

Plain English Subcommittee on Real Estate

By George H. Hathaway

The goal of the Subcommittee on Real Estate is to promote plain English in real-estate documents written in the actual practice of law.¹ To do this, the subcommittee finds and gives Clarity Awards to clearly written sales contracts, deeds, easements, leases, land contracts, mortgages, and liens.

We have grouped real-estate documents into six separate types shown above. Within each type there are usually several widely used real-estate forms, each written by a

small group of lawyers. Consequently, to eliminate legalese in real-estate documents, we must do four things. First, divide the topic into six separate types. Second, identify the people who influence the style and clarity of each type. Third, identify the people who have the interest, ability, and courage to eliminate legalese and write in plain English. And fourth, join forces with them to work in an organized way from within the system to eliminate legalese in real-estate documents.

Members of Subcommittee on Real Estate

Subcommittee members are listed in Figure 2.

With this subcommittee we hope to bridge the gap between the educational materials on plain English at Wayne State and Thomas Cooley Law Schools and real-estate documents written in the actual practice of law. We think we can do it with our approach.

Michigan Activities

Our activities in this area are as follows:

1) **Listing and sales contracts.** In 1985 we began our activities in real-estate documents when we reviewed a typical real-estate sales agreement and found that less than three percent of the words used in the agreement were required by case precedent.² Therefore, in 1988 we helped the Michigan Association of Realtors (MAR) Forms Committee develop a plain-English sales contract³ and a plain-English listing contract.⁴ However, most of the member companies of the MAR never used these contracts. Instead, each of the MAR boards and companies continued to use their own individual listing contract and sales contract, even though these documents were all written in legalese. They are now using about 100 different listing contracts and about 1000 different sales contracts. All of these contracts are written in legalese, but each one is written with different words and in a different style than any of the others.

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

Figure 1. Clarity Awards and Want List for Real Estate

Real Estate	Clarity Awards		Want List
Type of Document	(Year) and Document	Written By	
1. listing contracts and sales contracts	(97) Ann Arbor Area Board of Realtors Sales Contract	Cornell	We want to find Clarity Award documents written according to Mellinkoff, <i>Legal Writing: Sense and Nonsense</i> , and Wydick, <i>Plain English for Lawyers</i> , from the following: listing contracts of MAR boards sales contracts of MAR real-estate companies
2. deeds and easements	(94) deeds and easements	Rohe	
3. leases			leases of Michigan Apartment Association
4. land contract			land-contract forms printed by title-insurance companies
5. notes and mortgages	(94) mortgage foreclosure by advertisement	Backus	FNMA/FHLMC mortgage forms
6. liens (construction and tax)			construction-lien forms of Construction Association of Michigan

Figure 2. Members of Subcommittee on Real Estate

1. Listing and Sales Contracts		
2. Deeds and Easements	John Rohe Todd Zachary	Private practitioner Greco Title Insurance Company
3. Leases		
4. Land Contracts	James Keller	Private practitioner
5. Notes and Mortgages		
6. Liens (Construction and Tax)	Marty Burnstein	Private practitioner

In 1996 we tried a different approach. We did not try to persuade 3,000 different real-estate companies to use a common form. Instead, we tried to persuade them to at least use a sales contract that was written in plain English. The MAR plain-English sales contract proves that these contracts can be written in plain English without legalese. Thus, even if MAR real-estate companies all use different sales-contract forms, they should all use forms that are written in plain English. So we started to look for MAR boards of realtors who were using a sales-contract form that they had written in plain English. And we found that the Ann Arbor Area Board was using a sales contract that they had written in reasonably clear language. Therefore, we gave the Ann Arbor Area Board of Realtors a 1997 Clarity Award for their sales contract.

This year we want to make a list of the 10 largest boards of realtors (Macomb, Western Wayne-Oakland, Grand Rapids, Greater Lansing, Flint, South Oakland, Birmingham-Bloomfield, Northern Oakland, Ann Arbor, Kalamazoo) and the 10 largest real-estate companies (Century 21, REMAX, Real Estate One, Red Carpet Keim, Coldwell Banker Schweitzer, and others). We want to find as many Clarity Award listing contracts and sales-contract forms from these boards and companies as possible.



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2) **Deeds and easements.** In previous years we have taken brief sample surveys of register-of-deeds offices for the clarity of real-estate documents.⁵ And we have found much legalese in these documents. But we have also found some clearly written documents. For example, in 1994 we gave John Rohe a Clarity Award for clearly written deeds and easements that he prepared.

This year we are doing two things. First, we have written a plain-English notary-forms bill that Rep. Ciaramitaro is sponsoring and that the State Bar Board of Commissioners has recommended.⁶ Second, we are trying to find other examples of clearly written deeds and easements in our Clarity Awards search.

3) **Leases.** In 1988 we wrote an article about plain-English apartment leases. But we have never found a lease that we thought was worthy of a Clarity Award. Therefore, this year we want to make a list of the 10 largest apartment owners in Michigan. We will see how many of their leases are written in clear language without legalese.

4) **Land contracts.** Land contracts are written on three major forms that are printed and distributed by First American Title Insurance Company, Lawyers Title Insurance Company, and the Grand Rapids Bar Association. We will review these forms to see if they are clearly written. And we will also try to see if there are any other land-contract forms available in Michigan.

5) **Notes and mortgages.** Most notes and mortgages in Michigan are written on printed forms that are developed and distributed by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. They are referred to as the FNMA/FHLMC or Fannie Mae Freddie Mac mortgage forms. The notes are written in clear language. How-

ever, the mortgages could be improved. We will try to coordinate our activities with the National Performance Review to see if we can improve the clarity of these mortgage forms.

6) **Liens.** Construction liens and tax liens are the two most common types of liens filed in Michigan. The most widely used construction-lien forms are printed by the Construction Association of Michigan. These forms still contain legalese. We will try to work with the Construction Association to see if these forms can be written in clear language without legalese.

Sample Populations

In our previous articles we identified the largest metropolitan areas in the largest states and English-speaking provinces in the United States, Australia, and Canada. We now want to identify the biggest real-estate company, register of deeds, and publisher of mortgage forms in each of these metropolitan areas. We will then have a sample population from which we can obtain sample real-estate documents. And we can then compare the clarity of Michigan real-estate documents with the clarity of these sample documents.

Conclusion

We have developed a plan to bridge the gap between educational materials and six specific types of real-estate documents written in the actual practice of law. Now we need to carry out that plan. ■

Footnotes

1. *Plain English in Real Estate Papers*, 72 Mich B J 1308 (December 1993).
2. *Legalese and the Myth of Case Precedent*, 64 Mich B J 1136 (October 1985).
3. *New Sales Agreement Helps Prove Case for Plain English*, 3 Mich L W 506 (Feb. 27, 1989).
4. *Plain English in Residential Real-Estate Listing Contracts*, 70 Mich B J 1320 (December 1991).
5. *An Overview of the Plain English Movement for Lawyers... Ten Years Later*, 71 Mich B J 26 (January 1994); *Plain English in Real Estate Papers*, 72 Mich B J 1308 (December 1993).
6. *Affidavits*, 74 Mich B J 1199 (November 1995); *Plain English in Notary Forms and Notices*, The Official Record (of Michigan Association of Legal Secretaries), Summer 1993; *Plain English Acknowledgment Forms*, 70 Mich B J 338 (March 1991).