

An electronic newsletter for real estate professionals

From the desk of:

The Real e-ditor



The theme for this issue of the e-Newsletter seemed obvious in light of the impending presidential election: What impact would election of a Democratic versus a Republican President have on real estate markets? We thought comparing and contrasting would be easy. All we would have to do is compare the two major party platforms, ferret out the distinctions between them, and opine on the likely effects on real estate markets. While our task was clear the distinctions were not.

With the advent of the internet, the amount of readily available information pertaining to the parties' respective platforms has grown exponentially. A quick internet search revealed "The Democratic Platform for America - Strong at Home, Respected in the World" and "2004 Republican Party Platform: A Safer World and a More Hopeful America". Sadly, from an economic perspective, after stripping away the rhetoric from both platforms, the most notable distinction seemed to be the format the documents were delivered in: html versus pdf.

Both parties assert a desire to encourage savings and promote small business growth by reforming tax laws, and by spurring free and fair trade (as discussed further in this issue), however, the platforms are sparse on specific information as to how each party would accomplish its objectives. Clearly the growth of savings and small business should positively impact the level of activity in real estate markets (as well as most other sectors of the economy), and free and fair trade should further stimulate the economy and correspondingly, real estate market activity.

However, the reality is that until the new President takes office, be it George W. Bush or John Kerry, and begins to implement his party's platform, and his own agenda, it is impossible to project how the economy will respond. As is often the case, the proof will be in the pudding. The actual implementation of the prevailing party's platform will determine the future course of the economy. We, like all Americans, will have to wait and see whether we reap the rewards or suffer the consequences of our November choices.

Steven D. Sallen
Shareholder

NEW LEGISLATION:

BUDGET BALANCED ON PROPERTY OWNERS' BACKS

BY: STEVEN D. SALLEN

Imagine how much better your cash flow situation would be if you miraculously received your December bonus check (is there still such a thing?) in July. In a sense, that's the scheme that Governor Granholm and the Michigan legislature have codified into law in a bill signed September 30, 2004. The only problem is that Michigan's real property owners are the ones who will be writing that early bonus check.

Amendments to the General Property Tax Act will move up the collection date for the county operating millage by five months, from December 1 to July 1, over a three year phase-in period, beginning July 1, 2005.

Linked to State Revenue Sharing payments, this accelerated tax collection will reportedly save the State \$182.1 Million in Fiscal Year 2004-05. The phase-in will work by shifting 1/3 of the total number of mills allocated to the county from December 1 to July 1, 2005; the remaining 2/3 will be due December 1, 2005. In the following year, 2/3 of the total number of mills allocated to the county will be shifted from December 1 to July 1, 2006, and the remaining 1/3 will be due December 1, 2006. In 2007 the entire county millage will be due on July 1. December 1 will pass with no tax bill arriving in the mail.

The Governor insists that this revenue shift is not a tax increase.

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JUDGMENT LIENS PERMITTED AGAINST REAL PROPERTY

BY: BRANDON K. BUCK

Beginning September 1, 2004, Michigan joined Illinois and a number of other states that permit the recording of judicial liens against a judgment debtor's real property. The new judgment lien act will give creditors new incentives to obtain, and now record, judgments against corporate, individual and other debtors, to gain priority over competing creditors.

Under the new law, judgment creditors will now have the ability to perfect and retain, for up to 10 years, a valid judgment lien *against real property* located in Michigan by (i) obtaining a notice of judgment lien from the clerk of a Michigan state court or federal court, (ii) serving the notice on the debtor (personally, if the judgment is for an amount greater than \$25,000), and (iii) filing the notice in the land title records of the register of deeds for the county where the debtor's property is located. The judgment creditor is not required to obtain a legal description of the real estate, only the last known address of the debtor is required. A perfected judgment lien will have priority over all subsequent creditors upon the sale of the debtor's property, excepting, most significantly, purchase money mortgage holders, mortgages arising from the subsequent refinancing of purchase money mortgage debt, construction liens, condominium liens, and state and federal tax liens.



The Governor insists that this revenue shift is not a tax increase.

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DECISION 2004:

ANY ANSWERS IN THE PARTY PLATFORMS?

BY: DANIELLE M. SPEHAR AND KAS BAGCHI

With presidential elections less than three weeks away, how well informed are you about the 2004 Republican and Democratic party platforms? To test your knowledge, here's a little quiz. Which party makes the following statements in their platform?

- 1) "We believe the private sector, not government, is the engine of economic growth and job creation."
- 2) "Open markets spur innovation, speed the growth of new industries, and make our businesses more competitive".
- 3) "We will make it our priority to knock down barriers to free, fair and balanced trade so other nations' markets are as open as our own."
- 4) "We will restore commonsense [sic] budget rules...like 'Pay-As-You-Go' rules that require the government to pay for new initiatives...We will enact a Constitutional version of the line-item veto to make it easier to root out pork-barrel spending...We are committed to cutting the deficit in half over the next few years."

Believe it or not all of those statements were incorporated into the 2004 Democratic platform. Similar statements were also included in the 2004 Republican platform. This leads to an important question come November: concerning the economy, do the Democrats and Republicans actually differ? If the platforms do differ, what are the potential ramifications to the economy in general and, more specifically, to future real estate markets?

While both parties purport to want to encourage savings and promote small business growth by reforming tax laws and spurring free and fair trade by enforcing trade laws, there are two differences of which the voter should be aware:

The first difference is the breadth of tax cuts. Republicans would make permanent the across the board tax cuts that were enacted in 2001 and are set

to expire in 2010. The tax reforms of 2001 not only lowered individual tax rates for all Americans who pay income taxes, but also doubled the child tax credit, reduced the marriage penalty,



raised the estate tax exemption and reduced the tax rates on capital gains and dividend income. The Republicans assert in their plat-

form that lowering taxes across the board has increased the rate of growth of the gross domestic product and cite statistics that employment is up in 46 states. The Democratic platform, however, contends that the Bush tax cuts have turned record surpluses into record deficits and have made the wealthy even wealthier. In response to the perceived shortcomings of the Bush tax cuts, the Democrats would roll-back the tax cuts for those making over \$200,000.00, "to the same level as in the late 1990's, a period of great prosperity when the wealthiest Americans thrived without special treatment" while continuing to oppose tax increases on middle class families.



Mission Statement:

"America is a nation with a mission - and that mission comes from our most basic beliefs. We have no desire to dominate, no ambitions of empire. Our aim is a democratic peace - a peace founded upon the dignity and rights of every man and woman"

George W. Bush

The second difference concerns outsourcing. While both parties applaud various tax incentives that lower the overall operating costs of small business, the Democratic platform states that the party will seek to penalize companies that ship jobs overseas, while offering tax incentives for companies that create jobs here in America. Specifically, the Democrats would terminate the current deferral tax policies that permit American companies to avoid paying taxes on income earned by foreign subsidiaries. However,

such a policy could increase costs to the American consumer for domestically manufactured goods and services, make domestic products less competitive in the global marketplace, and potentially damage the profits of those same companies that provide jobs to American workers. With that being said, the silence of the Republican platform on the outsourcing issue provides no measure of comfort to those whose jobs have been, or are in danger of being, shipped overseas.

American Unity:

Let's build unity in the American family, not angry division. Let's honor this nation's diversity; let's respect one another; and let's never misuse for political purposes the most precious document in American History, the Constitution of the United States."

John Kerry

The ultimate question is whether the distinctions in the parties' platforms show real party-line differences on the economy. Unfortunately, for the average American voter, both platforms are long on well intentioned and good-sounding policy goals, while failing to give real details on what *specifically* each party would do to achieve those goals.

As in most recent election years, we will head to the voting booth with much rhetoric, but little real guidance.

BUDGET (Continued from Page 1)

The nonpartisan House staff analysis of the law's fiscal impact claims that this shift will have "no impact on the amount of property tax that an individual would pay in any given calendar year" and that those who pay their winter tax bill in December to take advantage of a federal tax deduction, would only pay their county property taxes "about three months sooner."

Beyond cash flow considerations, this new law will also affect property owners in at least two other significant ways. First, tax escrow accounts will be affected. Both residential and commercial mortgage companies will soon begin increasing the amount of their monthly collections in order to have sufficient escrow funds on hand to make tax payments up to five months earlier. Also, tenants whose landlords collect property taxes in advance installments will soon see their estimated monthly payment amounts increased by their landlords. Tenants may demand earlier reconciliation and adjustment of taxes, or they may dispute their landlord's early or increased tax billings, especially if the Lease is not clear concerning how taxes are prorated or apportioned.

Second, the method by which real estate taxes are prorated in sale and lease transactions will be affected. The "due date" method has been the preferred method for prorating taxes in southeast Michigan for many years. But consider the impact on a seller using the due date method. Consider a \$12,000 County tax bill due and

"...this new law will affect property owners in at least two significant ways..."

paid December 1, 2004. In the event of a closing on February 1 of the following year, the Seller would be credited back \$10,000 at closing; \$1,000 per month for each of the ten months from February through November. Now imagine the same transaction closing on February 1, 2008. Here the Seller would be credited back just \$5,000 at closing; \$1,000 per month for each of the five months from February through June. For closings between July 1, 2005 and June 30, 2008, a complicated two step proration will be required, with the July 1 portion of the county millage being prorated separately from the old December portion, but in any event, the proration will favor the buyer over previous practices.

It may be time to reconsider the so-called "fiscal year" method of tax proration, especially for sellers and tenants.

Expect some tedious negotiations between buyers and sellers, landlords and tenants, and their respective attorneys and advisors as the real estate community seeks out a *new normal* in tax prorations. Even worse, we're likely to endure some substantial closing table disputes as the parties to purchase transactions come to grips with the economic effects of using standard old tax due date proration clauses in purchase contracts, in light of these new realities. Real estate professionals must be aware of these changes when documenting new transactions, giving particular attention to the special problems that will be encountered during the phase-in period.

Reminder:

Maddin Hauser will host its Thirteenth Annual Tax Symposium, at the Novi Sheraton on Saturday, October 16th, 2004, from 8 a.m. until 12 p.m.

For more information, please contact Charles M. Lax at 248-827-1877.

LIENS (Continued from Page 1)

However, it should be noted that a judgment lienholder will not have the ability to force the foreclosure and sale of the property. In addition, the statute specifically excludes property owned by a married couple as tenants by the entirety, unless the underlying judgment is entered against both spouses.

Previously, a judgment creditor had to first locate, levy, and execute against available personal property before it could even attempt to collect against a debtor's real property. Even then, a judgment creditor was not entitled to record a judgment lien against real property. Michigan now joins 44 other states with judgment lien acts already in place.

Expect More

Our clients have come to expect more from our law firm. Soon, they can EXPECT MORE from our Website. Log on to www.maddinhauser.com to see all of the changes: more graphics, more exciting layouts and an easier to navigate design. We have updated our logo and are expanding our features.

Our Website, www.maddinhauser.com, will retain all of the relevant information you've come to expect, but with easy to use icons and helpful links, including back issues of the Real e-State Newsletter. EXPECT MORE from Maddin, Hauser, Wartell, Roth & Heller, P.C.



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