

LAW OFFICES

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

THIRD FLOOR ESSEX CENTRE
28400 NORTHWESTERN HIGHWAY
SOUTHFIELD, MICHIGAN 48034-8004

(248) 354-4030

(248) 355-5200

TELEFAX (248) 354-1422

MAILING ADDRESS
POST OFFICE BOX 215
SOUTHFIELD, MI 48037-0215

MICHAEL W. MADDIN
MARK R. HAUSER
RICHARD J. MADDIN
RICHARD F. ROTH
HARVEY R. HELLER
MICHAEL S. LEIB
ROBERT D. KAPLOW
WILLIAM E. SIGLER
STEWART C.W. WEINER
CHARLES M. LAX
STUART M. BORDMAN
STEVEN D. SALLEEN
JOHN E. JACOBS
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GEORGE A. CONTIS
MARTIN S. FRENKEL
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GEORGE V. CASSAR, JR

LORI E. TALSKY
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E. DALE WILSON
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DANIELLE M. SPEHAR
CHRISTOPHER A. McMICAN
GEOFFREY N. TAYLOR
BRIAN A. NETTLEINGHAM
BRANDY L. MATHIE
DAVID B. KRAMER
THEODORE C. NITTIS
PATRICK E. WINTERS

OF COUNSEL
WALTER J. GOLDSMITH
MILTON M. MADDIN
(1902-1984)
C. ROBERT WARTELL
(1936-2001)

MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES
FROM: CATHERINE H. FINN, ESQ.
RE: ASSOCIATION AND DEVELOPER RIGHTS TO GRANT
EASEMENTS IN CONDOMINIUMS
DATE: May 4, 2004

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In its June 18, 2002 Opinion in *Rossow v Brentwood Farms Development, Inc.*, the Michigan Court of Appeals addressed the issue of the Condominium Association's authority to grant an easement against a privately owned condominium unit. The Court held that the Condominium Master Deed and the Michigan Condominium Act permitted the Association to grant the easement.

Brentwood Farms Development, Inc. executed a Master Deed for the Brentwood Farms Condominium Project in White Lake Township, which was recorded on November 9, 1993. Glenn and Ginger Rossow purchased Unit 82 of the Project by Land Contract that was executed in December 1993. A Warranty Deed for Unit 82 was recorded in June of 1997. Some time between October 1996 and the end of 1997, James and Linda Hogan purchased a home that was located on Unit 83 of the Brentwood Farms Condominium Project. In September 1996, a survey of Unit 83 was conducted. The survey revealed that the driveway that serviced the home on Unit 83 actually encroached upon Unit 82 by approximately 9 feet. In October 1998, Brentwood Association recorded an easement over Unit 82 for the benefit of Unit 83. The Plaintiffs, Mr. and Mrs. Rossow, sued the Association for slander of title, breach of the Michigan Condominium Act, and breach of the Condominium Association By-laws. The Court ruled in favor of the Defendant Condominium Association.

The recorded Master Deed for the Brentwood Condominium Project, which was incorporated by reference into the deed by which the Plaintiffs received title to Unit 82 provided that in the event that any portion of a site or residential structure in a site or common element encroaches upon another site or common element due to, among other things, survey errors, a reciprocal easement shall exist for the maintenance of such encroachment for so long as such encroachment exists, and for maintenance thereof after rebuilding in the event of any destruction. In addition, Section 40 of the Condominium Act, as it existed at the time the easement was granted, provided "to the extent that a condominium unit or common element encroaches on any other condominium unit or common element . . . by reason of any deviation from the plans and construction . . . a valid easement for the encroachment shall exist." The Court found that the language of the by-laws and the Condominium Act gave the Association the authority to grant an easement against Unit 82 for the benefit of Unit 83.

At Maddin Hauser, we have a great deal of experience assisting clients with all types of real estate transactions and litigation issues. If you have any questions regarding the authority of a Condominium Association to grant an easement over a privately owned condominium unit, are faced with similar situations, or any other issue, please feel free to contact me at (248) 359-7521 or chf@maddinhauser.com.