

Real e-State

An electronic newsletter for real estate professionals ©2004

From the desk of
The Real e-ditor

WELCOME to the first edition of the Maddin Hauser Real Estate Department's e-mail Newsletter. Over the years, we have met hundreds of hard-working, talented real estate professionals, including you. We have gained immeasurably from these associations and relationships. After all, when you get right down to it, aren't real estate transactions driven by valuable business relationships, just as much as they are by interest rates and other market forces? I am convinced of it!

So we conceived the idea of this Newsletter as a way to give back some of what we have gained over the years through our valued professional associations and relationships. We will provide you, on a quarterly basis, with news, notes and anecdotes relevant and interesting to commercial real estate professionals like you. Whether discussing recent developments in the law that might affect your next sale or lease transaction, market trend updates or useful planning pointers, we will provide you with a short but worthwhile read.

Those of you who know me best, know that I prefer a lively discussion, to a dull lecture. So, we also hope that, from time to time, you will suggest topics of interest or concern to you, so that we can explore them together in future issues.

Call us, and tell us what you think!



Steven D. Sallen
Shareholder

LEGISLATION AFFECTING REAL PROPERTY

With the onset of the new year, it is useful to take inventory of currently pending legislation that could impact your professional practice. This year there are two specific Bills that may produce a noteworthy impact in the real estate arena should either or both become law.

Senate Bill 172, introduced in February 2003, proposes the establishment of the **Toxic Mold Disclosure Act** (the "TMDA"). Contrary to the existing Seller Disclosure Act (MCL §565.957), which applies only to residential property transactions, the TMDA would apply to virtually all commercial and residential transactions in Michigan, subject to certain limited exceptions.

The proposed Act would require the delivery of a written disclosure by the transferor to the transferee prior to the transaction becoming binding. By its express terms, the Act also applies to landlords in leasing transactions. Failure to provide the required disclosure before a purchase agreement becomes binding will result in the transferee's ability to terminate the purchase agreement within



the time periods specified in the Act.

Unfortunately, the required disclosure pertains to mold of any kind in or on the property. By failing to exclude the presence of certain common types of mold such as that found in a shower or bathtub or on a bag of potatoes left in the cellar, obvious breadth and vagueness problems exist with this proposal. The disclosure statement would also require disclosure of the actions taken to identify if the mold was toxic and any clean-up efforts undertaken. The Act does not attempt to define what constitutes "toxic mold". However, the Act does provide relief for brokers by releasing the transferor's broker from liability for any representations not made directly by the broker or the broker's agent.

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CASE STUDIES

Under longstanding Michigan law, real property owned by a husband and wife was considered to be held in unity as tenants by entireties property, in which neither spouse had separate rights except a survivorship interest. Generally speaking, a third party creditor of one spouse was barred from penetrating this unity. The impact was that a judgment creditor such as the IRS could not attach a lien to tenants by the entireties prop-

erty without obtaining judgments against both spouses. Recently, however, the United States Supreme Court in *United States v Craft*, 535 U.S. 274, 122 S.Ct. 1414 (April, 2002), held that an **IRS tax lien** may attach to a federal tax debtor's spouse's interest in Michigan properties owned as entireties property. The Court's analysis concluded that the separate attributes each spouse enjoys

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Employment Law Symposium

Maddin Hauser will host the first in a series of law symposiums for 2004, at the Marriott Centerpoint on February 6, 2004, from 8:00 a.m. until 1:00 p.m.

The Employment Law symposium will include topics such as: proper practices for hiring, managing and terminating employees; preparation and use of proper employment documentation; proper protocol for protecting proprietary and confidential information, including the use of non-compete agreements. Breakout sessions will be held dealing with technical issues such as wage and hour compliance and various employee benefit issues.

Maddin Hauser will also host its annual Real Estate Symposium in the spring and our Tax Symposium in the fall.

If you are interested in attending our Employment Law Symposium or would like more information, please contact Ronald Sollish at 248-827-1876.

LEGISLATION (CONTINUED FROM PAGE 1)

The Act also provides that an agent is not liable for any violation of the Act by a transferor unless the agent knowingly acts in concert with the transferor to violate the Act. The proposed form disclosure statement advises the buyer to obtain professional advice and inspections of the property. The Bill has been submitted for comment. If this Bill becomes law, it will, in all likelihood, be modified in its final form to address obvious deficiencies. Nevertheless, the continuing legislative focus on the presence and impact of toxic molds in real property may drive the enactment of a modified form of this legislation. We will continue to follow and report to you on the progress of this proposed legislation.

Senate Bill 0302, introduced in March 2003, proposes the establishment of a sunset law that would provide for a complete repeal of the **Land Division Act**. It has been reported that the sponsors of the bill intend to force action by those who previously promised further revisions and refinements of the Land Division Act.

While it seems highly unlikely that the Michigan Legislature will permit the enactment of a complete repeal of the Land Division Act, this Bill may be a sign that significant revisions to the existing Act are imminent. We will continue to monitor the progress of this proposed legislation and its impact, if any, on the Land Division Act.

Meetings:

"Sometimes I get the feeling that the two biggest problems in America today are making ends meet and making meetings end."

Robert Orben

Speech Writer, Gerald R. Ford

CASE (CONTINUED FROM PAGE 1)

constitute "property" or "rights to property" under the federal lien statute of the Internal Revenue Code (see 26 U.S.C. §6321) and, therefore, is subject to lien attachment. If you would like further information regarding this decision or its practical implications, please feel free to contact us.

A recently issued decision of the United States Bankruptcy Court for the District of Minnesota, has held that exchange funds held by a bankrupt Qualified Intermediary in the context of a **Section 1031 Exchange** were subject to the claims of the Qualified Intermediary's general creditors in bankruptcy (See In re: Nation-Wide Exchange Services, Inc., 291 B.R. 131 (March, 2003)), due to the Qualified Intermediary's failure to segregate exchange funds into separate trust accounts. This shocking case dictates that Exchange Agreements must require that Qualified Intermediaries hold exchange funds in separate trust ac-

counts for each transaction and, that the Qualified Intermediary carry sufficient fidelity insurance and provide a certificate naming the 1031 exchanger as a policy beneficiary in order to insulate the exchange funds from possible claims of the Qualified Intermediary's creditors. If you would like further information regarding this decision or its practical implications, please feel free to contact us.

More Information:
www.michiganlegislature.org

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www.maddinhauser.com