What's new in driver license restoration—As of spring 2016

BY MICHAEL BROCK
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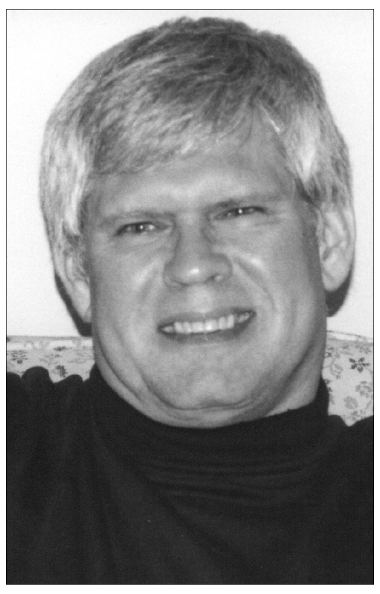
Michael G. Brock

As you already know, if your client fails a rolling retest, he has five minutes to clear the bad blow before he or she incurs a violation. If it is not the machines fault, it is typically caused by eating pizza or some other product with yeast. The client can clear the machine by rinsing their mouth with the water they should always keep in their car for such occasions. If they are unable to clear the bad test—which may be equipment failure, or in one case of ours, the result of spilling washer fluid inside the car—they must get a clean test at police station, or a laboratory. It is important to note that urine screens are no longer accepted by the Secretary of State AHS. They must have either a breathalyzer or an ETG swab.

As we noted in our book, "Get Your Michigan Driver's License Back," the U.S. government's own research states that the ETG is notoriously unreliable, but it is now what the State requires, so be sure to inform your clients of this requirement. Most police stations will do the breathalyzer, but some now charge to perform the service. Make sure there is as much detail on the report as possible, such as the client's name and the officer who performed the test, where and when it was performed, etc.

Beginning July 1, 2016, all interlock devices must have cameras. The reasons for this are obvious, if perhaps unnecessary, since the rolling retest takes care of a sober person starting the car for a drunk person to drive. However, it is what it is, and the camera does certify who is doing the test with certainty. The cost to your clients with be about an additional $40 per month, bumping the price up to about $120 per mo.

On the positive side, the problem with late abstractions causing needless expense and delays in the restoration process seems to have been resolved, thanks to presiding 3rd Circuit Court Criminal Division Judge Timothy Kenny looking into the matter for us. Many thanks to Judge Kenny.

We have also experienced some increased flexibility on the part of the State Hearing Officers with regard to submission of evidence that may not have been exactly in accordance with specifications. They have, in some cases, been allowing client's to submit documents at the time of the hearing, or after the hearing. This may be if they thought the mistake may have been made in their office. We are not sure, but it is a good sign that they have been willing to work with clients in what has become an increasingly complicated process.

There is also a bill currently pending before the legislature that would allow circuit court judges to issue a restricted license in cases on appeal from the AHS. At present, circuit court judges can only issue a full license, or remand the case back to the Secretary of State. Consequently, most cases are remanded, and about half of those result in a changed ruling. This bill could increase the odds of your client obtaining a desirable outcome on appeal, while reducing the time an expense required to obtain that result.

By way of a reminder, the most common reasons for denial of a driver's license are lack of sufficient sobriety (must have at least a year clean), lack of sobriety outside a controlled environment, lack of treatment or substance abuse education, or lack of support group involvement. If these are not done before the client sees the attorney or evaluator, it is unlikely that beginning involvement at the time of that meeting will make much difference. However, if the HO says they want to see it at the next hearing, they want to see it at the next hearing. Clients ignore these recommendations at their own peril.

Among things clients and attorneys have control over, the most common reasons for denial are inconsistent or inadequate evidence. The more times a client goes to a hearing and presents a different sobriety date, inaccurate or incomplete arrest information, changes in periods of abstinence, changes in frequency, substances or amounts consumed, or changes in abstinence periods on the SOS 257 that are different than those given to the evaluator, the harder it is to make a credible case for continued abstinence.

Sometimes your clients may be deliberately dishonest, but most of the times these conflicts are the result of laziness. I will change factually data that is in accurate if an attorney calls me, I will not debate with him what he said to me at the time of the evaluation. Mostly, when they want to do this it is because they are afraid of looking bad to the hearing officer. The hearing officer already knows he has a problem, to argue that he doesn't is inherently self-defeating. As you know, a big part of your job is to try to keep your client from shooting himself in the foot, or in some cases, the head.

If you can do that, we have a pretty good chance of success.

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THE EXPERT WITNESS

Reflections on the real-estate market

BY JOHN F. SASE, PH.D.
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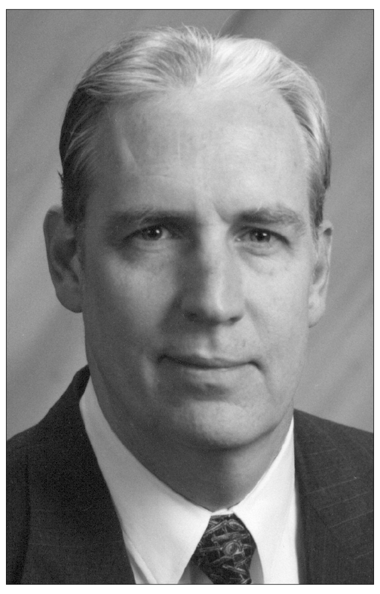
"The underlying principles of sound investment should not alter from decade to decade, but the application of these principles must be adapted to significant changes in the financial mechanisms and climate."

—Benjamin Graham, American Economist and professional investor ("The Intelligent Investor: A Book of Practical Counsel," Harper & Row, 1949)


John F. Sase

In the United States, the family home has represented both the single-largest household expenditure and the primary store of wealth for families over the past century. However, "gaming" the market (betting on and against Mortgage-Backed Securities) disrupted this general sense of equilibrium for many Americans as home prices rose to unaffordable levels before crashing down, wiping out family savings.

In last month's column, we presented a concordance of the book and film "The Big Short," a true story behind the largest Real-Estate Bubble in modern history. Was this the end? No! Many matters did not unravel quickly and the recent course of time has presented many new challenges to us. This month, we will take a look at events that have unfolded since the Crash and the Great Recession. In addition, we will address what may happen in the forthcoming decade.

Some Basics

Many of us may remember growing up in an era when our parents explained to us that purchasing a home was a long-term investment. Unlike stocks or other speculative investments, the return on family real-estate was expected to be modest but solid. The common philosophy was that home values kept up with inflation and that we got to live for free in the house. A review of the fifty-year average growth in home prices in the United States indicates that, through the 1990s, home values tracked the long-term rate of general inflation as measured by the Consumer Price Index (CPI).

The horse that upset the apple cart over the past two decades has been speculative house-flipping—buying and reselling quickly—along with bundling mortgages into investment securities that became highly speculative a decade ago. Though this bifurcation in housing investment has calmed down during the recent decade, it has not disappeared. The continuing duality of housing investment was spawned by the massive number of Adjustable Rate Mortgages (ARMs) that followed the subprime mortgage craze that occurred twelve years ago. The inherent problem with ARMs came from their low teaser-rates (ones that would jump to higher rates), which were due to reset by 2012. These rates were coupled with their down payments—ranging from small to zero— that caused many properties to slip underwater easily. Market analysts such as Whitney Tilson of Tilson Mutual Funds expected a second mortgage tsunami by 2012 or 2013. As the ARMs reset at significantly higher rates, analysts predicted that these rates would make underwater properties even less purposeful to hold as monthly mortgage-payments escalated sharply. The result was the fear of a second great "walk-away" by mortgage-defaulters (see https://youtu.be/cd88qspueys).

However, this event was subdued by an apparent (though somewhat covert) action by the banks. They reset mortgage-rates at acceptably low fixed-rates while restructuring many existing mortgages with some help from the Federal Government's Home Affordable Refinance Program (HARP). Along the sidelines, many analysts continue to suggest that this course of action necessitated holding down rates through intentional suppression of the London Inter-Bank Offer Rate (LIBOR). The LIBOR sets the standard for determining mortgage-rates used by major banks throughout the world. This episode led to the investigation of the dozen-and-a-half banks that are seated on the LIBOR board. The episode also resulted in Barclays Bank taking the bullet in the form of a fine that amounted to its profits for one morning from its opening until the first coffee break. In concurrence with our Federal Reserve Bank (the FED) and other central banks, interest rates have continued to remain low. In support of the primary home-buying season of the year, the FED recently announced its plans to hold down mortgage-rates through at least June of this year.

Fair Value

Home prices no longer track the CPI rate of inflation as they had for decades. This may be due to market conditions that include the gaming of the mortgage-market, downward fluctuations in interest rates, and a tight supply of housing in respect to demand in recent years. In place of the CPI rate, an alternative metric of Fair Value is used. This metric, developed by American economists Karl Case and Robert Shiller, presently is owned by CoreLogic, the prominent information, analytics, and data-service firm. This new index of Fair Value floats well above the average CPI inflation-rate. For some economists, this Fair-Value Index does not reflect what the author of our opening quote, Benjamin Graham, considered the father of Value Investing, defined as Firm-Foundation Value (a value that parallels long-term average inflation) in his classic text Security Analysis (McGraw-Hill, 1934). Not only does the Fair-Value Index appear to be sensitive to normal changes in interest rates, it also appears to be sensitive to large changes in the market-equilibrium price of housing should a building boom of affordable housing take place. Such housing would serve to replace the older generations of affordable housing built during the affluence of the 1920s as well as during the rapid expansion of tract housing that occurred during the suburbanization in the era that followed World War II.

Recent and Current Trends

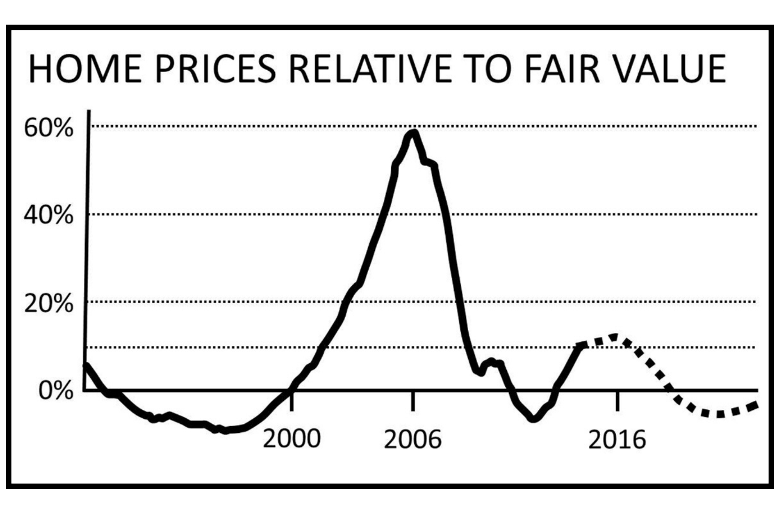
If we consider the graph of Home Prices Relative to Fair Value released by Bank of America Merrill Lynch Global Research and the Wall Street Journal, we can gain a reasonable assessment of the recent and current situations of the housing market.

Real-estate prices peaked in March 2006. At this time, average prices approached levels of 60% higher than the Fair Value. (Note: This spike placed the housing-price index at a level near 200% above the more general CPI inflation-rate.) Before the beginning of the millennium, home prices fluctuated within a range of plus/minus 10% of the Fair-Value Index and tracked close to the CPI inflation-rate. Following the Bubble, home prices dipped below the Fair-Value baseline before recovering in 2012. However, the home-price index has yet to return to the CPI inflation-rate. Pent-up market demand, initially low home-prices, and uncommonly low mortgage-interest rates (as discussed previously) led to the surge that has occurred during the past four years, a surge that rises to 12% above the Fair-Value Index (46% above the CPI rate of inflation). However, this trend has been flattening to the current peak for the past two years.

Quo Vadis?

Where are we going? If the build-rate for new housing remains equal to the rate in which older properties are removed from the housing-stock (relative to minor changes in demand), this current near-peak market may sustain for a lengthened period of time. Of course, this only will endure as long as interest rates remain low. The dynamic is simple for most homebuyers. Generally, housing consumers qualify for the amount and rate of a mortgage-loan based on their income and their outstanding debt. In this respect, purchasing power is defined in terms of the monthly payment that these homebuyers can afford. As long as the home insurance, property taxes, and loan-maturity are held constant, the remaining portion of the monthly payment is divided between the pay-down of principle and the declining amount of interest paid.

If interest rates decrease, then a larger share of the monthly payment is available for the pay-down of principle. Carried across all buyers in the market, this means that home prices will tend to rise. However, if interest rates increase, the opposite will happen with the principle portion and, consequently, with the resulting prices in the market. The forecast released by Bank of America Merrill Lynch Global Research and the Wall Street Journal leads us to expect home prices to hit the mark on the Fair-Value Index in late 2018 before they dip below the mark by 5% in late 2020. Following this low point, prices are expected to rise back slowly to the mark by mid-decade. All the while, home prices will approach the rate of general inflation. Perhaps they will reach their Firm-Foundation Value as the market corrects itself.



Takeaway

In matters of Real-Estate Law, knowledge of the facts, theories, and trends outlined above may prove critical in litigation. On the large scale, the manipulation of mortgage-rates through the LIBOR may have a wide impact in housing markets. Determination of the cause-and-effect relationship of such actions may provide solid evidence to support the hypothesis of the case in matters of due diligence, purchase agreements, mortgage fraud, and similar situations in which the macroeconomics affects the microeconomics. More generally for the many attorneys who invest their earnings in residential rental-properties, these facts and forecasts may serve them in a number of ways, such as in purchase-timing, offer-prices, and determination of rental income. At home or in the courtroom, attorneys and their associates will be well-armed with a little bit of insight into the current and future Real-Estate Market.

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