

From the desk of:



The Real e-ditor

Summer is in full swing, and despite the talk of gloom and doom that seemed to dominate the business pages this past spring, our area seems to be enjoying a better than expected summer. Led by the resurgent Detroit Tigers, southeast Michigan is riding an unexpected tide of better than expected news.

Two of the highest profile projects, the renovation and redevelopment of the Book Cadillac Hotel - in which I have been fortunate enough to play a small role - and the Google deal in Ann Arbor, are bright stars in what we had all feared would be a dreary summer sky. Now I don't have any empirical data to back me up, but my general sense of the pace of Detroit business, based in part on how busy my business acquaintances and friends claim to be, is that there is a brisk amount of business activity still going on here. Business could be better, but opportunity still knocks in southeast Michigan for those of us out there hustling.

So, just like those intrepid Tigers, who seem to have a knack for winning in the last innings, maybe if we hustle our way through the rest of this summer, October will bring unexpected rewards to our area: a pennant for the Tigers, and a revitalized sense of our southeast Michigan real estate and business marketplace.

He not busy being
born is busy dying.

~Bob Dylan

REVERSING THE MYTH ABOUT REVERSE MORTGAGES

BY: KASTURI BAGCHI

Washington Post columnist Ken Harney recently warned the public about "the hidden dangers of reverse mortgages" by recounting the tale of Katherine Stephens, a 94 year old widow. Mrs. Stephens and her husband, Harold, had closed on a reverse mortgage loan in 1988 which allowed them to receive monthly payments of \$312.00 until death or they moved out of the house, at which time the reverse loan would have to be repaid in full. The loan included the lender's right to "100% of all gains in the market value of the property from the date of settlement to the date of final payoff." Several years after her husband's death, Mrs. Stephens moved into a nursing home. Unfortunately, this event triggered the acceleration clause of the reverse mortgage loan and the lender is now demanding repayment in the amount of \$416,500.00 even though Mrs. Stephens only received a total amount of \$67,500.00 in advances over the years. Because the 1988 loan documents permitted the lender to grab all of the equity in the house, Mrs. Stephens cannot simply repay the \$67,500.00 plus interest and use the rest of her sale proceeds to pay her nursing home bills.

While Mr. Harney did acknowledge that "the reverse mortgage loan industry no longer makes equity grab loans", his article generated a passionate response from the current president of the National Reverse Mortgage Lenders Association (NRMLA) to the Washington Post which is available at www.reversemortgage.org. Citing Mr. Harney's article as seriously misleading, the NRMLA wants seniors to know that reverse mortgage loans "with equity share features have been withdrawn from the market for a number of years" and that consumer protections have now been implemented which "provide consumers with accurate upfront disclosures illustrating the total costs of their loan...."

Before deciding on whether or not a reverse mortgage loan is the right product for you, it is critical to understand how it differs from conventional mortgages. The AARP website notes the following distinguishing features:

- Unlike the conventional mortgage whose

purpose is to allow the borrower to purchase a home, the purpose of the reverse mortgage is to tap into the equity of your existing home;

- Unlike the conventional mortgage where at the time of closing the borrower has no equity in the home, at the time of closing a reverse mortgage loan, the borrower has substantial of equity in the home;
- Unlike the conventional mortgage where the borrower makes monthly payments to the lender which reduces the principal balance of the loan, the borrower receives either a lump sum or monthly payments from the lender increasing the balance of the debt over time; and
- Because the borrower receives payments from the lender under a reverse mortgage loan, you do not need a minimum amount of income to qualify.



Current industry standards require repayment of all reverse mortgages "when the last surviving borrower dies, sells the home or permanently moves out of the home". See www.aarp.org. The payoff amount equals all of the loan advances made by the lender plus interest. If the total payoff amount equals or exceeds the value of your home, the debt is non-recourse so that the borrower can never owe more than what the home is worth at maturity of the loan.

The reverse mortgage loan may be an attractive product for some seniors who need extra income to pay for rising health care costs or other retirement expenses. If you are considering a reverse mortgage loan product, the AARP suggests you analyze the total cost of staying in your current home versus buying or renting a new home with sale proceeds from the existing home. This cost-benefit analysis will lead to the proper decision for you.

CHANGES IN THE LAND DIVISION ACT

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The Michigan Legislature has enacted a new law in Michigan (P.A.525 of 2004) which amends the Land Division Act (P.A.288 of 1967) and simplifies the traditional platting process. Prior to this amendment the process to create a subdivision of real property was time consuming and included multiple layers of governmental oversight and control at municipal, county and state levels.

The process could be characterized as a slow moving train with many stops along the "trip" for approval. Sometimes the train broke down for long periods of time adding even more time to the approval process.

Then came the saving grace for developers by way of the Condominium Act (P.A. 59 of 1978), which eliminated state control over the "subdivision" process and placed it in the hands of the local and county governments. As prospective buyers became more comfortable with the "condominium" concept, including the rules and regulations required by The Condominium Act, developers continued a divergence from the traditional platting process. However, as time went by, municipalities tightened their ordinances to react to the onslaught of condominium site plans.

Many communities have forced developers, down the path of planned unit development (PUD), with highly restrictive site plan and PUD ordinances governing the approval process. In general, the duration of this condominium approval process has lengthened over the years, but may still be shorter than the traditional platting process. Sometimes, this may result in a higher cost of development due to sophisticated ordinances and regulations imposed by local governments.

The amendment to the Land Division Act streamlines the traditional platting process by allowing concurrent reviews of the preliminary plat by local, county and state agencies and concurrent reviews of the final plat drawing by municipal agencies, county agencies and the Michigan Department of Transportation. The changes effectively take months out of the traditional platting process, thereby making it more attractive for the use by developers.

Additionally, legislation passed in Act 525 provides an opportunity for the proprietor to request a pre-application review meeting with agencies having jurisdiction over review

of the preliminary plat. This is done without any penalty to the proprietor with regard to the overall approval time frame. Additionally, this process gives developers an opportunity for immediate feedback concerning their development plans.

It remains to be seen if the tide of parcel creation by way of condominium will change. However there is something to be said for owning property without the numerous regulations and control imposed by condominium associations. There may be a market of people out there interested in purchasing a good old fashioned "lot" rather than a "unit".

Also, with municipality focus being on site plan and PUD ordinances over the past decade, the time may be right for developers to consider a traditional plat, where time constraints for reviews and approvals through the platting process are fixed by law, and are now substantially reduced.

Nowak & Fraus, PLLC offers a variety of services including consulting engineering, land surveying, land planning, landscape design and condominium platting.

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EDITOR'S NOTE: Public Act 525 of 2004 addressed in this article became effective July 1, 2005. In addition to the changes this Act made to the Land Division Act, one of the other criticisms made against the platting process has been the difficulty one encounters when trying to make even minor revisions to the final approved plat. Michigan law provides that to vacate, correct, or revise a recorded plat or any part of a recorded plat, it is necessary to file a complaint in the circuit court by the owner of a lot in the subdivision, a person of record claiming under the owner, or the

governing body of the municipality in which the subdivision covered by the plat is located. Public Act 590 of 2004 addresses a specific set of circumstances under which the revision process has been simplified with respect to the relinquishment of a public utility easement. MCL 560.222a permits a public utility easement to be relinquished without filing an action in circuit court if a written agreement for that purpose is entered into among all of the following



parties: (a) Each public utility or municipal entity that has the right to use the recorded easement; (b) The owner or owners of each platted lot or parcel of land subject to the easement; (c) A 2/3 majority of the owners of record of each platted lot or parcel of land within 300 feet of any part of the recorded easement; and (d) The governing board of the municipality in which the subdivision covered by the plat is located. These Acts coupled together serve to make traditional plats more attractive by addressing many of the impediments to the platting process that have long been lamented by developers.

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TIME IS MONEY

BY: JOSHUA MCCANN

For the handyman landlords who feverishly work on repairs to their property caused by reckless tenants, relief is on the way (at least financial relief). In the past, if landlords or property managers personally made repairs to premises that in fact tenants were responsible for, then landlords were only able to recover the cost of the materials needed to make the repair from the tenant. This left the landlord with three options: (1) Call a third party and wait for it to repair the premises; (2) repair the premises itself and take the loss on the value of its own labor; or (3) leave the premises in disrepair.

Now, under the terms of MCL 600.5739, Michigan landlords who file actions in court against their tenants for the costs incurred in repairing premises damaged by a tenant will be able to recover the cost of repairs made by themselves or their property managers, *including the cost of labor*. The amount that the court will award to a landlord who succeeds in court against a tenant for physical injury to their property will be the same amount that a third party would have charged to make the repairs. This means that the

landlord or property manager's labor will finally be compensable.

This, however, cuts both ways. If a tenant makes a counter-claim alleging that the landlord has breached a lease by failing to make repairs which a court determines the landlord was responsible for, the same rule will apply to the landlord. This means that the tenant will no longer be forced to make the decision of whether to waste the value of his (or her) own time in making the repairs, or waiting for the landlord to get



around to fixing it. Instead, the tenant will have the option of immediately repairing the premises and seeking recovery in court for the cost of repair, including its time. If the tenant has in fact made the repairs, then the tenant will be entitled to recover the same cost of repairs that a third party

would have charged.

In both cases, the court will determine what the amount of compensation, and will base that determination on the usual and customary charges for the repair. Because of this change, both landlords and tenants will now be able to recover the value of their own time if they make repairs to the premises themselves.

SBT WATCH

BY: DANIELLE M. SPEHAR

As many of you are undoubtedly aware there is currently a great deal of talk about rescinding the Single Business Tax ("SBT"). If the SBT is repealed, will the legislature adequately address the issue of the potential impact of the elimination of the SBT on Brownfield Redevelopment pro-

jects? The SBT credit is a key component of Brownfield legislation and serves as an incentive to developers to invest in and develop Brownfield properties. Preliminary discussions with legislators have been initiated with respect to this matter. Some interested parties have suggested that the credits should be transferable to an existing tax program, such as the payroll deduction for income tax; however, politics may make such a program difficult. Watch for future issues of the Real e-State Newsletter for updates on this important issue.

Maddin Hauser and the staff of Real e-State would like to welcome the newest member of our family, Mandira Sardar daughter of Kasturi Bagchi, contributing editor.