maddin hauser
Maddin Hauser Wartell Roth & Heller PC
attorneys and counselors

Real e-State

August 2007
Vol. 4 Issue 3

An electronic newsletter for real estate professionals

From the desk of:

The Real e-ditor

Of this much I am certain. Change is coming! Like Tony in *West Side Story*, I can feel it "just around the corner". But does change bode well or ill for our local economy?

I just returned to the office from a few vacation days in smoke-shrouded Santa Barbara, where wildfires in the rain-parched hills darkened the sky and drizzled a light ash over a wide area. The full moon rose red through the smoke (literally)! When I returned to my desk on Tuesday, I was reminded just how quickly change can befall (and befuddle) the business world. With the recent trip and fall of the credit markets, and a stock market slide in process, an otherwise promising summer now looks worrisome. Lenders are now pulling up commitments and standing on the sidelines to see what will happen next.

But wait, we here in Michigan have been sweating out a weak economy for years. Could it be that the rest of the country is just now catching up to Michigan? Does that mean that maybe, just maybe, we'll lead the way out of the weakness first? Coincidentally, GM reported an unexpectedly high profit for the second quarter. Even bankrupt and flight-cancellation plagued Northwest Airlines posted a slight profit for the second quarter. This summer's UAW labor negotiations with the Detroit Three could, with the right result, signal a new beginning for labor-management relations in our entire area.

We also have a new business tax which the Governor claims will "encourage companies to invest in Michigan". We hope to summarize this new law for our next issue and point out the opportunities it may hold for the future of Michigan. But even the new MBT is not in final form, as a "cleanup bill" is expected this fall to deal with glitches and unintended consequences which, undoubtedly, will be found in the coming weeks. Other revenue enhancements appear to still be on the table, such as a service tax and the "ticket tax" we keep hearing about.

So clearly, change is here and more change is coming. The only question is, will our area benefit or suffer from the changes? Stay tuned to future issues of *Real e-State* for answers.

Steven D. Sallen
Editor-in-Chief

APPELLATE COURT APPLIES NO NONSENSE APPROACH IN FORECLOSURE PROCEEDINGS

BY: KASTURI BAGCHI

On May 15, 2007, the Detroit News reported that there was one foreclosure filing for every 614 Michigan households during the month of April, thereby awarding Michigan with the dubious distinction of being the state with the tenth highest foreclosure rate in the nation. The good news is that the April foreclosure rate was much lower than in January, creating a sense that the worst may be over. What's the bad news? On the same day that this Detroit News article was published, the Michigan Court of Appeals revealed its no nonsense approach to handling foreclosure proceedings in *Sweet Air Investment, Inc. v. Kenney*, No. 265691 (May 15, 2007), which may be a source of concern to Michigan mortgagors.

In *Sweet Air*, the mortgagor purchased 66 continuous acres consisting of three different tax parcels. The property was improved by an 8,000 square foot main house, 5 outbuildings, dog kennels, and a caretaker's home. The mortgagor resided at the main house, located at 300 Marr Lake Road (the "Main Parcel") and used the property to raise show dogs. The caretakers resided at the caretaker's home, located at 750 Marr Lake Road (the "Caretaker Parcel"), which was connected to the Main Parcel only by a bridge. When the mortgagor defaulted on a loan secured by all 66 acres, the lender instituted foreclosure proceedings and received a sheriff's deed at the sale. The lender then quitclaimed all 66 acres to Sweet Air Investments which then sought possession of the property and commenced eviction proceedings.

In spite of the public policy goal of insuring redemption rights, the ruling in Sweet Air suggests a literal approach in applying the [law] as well as a reluctance to favor mortgagors who have waited too long to object to foreclosure proceedings.

The mortgagor sought protection under MCL 600.3224 arguing that the Main Parcel and the Caretaker Parcel were distinct parcels separately occupied by the mortgagor and the

See **Court** Page 3

AVOIDING AN UNINTENDED RELEASE OF A PERSONAL GURANTOR IN A COMMERCIAL LEASE

BY: DANIELLE M. SPEHAR

Getting the principal of a commercial tenant to sign a personal guaranty for a lease is like pulling teeth. Because the negotiation process can be difficult, many landlords rely on a standard guarantee clause that often states the guarantor remains liable despite any modifications, extensions, or renewals of the lease, to avoid asking the principal to execute a new guaranty when the existing lease expires and a new lease is signed. Unfortunately, this may not be a sound business practice. Without the guarantor's consent to become liable under the new lease, you may end up inadvertently releasing the guarantor from further liability under the guaranty.

In a recent Ohio Court of Appeals case, *Samsel Rope & Marine Supply Co. v. Gray*, a landlord learned this lesson the hard way. The facts of the *Samsel* case were quite typical. The tenant's principal signed a personal guaranty of the tenant's obligations under a 1985 lease. The guarantor died in 1994 and the tenant's assets were assigned to a new principal. The lease was scheduled to expire by its terms on August 31, 1995, but provided the tenant with an extension option.

See **Guaranty** Page 3