned 100-year-old factory building and converted it into residential condominium units. The site was contaminated with trichloroethylene—a chemical used not only to degrease metal parts, Bowman but also as a refrigerant. In order to deal with the contamination, the developer installed a vapor barrier over the affected ground area, which required constant maintenance and the presence of a blower.

In 2001, the developer hired Defendant broker to market the condos. Defendant prepared a marketing brochure, which stated in part: "the property has been addressed under current Michigan cleanup requirements through a grant from the Michigan Department of Environmental Quality (DEQ)."

In 2002, Defendant seller purchased a condo, and in early 2004 contracted with Defendant broker to resell it. Plaintiff buyers later contacted Defendant broker to view the property. Plaintiffs asked both Defendant broker and Defendant seller if there were any environmental issues ongoing with the property, and both individuals assured Plaintiffs that there were none. Plaintiffs also reviewed Defendant seller's *Seller's Disclosure Statement* wherein he indicated that there were no "environmental problems" on the property.

Plaintiffs agreed to purchase the condo for $360,000. However, before closing, the DEQ sent a letter to the developer, Defendant broker and all condo owners regarding the status of the property and the marketing brochure. In the letter, the DEQ stated that the property remained "highly contaminated," and that the marketing brochure was "misleading to the reader." Defendant didn't furnish Plaintiffs with a copy of the letter.

About one year after purchasing the condo, Plaintiffs learned of the extensive contamination at the site. At some point, the developer declared bankruptcy, and the condo association became responsible for the costs associated with monitoring pollution and maintaining the vapor barrier. Plaintiffs then filed a lawsuit against Defendant broker and Defendant seller, alleging fraudulent misrepresentation, silent fraud, negligent misrepresentation, and violation of the *SDA*. A trial court jury concluded that Defendant broker had acted in concert with Defendant seller to violate the *SDA*, found both Defendants guilty on all four counts, and awarded Plaintiffs damages totaling $483,195.

**QUESTION BEFORE THE COURT:** Were the seller and broker liable for fraudulent misrepresentation, silent fraud, negligent misrepresentation, and violation of the *SDA*?

**RESULT:** Yes. The Michigan Court of Appeals affirmed the trial court verdict.

NOTE: There would probably have been no way for Defendants to avoid money damages based on the fraud and negligent misrepresentation claims. However, had they raised the defense that there is no separate claim for money damages under the *SDA* based on prior Michigan Court of Appeals' opinions, the total amount of damages awarded by the trial court jury may have been less.

► **Formaldehyde.** One of the top 25 bulk chemicals sold in the United States. Formaldehyde is usually in gaseous form, but a common source is urea- formaldehyde foam insulation (UFFI). Other sources are found in particle board, Plywood, paneling, textiles, resins, dyes, inks, latex, germicide, fungicides, and as disinfectant additives. *The impact on the environment is off gassing into buildings.* Temperature, humidity, HVAC systems and moisture content in the building all affect the rate and amount of release.

The effect on human health (through inhalation), is irritation of skin and mucous membranes, respiratory problems, headaches, dizziness, and drowsiness. It is considered a possible carcinogen. The most likely locations you will find formaldehyde is in commercial and residential buildings constructed in or remodeled in the 70s, and in industrial buildings. Remediation includes increasing ventilation, simply letting the product age (emissions will decrease over time), and to simply avoid use of products that contain it.

► **PCBs** (polychlorinated biphenyls) were initially manufactured in 1929. They are composed of hydrogen, carbon, and chlorine. The benefit of the material is that it does not conduct electricity or burn. The most common sources come from transformers, capacitors, switches and other electrical equipment used between 1930 and 1970. The effect on human health: may cause cancer (evidence inconclusive), severe skin rash, reproductive, respiratory, liver and neurological disorders.

The most likely locations for PCBs would be commercial buildings constructed between 1930 and 1970, landfills, and harbors, streams and rivers located in manufacturing and urban areas. Remediation techniques

include removal and replacement (expensive to dispose of) draining and replacement (difficult), and insulation (keep protected against fires of spills).

► **PBBs.** In early 1973, both PBB (sold under the trade name Fire Master) and magnesium oxide (a cattle feed supplement sold under the trade name NutriMaster) were produced at the same St. Louis, Michigan plant by the Michigan Chemical Company. A shortage of preprinted paper bag containers led To 10 to 20 fifty pound bags of PBB accidentally being sent to Michigan Farm Bureau Services in place of NutriMaster. This accident was not recognized until long after the bags had been shipped to feed mills and used in the production of feed for dairy cattle. By the time the mix-up was discovered in April 1974, PBB had entered the food chain through milk and other dairy products, beef products, and contaminated swine, sheep, chickens and eggs.

**► PFAS. EPA PFAS Drinking Water Limits May Be Much Lower Than Predicted**

For many years, the question of the EPA PFAS drinking water limits centered on waiting for the EPA to set binding limits for PFAS in drinking water. Now that the EPA has introduced the PFAS Strategic Roadmap with a target date of October 2022, the question shifted away from "when" to "what will the EPA's PFAS drinking water limit be in Fall 2022?" The EPA's recent data submission to the Science Advisory Board is a strong indicator that the EPA may intend to regulate at least two types of PFAS – PFOA and PFOS – more aggressively than many initially believed. The lower the limit that the EPA sets in 2022, the greater the impact on companies' finances because of PFAS water pollution enforcement actions.

On November 16, 2021, the EPA released a press release indicating that it had submitted to the agency's Science Advisory Board (SAB) draft documents regarding the health effects of certain types of PFAS, most notably PFOA and PFOS. Significantly, the EPA's data and scientific documents indicate that "negative health effects may occur at much lower levels of exposure to PFOA and PFOS than previously understood and that PFOA is a likely carcinogen."

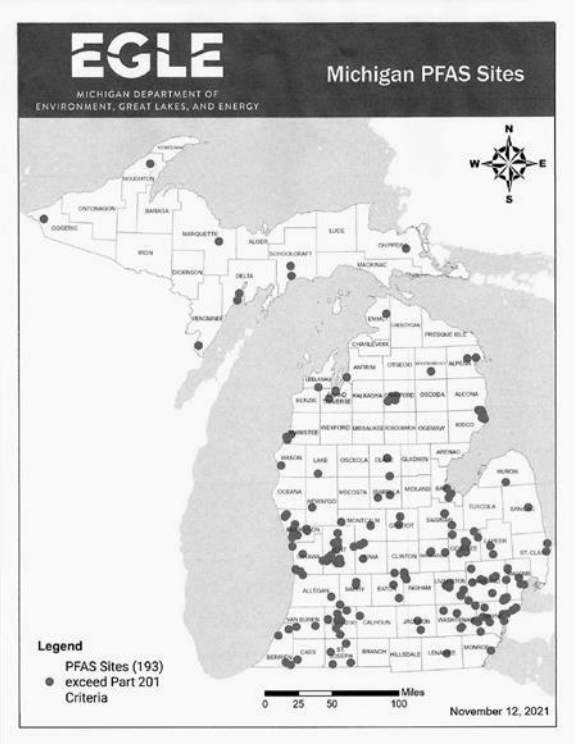
Many states have stepped in and created enforceable limits for PFAS in drinking water. The permissible levels range widely, generally within the 5 parts per trillion (ppt) to 70 ppt range. Many have argued that when the EPA sets a a PFAS National Primary Drinking Water Regulation, it will fall somewhere near the midpoint in this range. However, the data submitted regarding PFOA and PFOS, particularly the "likely carcinogen" categorization for PFOA, suggests that the EPA's regulation for PFOA and PFOS may fall well below the 30-40ppt range that many felt was a reasonable estimate.

In states that currently have PFAS drinking water standards in place, businesses have seen an uptick in enforcement actions related to PFAS remediation costs. If the EPA were to set significantly lower PFAS drinking water standards than initially predicted, it will naturally mean that the EPA will have a broader pool of alleged polluters to choose from for pursuing PFAS remediation costs. Depending on the scope of the PFAS pollution issue, cleanup costs can range anywhere from a few hundred thousand dollars to millions of dollars.

Now more than ever, the EPA is clearly on a path to regulate PFAS contamination in the country's water, land and air. The EPA has also for the first time publicly stated when they expect such regulations to be enacted. These regulations will require states to act, as well (and some states may still enact stronger regulations than the EPA). Both the federal and the state level regulations will impact businesses and industries of many kinds, even if their contribution to drinking water contamination issues may seem on the surface to be de-minimus. In states that already have PFAS drinking water standards enacted, businesses and property owners have already seen local environmental agencies scrutinize possible sources of PFAS pollution much more closely than ever before, which has resulted in unexpected costs. Beyond drinking water, though, the EPA PFAS plan shows the EPA's desire to take regulatory action well beyond just drinking water, and companies absolutely must begin preparing now for regulatory actions that will have significant financial impacts down the road.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

**Michigan has the most PFAS contaminated sites in the U.S., according to new data.** An update to a study conducted by the Environmental Working Group (EWG) shows Michigan with by far the most sites (192), but the report says it could be attributed to a more comprehensive testing program.




"It reinforces the fact that PFAS chemicals are everywhere – when you look for them, you find them. California has 47 known contamination sites and New Jersey has 43," the report said. “The updated map shows that PFAS contamination is truly a nationwide problem, impacting millions of Americans in hundreds of communities,” said Phil Brown, a professor of sociology and health sciences at Northeastern University and director of the Social Science Environmental Health Research Institute. “Leaders in many communities and states are doing great work to raise awareness about PFAS and push for cleanup, but this is a national crisis demanding national action. The EPA should act more quickly to evaluate all PFAS chemicals and restrict their use, and polluting industries should be held responsible.”

The last time the map was updated, November 12, 2021, there were 193 contaminated sites.

What is 'PFAS' and how can it affect your health?
First, a quick explanation on what "PFAS" is exactly:
"PFAS," or "PFAs," is an acronym for perfluoroalkyls, which are a group of man-made chemicals that are not found naturally in the environment, according to the Centers for Disease Control (CDC). These are industrial chemicals used in manufacturing.
Chemicals that are in this group include:

- perfluorooctanoic acid (PFOA)
- perfluorooctane sulfonic acid (PFOS)
- perfluorononanoic acid (PFNA)
- perfluorohexane sulfonic acid (PFHxS)
- perfluordecanoic acid (PFDeA)

We’re sure you have heard the environmental experts speak of “forever chemicals”. PFAS is one of the many that are definitely a problem. Where PFAS is found?

The CDC says PFAS can be found in air, soil and water. The substances will break down when in the air and fall down to the soil, then eventually enter the water system. PFAS won't break down in soil or water, the CDC says.

PFAS can get into drinking water when products containing them are used or spilled onto the ground or into lakes and rivers. PFAS move easily through the ground, getting into groundwater that is used for some water supplies or for private drinking water wells. When spilled into lakes or rivers used as sources of drinking water, they can get into drinking water supplies. PFAS in the air can also end up in rivers and lakes used for drinking water.

The CDC says most companies have stopped making these PFAS chemicals. Moreover, in addition to being used in manufacturing and consumer products in the past, firefighters have used the chemicals to fight fires, specifically at airports. It's used in the firefighting foam you may have seen before.
The EPA has published a list of where PFAS can be found:

- Food packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water.
- Commercial household products, including stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and fire-fighting foams (a major source of groundwater contamination at airports and military bases where firefighting training occurs).
- Workplace, including production facilities or industries (e.g., chrome plating, electronics manufacturing or oil recovery) that use PFAS.
- Drinking water, typically localized and associated with a specific facility (e.g., manufacturer, landfill, wastewater treatment plant, firefighter training facility).
- Living organisms, including fish, animals and humans, where PFAS have the ability to build up and persist over time.
- Drinking water contaminated with the chemicals, of course, means you're exposed to those chemicals. That's pretty straightforward, and that's why health officials urge people not to drink PFAS-contaminated water (see below what it can do to you).
-

The CDC explains you may be exposed to PFAs in the air; in indoor dust, food, and water; and in some home products. However, the main sources of exposure to PFAs, such as PFOA and PFOS, are usually from eating food and drinking water that has these chemicals.
Breast feeding infants may be exposed to PFAs since these chemicals have been found in breast milk. The benefits of breastfeeding are well known and almost always outweigh any potential risk, but you can talk with your doctor about concerns.
Children can be exposed to PFAs in carpet since they are closer to the ground and play on the floor.
Workers in facilities that make or use PFAs can be exposed to higher amounts of these chemicals and have higher levels in their blood.
Some communities near factories that made or used PFOA and PFOS or in areas that used certain types of firefighting foam that spread into the environment may have been exposed to high levels of these substances in their drinking water.
In Michigan, state health officials say the main way people are exposed to these chemicals is by swallowing them. In addition to being found in Michigan drinking water, PFAS chemicals can be found in cooking or food packaging products.
Here is a sliver of good PFAS news from Michigan state health officials:
"Touching products made with PFAS or touching water that contains PFAS is not the main way people are exposed to these chemicals. The PFAS chemicals do not easily absorb into the skin."

**The bad news:**

- You can't boil PFAS out of your water
- This isn't something that can be boiled out of water. It's not like when there is a water main break in your neighborhood and the loss of water pressure ups the risk for bacteria to enter the water system. You can boil the water to get rid of the bacteria. Nope, that's not at all the same as PFAS contamination. In the case of PFAS, we're talking about chemicals in the water that cannot be broken down. You can't "kill" chemicals like this.
- Do NOT boil your PFAS-contaminated water and then think it's OK to consume.
- However, you can lower the levels of PFAS in the water. According to the state of Michigan, you can treat water in your home to lower the levels of PFAS in the water.

A large number of studies have examined possible relationships between levels of PFAs in blood and harmful health effects in people. However, most of these studies analyzed only a small number of chemicals, and not all PFAs have the same health effects. Research suggests that high levels of certain PFAs may:

- increase cholesterol levels;
- decrease how well the body responds to vaccines;

- increase the risk of thyroid disease;
- decrease fertility in women;
- increase the risk of serious conditions like high blood pressure or pre-eclampsia in pregnant women;
- lower infant birth weights; however, the decrease in birth weight is small and may not affect the infant's health.

At this time, scientists are still learning about the health effects of exposures to mixtures of PFAs.

PFAS advisory levels
OK, let's take a step back and talk about PFAS advisory levels. According to the state of Michigan, the EPA has set a lifetime health advisory (LTHA) level for two PFAS in drinking water: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).
The LTHA level is 70 parts per trillion (ppt) for PFOA and PFOS combined. LTHA is the level, or amount, below which no harm is expected from these chemicals. There are other PFAS compounds that do not have LTHA levels.

To provide Americans, including the most sensitive populations, with a margin of protection from a lifetime of exposure to PFOA and PFOS from drinking water, EPA has established the health advisory levels at 70 parts per trillion.
What that means is there are levels of PFAS that you can consume that are not considered hazardous to your health. But if you're like me, then you probably wish there wasn't a world where you are consuming ANY level of these chemicals.
What is being done to fix this problem?
Research, for starters. Once researchers find it in the soil or water, then health officials have to find the source.
That's exactly what's happening in several communities in Michigan at the time of this writing. Residents are not supposed to drink the water, and the state is providing bottled water to them. They are investigating where this could have come from.
In Michigan, state officials say they have been collecting residential well data to determine if PFAS has entered residential drinking wells in communities where it is suspected. The state says municipal water systems are annually tested for a number of contaminants and many are proactively testing for PFOA and PFOS.

If you have questions about PFAS in your community, pick up the phone and call the State of Michigan Environmental Assistance Center at 800-662-9278. Your call could help bring more PFAS research efforts to your community.

► **Electromagnetic Fields.** No real evidence of any environmental impact. Don't confuse with stray voltage.

**Federal Laws**

**CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980).** CERCLA is more commonly known as the "Superfund" law. It was enacted after the publicity over the contamination of the Love Canal neighborhood near Buffalo, NY in 1978, raised public awareness and concern. *Initially, the law was intended to stimulate cleanup of abandoned and inactive hazardous waste sites, and to assign responsibility for clean-up costs.* CERCLA was comprehensively amended in 1986 by the Superfund Amendments and Reauthorization Act (SARA). This law established a Hazardous Substance Superfund for cleanup, partially funded by taxes on petroleum, some general revenue funds, and other taxes on corporations. It also requires the EPA to designate Superfund sites for the National Priorities List (NPL)

**RCRA (Resource Conservation and Recovery Act of 1976).** This is the *principal federal law that affects the operation of sanitary landfills and other facilities used for disposition of solid waste, and cradle-to-grave regulation of hazardous waste.* It was enacted in response to the "solid waste crisis". In 1988 the EPA estimated

that 40% of the nation's landfills would close within 5 years. It was intended to establish a cooperative program between the federal, state, and local governments, although actual enforcement is left to the states. Wastes not covered by RCRA may be regulated by the Clean Water Act (domestic sewage), or by the Atomic Energy Act (nuclear waste).

The important distinction between CERCLA and RCRA is:

RCRA applies to *active* waste transporters, generators, and treatment, treatment, disposal, and storage facilities. CERCLA applies to *inactive* or abandoned hazardous waste sites.

**TSCA (Toxic Substances Control Act).** This law gives authority to the U.S. EPA to require testing of chemicals and to regulate existing chemicals. The EPA maintains an inventory of chemical substances, such as CFCs (chlorofluorocarbons), PCBs, and dioxins. *TSCA does not cover pesticides.*

**FIFRA (Federal Insecticide, Fungicide and Rodenticide Act).** This is the principal federal law regulating pesticides. It was first enacted in 1947, and required registration of pesticides distributed in interstate commerce, and labeling to ensure proper use. It was amended in 1972 by the Federal Environmental Pesticide Control Act.

**Clean Air Act.** The federal government sets air quality standards for specific substances. It includes setting standards for the ozone and carbon monoxide.

**Clean Water Act.** This was first adopted in 1972, with many amendments since. The goals and policies are to achieve water quality that protects fish, wildlife, and recreation.

While congress writes law, the regulatory bodies which enforce the law are the ones which promulgate the rules as to how the law shall be interpreted. There have been many different sets of rules over time. In December of 2021, the most recent rules that were in effect were from 1988. The 2015 and 2018 and 2020 rules are no longer in effect at this time. The 2021 rules have been drafted are awaiting public opinion.

EPA is asking the Supreme Court to reject a petition by Idaho property owners Michael and Chantell Sackett to determine the standard for which the agency can make waters of the U.S. determinations.

In a brief filed at the end of November, EPA told the Supreme Court that lower courts have affirmed the validity of the use of the so-called "significant-nexus" standard.

The agency also said the court should not take the case before EPA finishes its current rulemaking changes to redefine waters of the U.S.

The Sacketts' battle over an EPA wetland determination started when they bought a small parcel of land in 2005 with the intent to build a home in Priest Lake, Idaho.

They obtained a county permit to build, but EPA claimed the property contained wetlands and ordered the couple to return the land to what EPA said was its original state or pay penalties -- all without the ability to challenge EPA's wetland ruling.

In their petition filed with the Supreme Court, the Sacketts asked the court to reconsider a ruling it issued in 2006 in Rapanos v. United States. In Rapanos, the Supreme Court held the Clean Water Act does not regulate all wetlands. However, the court offered no opinion explaining why.

A plurality opinion authored by the late Justice Antonin Scalia and joined by three other justices argued only wetlands with a continuous surface-water connection to regulated waters can be regulated.

A concurring opinion by Justice Anthony Kennedy, however, allowed for regulation of wetlands regardless of any surface connection so long as wetlands bear a so-called "significant nexus" with traditional navigable waters.

The EPA has indicated in its latest rulemaking to return to pre-2015 definitions, it is reimplementing the "significant nexus" test.

"Petitioners urge that the CWA should instead be construed to cover only those wetlands that have a 'continuous surface water connection' to other covered waters," EPA said in a brief filed with the Supreme Court.

"On that approach, the agencies would lack authority to protect wetlands separated from a navigable river by a small dune or other natural barrier, even if overwhelming scientific evidence showed that the wetlands significantly affect the river's 'chemical, physical, and biological integrity.' The act requires the agencies to make complex, policy-laden judgments about the extent to which wetlands should be treated as 'the waters of the United States.' Those decisions can be controversial and are subject to the vagaries of litigation. But, contrary to petitioners' suggestion, the agencies' past experience does not indicate that they are incapable of adopting durable rules in this area."

The agency told the court there was no reason to accept the petition because, "EPA has withdrawn the administrative compliance order that was the original subject of petitioners' challenge, and the agency has disclaimed any intent to revive that order."

EPA said that after it promulgates a new WOTUS definition, "The court will be in a better position to evaluate the extent and significance of any dispute about the application of the CWA to wetlands like these -- i.e., wetlands that are only a short distance from a tributary of a traditional navigable water, but that are separated from the tributary by an artificial barrier."

In a response filed with the court, the Sacketts, who are represented by the Pacific Legal Foundation, said the Supreme Court could provide regulatory relief to many other property owners.

"Adoption of the Rapanos plurality test to govern wetlands jurisdiction would provide full relief to the Sacketts as well as similarly situated landowners throughout the country," the Sacketts said in their brief.

"There is no surface-water connection from the Sacketts' property to any alleged jurisdictional water."

The Sacketts said the proposed new rule to return to pre-2015 WOTUS definitions would "not resolve the dispute" presented in their petition.

The significant-nexus test was one of the hallmarks of the 2015 WOTUS rule challenged by agriculture interests and eventually taken off the books by the Trump administration.

"That is the very same framework, according to which EPA issued the compliance order challenged in this case," the Sacketts said in the brief.

"Hence, holding off review to allow EPA's rulemaking to play out would do nothing to sharpen the issues or avoid the dispute raised by the Sacketts' petition."

**Safe Drinking Water Act.** Requires that the U.S. EPA set standards for suppliers of tap water. Prevents groundwater contamination.

# CHAPTER 5 - ENVIRONMENTAL ISSUES

## Michigan Laws NREPA

**Part 201 of the Natural Resources and Environmental Protection**
**Act** ("the Code"), 1994 P.A. 451, as amended. The purpose of the amendment is to eliminate the liability of current or former owners or operators who have not caused a spill, to exempt other parties from liability, and to change the standards for cleanup.

The person cleaning up the site may select the category of cleanup standard: residential, commercial, industrial, recreational, or designated "limited", provided that their remedial action plan documents that the cleanup criteria category is consistent with the zoning at the facility. Changes in the law, commonly known as the *"Polluters Pay Act"*, include limiting of strict joint and several liabilities to the person or business that caused the contamination.

***Residential property:*** *owners and occupants of residential properties are exempt from liability for contamination that occurred before their purchase or occupancy provided that hazardous substance use at the property is consistent with residential use.*

***De minimis contamination:*** *liability for this level of contamination is eliminated where concentrations are below residential cleanup standards.*

***Certain leases:*** *a lessee who uses property for retail, office or commercial purposes is not liable, unless they are responsible for causing the contamination.*

NREPA allows anyone who buys contaminated property after the effective date of the legislation to be exempt from liability, providing they have had a baseline environmental assessment (BEA aka Phase I) done within 45 days of purchase, and are exercising "due care".

► If the BEA does not disclose any contamination, the person may be entitled to assert an "innocent purchaser" defense in the event historic contamination is later discovered, provided that the BEA was conducted properly.

► An owner or operator who is liable under the statute now has an affirmative obligation to "diligently pursue" cleanup to completion - verbiage which was not included in Act 307. Part 201 continued to require a person who knows, or is on notice that a parcel owned by the person is contaminated, to provide written notice to a transferee.

► Due care: all persons who own or occupy property are required to take measures necessary to prevent exacerbation of existing contamination, assuring that the use of the property protects the public health and safety, and must take reasonable precautions against acts of a third party. Exacerbation means either of the following caused by an activity of the owner operator: 1) Migration of contamination beyond the property boundaries 2) A change in facility conditions that increase response costs.

*In general, NREPA reduces liability for lenders and has had a dramatic affect on how real estate transactions are handled in Michigan.*

**Chapter 324 of the Natural Resources and Environmental Protection A c t .** *Michigan became the first state legislature to codify all state laws pertaining to natural resources and environmental protection.* Prior to the codification, these statutes were scattered throughout Michigan's Compiled Laws. Simply finding a particular law would often require expertise in legal research. The Natural Resource and Environmental Protection Act (Public Act 451 of 1994, Michigan Compiled Law Chapter 324) compiles nearly 200 statutes into one chapter. A person attempting to find the state law

pertaining to an environmental protection or natural resources topic may now simply turn to Chapter 324 of the Michigan Compiled Laws to find the appropriate law.
Following is a brief description of parts of this act.

***Environmental Protection Act: Part 17.*** Part 17, referred to as the Environmental Protection Act, is one of Michigan's most important and widely recognized statutes. This part allows citizens, governmental entities, groups, and businesses to sue and be sued for violations that have occurred, or are likely to occur, and which are detrimental to the air, water, or other natural resources and the public trust therein.

***Water Resources Protection: Part 31.*** This part provides for the control of polluting discharges, including the establishment of state water quality standards for the management of surface waters. Those discharging wastewater into the surface or groundwater of the state must obtain a permit and file reports on their discharges. Violators are subject to civil penalties.

***Cleaning Agents: Part 39.*** The level of phosphates in detergents and other cleaning compounds is restricted under this part.

***Air Pollution Control: Part 55.*** This part authorizes the state to control air pollution and enforce the federal Clean Air Act.
Under this part, stationary sources must obtain permits to construct and operate their facilities. Permit applicants must pay fees to cover the cost of administering the operating permit program.

***Pesticide Control: Part 83.*** Part 83 requires the Michigan Department of Agriculture (MDA) to regulate the distribution, sale, and application of pesticides in Michigan. Pesticides offered for distribution or sale in Michigan must be registered by the MDA. The MDA may refuse, cancel, or suspend the registration of a pesticide for the reasons specified in the statute. Both private
agricultural applicators and commercial applicators of pesticides must be certified or licensed by the MDA to apply pesticides. The qualifications, costs, and procedures for obtaining certification or licensure are also specified. In addition, training programs for pesticide applicators must be developed by the MDA.

***Soil Erosion and Sedimentation Control: Part 91.*** The development of a unified soil erosion and sedimentation program and an effective enforcement procedure are provided under this part. Landowners are required to maintain control measures to reduce erosion and sedimentation.

***Watercraft Pollution Control: Part 95.*** Watercrafts are prohibited from causing water pollution by discharging wastes or refuse into the waters of Michigan. Boats with marine sanitation devices are to be equipped with pollution control devices. Docking facilities must provide pump-out facilities for boats with sanitation holding tanks.

***Hazardous Waste Management: Part 111.*** This part requires the monitoring of all hazardous waste, from the point of generation to the disposal site (cradle to grave). All hazardous waste haulers and disposal site operators are required to be licensed. In addition, this part creates a unique method for state and local cooperation in decisions on licensing new hazardous waste disposal facilities, including public participation. Part 111 provides incentives for recycling and disincentives for land filling. In addition, this part provides for strict disposal measures for solid waste incinerator ash to protect human health and the environment. Recent changes address corrective actions at sites where a release of hazardous material has occurred.

***Solid Waste Management: Part 115.*** This part regulates the establishment and operation of solid waste disposal areas, governs the transportation of solid waste, and requires the development of county-wide or regional waste management plans. Landfill owners are required to carry financial assurance equal to the cost of closure, post-closure monitoring, and necessary corrective action.

Financial assurance obligations can be met using bonds, the state mandated perpetual care fund, and a financial test of assets. Prior to 1992, this section regulated the importing of solid waste for disposal from another county, state, or country. However, in 1992, the U.S. Supreme Court ruled that Michigan's law allowing counties to ban the disposal of out-of-county or out-of-state solid waste violates the Interstate Commerce Clause of the U.S. Constitution.

***Environmental Audit: Part 148.*** Part 148 provides an owner or operator of a facility with an opportunity to conduct an internal environmental audit. This type of "self-policing" may encompass an evaluation of the facility's environmental management systems and operating processes; identification of historic or current non-compliance cases; and identification of hazards, contamination, or other adverse environmental conditions. Under Part 148, a person is immune from administrative or civil penalties and fines if they make a voluntary disclosure of any violations identified in the audit to the appropriate state or local authorities. Additionally, the person disclosing information must also make an effort to correct violations and achieve compliance. Immunity from administrative, civil, or criminal penalties and fines is not provided to people who knowingly commit a serious violation or a criminal act.

***Office Paper Recovery: Part 165.*** State departments and state agencies, the Legislature, and judicial offices are required to recycle specified wastepaper products. The Department of Management and Budget is responsible for establishing a paper recycling system and educating participating employees as to the importance of recycling paper. The Department Environmental Quality is responsible for locating and developing markets for recyclable wastepaper products.

***Used Oil Recycling: Part 167.*** Used oil recycling promotes the collection and proper disposal of used motor oil removed from motor vehicles by "do-it- yourselves." It is illegal to dispose of used oil by dumping it on the ground, down sewers, or placing it in a landfill. Under this part, a recycling demonstration project is to be implemented by the Department of Management and Budget.

***Scrap Tires: Part 169.*** Under Part 169, owners of scrap tire piles and haulers of scrap tires are required to register with the state. Scrap tire piles are regulated to control rodents, mosquitoes, and fire hazards. The Scrap Tire Regulatory F u n d is created to clean up abandoned scrap tires. An amendment to the Michigan Vehicle Code requires a fifty-cent surcharge be collected on each certificate of title. This surcharge is deposited to the Scrap Tire Regulatory Fund.

***Battery Disposal: Part 171.*** Lead-acid batteries must be disposed of by delivery to a retailer, distributor, manufacturer, collection, recycling, or smelting facility. These batteries cannot be disposed of in solid waste landfills or incinerators under this part. Under Part 171, the sale of alkaline manganese and zinc carbon batteries containing intentionally introduced mercury is prohibited. Button cell mercuric oxide batteries are also prohibited.

***Environmental Response: Part 201.*** This part establishes a process for evaluating, prioritizing, and cleaning up environmental contamination. Originally enacted as Public Act 307 of 1982, Michigan's Environmental Response Act underwent major revisions in 1990 and 1995. These amendments clarify the responsibility for reporting releases of environmental contaminants; establish the process for determining appropriate response actions and assign liability for the cost of cleanup. The amendments also exempt parties who were not responsible for contamination from liability for the cleanup costs. Cleanup requirements are tied to the intended use of the property.

***Underground Storage Tank Regulations: Part 211.*** Part 211 requires owners of underground storage tanks (USTs), storing either

petroleum or hazardous substances, to register their tanks with the DNRE. An UST regulatory enforcement fund is established to
provide for the enforcement of UST construction, installation, operation, and closure standards.
The fund receives money from the yearly tank registration fees paid by all UST owners. People who install or remove UST systems are required to have $1 million in pollution liability insurance.
Criminal penalties for tank registration and operation violations are also established under this part.

***Leaking Underground Storage Tanks: Part 213.*** The leaking underground storage tank part provides for the reporting and cleanup of releases from leaking underground storage tanks (LUSTs). Amendments to this part in 1996 changed the liability standard for UST releases. Parties not responsible for the tank operation at the time of the release are exempt from liability.

However, the party must take precautions not to increase the extent of the contamination. This part requires tank owners to hire qualified consultants to complete initial assessments of the release and remediate the contamination caused by a LUST. Hydrogeological studies, feasibility studies, and correction action plans are required where groundwater is contaminated. The DNRE will provide oversight of corrective actions and audit select LUST sites. Fines and penalties are established for fraudulent practices.

***Underground Storage Tank Financial Assurance: Part 215.*** This part establishes the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund to assist owners of storage tanks in meeting their federal and state financial responsibility requirements. The fund reimburses eligible UST owners and operators for LUST site cleanups and third-p arty damage claims resulting from tank releases. The MUSTFA Fund is supported by a 7/8cent regulatory fee on all refined petroleum products sold in the state. The State Treasurer is authorized to
collect the fee until all MUSTFA obligations are paid. Work invoices and requests for indemnification submitted by 5 p.m., June 29, 1995 are eligible for
reimbursement from MUSTFA. Any claims, work invoices, or indemnifications submitted after that date are not eligible for reimbursement.

***Inland Lakes and Streams: Part 301.*** A permit is required for any dredging or filling of the bottomlands, changing natural water flow, creating or altering of artificial waterways, and similar activities in inland lakes and streams.

***Wetlands Protection: Part 303.*** This part provides for the conservation and regulated use of Michigan's wetlands in recognition of their functions as food and fiber sources, shoreline stabilizers, wildlife habitats, water quality protectors, flood controllers, and providers of outdoor recreational opportunities. The part also requires persons wishing to fill, dredge, or drain a wetland to obtain a state permit.

***The Great Lakes: Parts 321 through 331.*** A package of legislation was enacted in 1985 concerning the protection of the Great Lakes and addressing the issue of diverting water from the Great Lakes Basin. These acts have been included in the Natural Resources and Environmental Protection Act as Parts 325, 327, 329, and 331. Great Lakes Protection designates the Office of the Great Lakes within the DNRE as the lead agency for the development of Great Lakes policy (Part 329).

Other parts of the package include changes in the composition of the Michigan delegation to the Great Lakes Commission and prohibits the diversion of Great Lakes water within Michigan boundaries. Later
amendments minimize the potential for Great Lakes oil and chemical spills by establishing state policies and programs to help prevent major toxic spills and create a more effective response to any that do occur. The Michigan Great Lakes Protection Fund has been created to provide grants to Great Lakes research and protection programs.

***Sand Dunes Protection and Management: Part 353.*** This part restricts mining activities in the Great Lakes sand dunes and promotes the development of a comprehensive plan for the protection of critical dune areas. A permit must be obtained from the DNRE prior to mining sand from dunes. The DNRE will deny permits where it determines that the proposed mining operations would cause irreparable harm to the environment. This part also establishes fees for monitoring sand dune mining activities and enforcing the regulations.

***Farmland and Open Space Preservation: Part 361.*** This part provides for long- term development rights agreements and open space development rights easements between the state and farmers and certain other landowners. Aimed at slowing down wide scale development, this part incorporates tax break incentives for farmers and other selected landowners. Amendments made in 1996 authorized the state to purchase development rights on farmland from willing sellers.

***Endangered Species Protection: Part 365.*** Comprehensive protection for threatened or endangered wildlife, fish, and unique plant forms is provided by this law. Habitat programs for endangered wildlife, federal grant assistance, and penalties for violations of the part are all included.

***Hunting and Fishing Licenses: Part 435.*** This part regulates the issuance of hunting and fishing licenses. Those activities for which a license is necessary are specified, as are the fees for each type of license. People who sell licenses as agents of the DNRE are also regulated under this part.

***Nongame Fish and Wildlife Trust Fund: Part 439.*** This part was established to provide a permanent source of funds for the management and habitat improvement of unconfined fish or wild animals that ordinarily are not taken for sport, fur, or food. An amendment to the state's Income Tax Act permits taxpayers to earmark $2.00 or more of their income tax refund to the trust fund.

***Supervisor of Wells: Part 615.*** This part establishes a state policy to conserve oil and gas through proper drilling, production, and preventing waste. The responsibilities of a person wishing to drill a well are delineated in this part and include obtaining a drilling permit and filing a bond with the DNRE. Criminal penalties are also established for violations.

***Peat Extraction from State Owned Lands: Part 641.*** The responsibilities of the DNRE, the Natural Resources Commission, and private parties are established regarding peat mining on state land. This part calls for a full inventory and assessment of all state-owned peat lands prior to further mining.

***Sand Dune Mining: Part 657.*** This part restricts mining activities in the Great Lakes sand dunes and promotes the development of a comprehensive plan for the protection of critical dune areas. A permit must be obtained from the DNRE prior to mining sand from dunes. The DNRE will deny permits where it determines that the proposed mining operations would cause irreparable harm to the environment. Fees are also established for monitoring sand dune mining activities and enforcing the regulations.

***Off-Road Recreational Vehicles: Part 811.*** This section provides for the registration and regulation of off-road recreational vehicles (ORVs). Safety and education requirements for ORV operators are provided in this part. Recent amendments address public use of motorized trails on state forest lands. The law provides for specific opportunities of ORV recreation while minimizing environmental damage and separating conflicting land uses by establishing a funding mechanism for trail development.

***Beverage Containers***. In the 1976 General Election, Michigan voters approved a proposal to ban certain throwaway bottles and cans. The new returnable beverage container law took effect on December 3, 1978, making Michigan the first major industrial state with such a law. Consumers pay a deposit for beverage containers, which is refundable. In addition, pull-tab devices on cans are prohibited. The Legislature amended this law in 1986, imposing the same deposit requirements on

wine cooler and mixed spirit drink containers. Recent amendments require that 75% of unclaimed bottle deposits be collected by the state. The proceeds is deposited in the "Cleanup and Redevelopment Trust Fund."

***Low-Level Radioactive Waste Laws.*** Michigan joined the Midwest Interstate Low-Level Radioactive Waste Compact with the enactment of Public Act 460 of 1982. Six other states, Indiana, Iowa, Minnesota, Missouri, Ohio, and Wisconsin, also enacted the agreement to become members of the Compact. Michigan's membership in the Compact was revoked by the other six states in July 1991, citing the state's "failure to fulfill its responsibilities as the host" for the Compact's first regional low-level radioactive waste disposal facility.

Stigma and Value

**Stigma.** The real estate definition of stigma is: an adverse effect on the market's perception of value of property containing an environment risk even after cleanup costs been expended or considered in estimating value. Properties may be stigmatized that are too close to noxious uses or from being associated with gruesome events, etc. Sources of stigma include:

- Fear of unknown, possible additional cleanup costs
- Fear from future liability due to changing cleanup standards
- Fear that additional testing may be required in the future
- Uncertainty regarding future legal regulation

**Value.** Lenders and the secondary mortgage market have guidelines on hazardous waste. For example: Fannie Mae - Section 303:

► "If the real estate broker, the property seller, the property purchaser, or any other party to the mortgage transaction informs the lender that an environmental hazard exists in or on the property, or in the vicinity of the property, the lender must disclose that information to the appraiser and note the individual mortgage file accordingly"

► When the appraiser has knowledge of any hazardous condition. He or she must note the condition on the appraisal report and comment on any influence that the hazard has on the property's value and marketability…and make appropriate adjustments in the overall analysis of the property's value."

► "We will purchase or securitize a mortgage secured by a property that is affected by an environmental hazard if the impact of the hazard is measurable through an analysis of comparable market data, and the comparable market data reveals no buyer resistance to the hazard."

► "In rare situations, a particular environmental hazard may have significant effect on the value of the subject property, although the actual impact is not measurable because the hazard is so serious or so recently discovered that an appraiser cannot arrive at a reliable estimate of market value because there is no comparable market data (such as sales, contract sales, or active listing) available to reflect the impact of the hazard. In such cases, the mortgage will not be eligible for delivery to Fannie May."

In a recent survey, 39 percent of responding lenders said that they are applying environmental scrutiny to residential loan origination.

**Looking for the *Best Place* to hang your real estate license?**
**http://www.acmereferralnetwork.com**