

LEGAL ALERT

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BUSINESS & PROPERTY LAW UPDATE

Divisions Under Michigan's Land Division Act: All or Nothing?

By Robert W. Parker, J.D.

The two-year anniversary of the adoption of Michigan's Land Division Act (the Act) is right around the corner. I, for one, do not plan to celebrate.

With the adoption of the Act, each deed (which involves a conveyance of unplatted land) is required to include the following language:

The Grantors grant to the Grantees the right to make [insert number] division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

If the deed fails to include this language, all *splits* stay with the remainder of the *parent* parcel retained by the grantor.

Initially, most real estate practitioners adopted the practice of inserting, where the Act envisioned enumerating the splits being conveyed, either the words "*all*" or "*none*." The thinking was that the recitation of a specific number of splits in

the deed might expose the grantor to liability if the enumeration was inaccurate. From the grantee's perspective, if all permitted splits were to be conveyed, why not simply use the word "*all*?" This would avoid the situation where the grantor, for example, conveyed four splits, believing his property was less than 20 acres, when in fact he had five splits because it was a tad larger than 20 acres. That one unconveyed split would remain with the grantor.

Curiously, the Department of Consumer and Industry Services, Land Division Office, interpreted the enumeration provisions of the Act to mean that the transfer of a whole parcel, with no division at all, must expressly transfer all split rights or the right to further split the land disappeared! Further, the Department was on record as asserting that an actual number of splits must be inserted in the deed: Terms such as "*all*" or "*all allowable*" were ineffective, thus causing the right to make future splits

disappear. This position was asserted even though the Department possessed no authority whatsoever over division or split rights.

Thankfully, the Attorney General's office has corrected this draconian result. While the opinions of the AG's office are not as binding as court decisions, they carry substantial weight and are considered conclusive of certain legal issues unless and until reversed by a court.

Addressing only the situation of when a *parent* parcel is transferred (i.e., one that was in existence as of March 31, 1997, and from which no subsequent divisions were made) The AG's office determined what effect the failure to include the number of divisions language might have on a deed.

"... a grantor, when conveying his or her entire interest in unplatted land, where no divisions from the parcel have been made since March 31, 1997, is

not required by the Land Division Act to include in the deed of conveyance a statement on whether the right to make further exempt divisions is being conveyed. The right to make further exempt divisions is conveyed with the land."

Of course, if the transfer constitutes a division, then Section 108 of the Act is applicable and the divisions will still need to be enumerated and the "magic" language included in the deed.

With regard to the issue of whether to itemize the actual divisions to be conveyed, the preferred practice appears to be usage of the term "*all*" if all division rights are intended to be conveyed, or "*none*" if division rights are to be retained, even though this remains contrary to the opinion of the Department of Consumer and Industry Services, Land Development Office. Further, in light of the AG's opinion, if a conveyance includes an unplatted *parent* parcel, it appears that the language regarding division rights need not even be included in the deed. There is little or no support for the

Department's position that failure to enumerate the divisions results in their loss. In fact, the AG's opinion holds just the opposite.

Undoubtedly, the issue of division rights -what was retained and what was conveyed - will increasingly be discussed, debated, and litigated as more conveyances and divisions are made. Stay tuned and, in the interim, be careful.

*If you would like further information regarding this topic, please contact **Robert W. Parker**, or any member of our Business & Property Law Department listed below.*

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