

DIVORCE: AN OVERVIEW IN MICHIGAN

APRIL, 2006

Each divorce case is unique. Each involves people of widely differing backgrounds, economic situations, and family relationships. The process, however, begins in the same way for each case.

The Michigan No-Fault Divorce Act allows the Court to grant a “Judgment of Divorce” to a person who files a “Complaint” alleging that “there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.” Courts only need the testimony of one of the parties that he or she simply does not wish to continue the marriage. A divorce action is filed in the Family Division of the Circuit Court located in each county. This court is commonly called the Family Court.

One factor that determines how complicated the process will be is whether the divorce is contested. If you and your spouse agree to the divorce and have worked out these issues, the process will be much faster and the legal fees will be less.

Although Michigan is called a “No Fault” State, fault for the divorce may be considered when dividing property. Fault can include:

- Infidelity;
- Domestic violence;
- Alcohol, drug or gambling addictions

One of the most frequently asked questions encountered by our divorce attorneys is:

WILL I LOSE CUSTODY OF MY KIDS?

Under Michigan law, the Court must determine the “best interests of the child” in deciding disputes regarding custody of a minor child. To determine the child’s best interests, the Court looks at:

- The love, affection, and other emotional ties existing between each parent and the child;
- Each parent’s willingness and ability to give the child love, affection and guidance;
- Each parent’s willingness and ability to continue the child’s education and religious upbringing, if any;
- Each parent’s willingness and ability to provide the child with food, shelter, clothing and medical needs;
- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining that continuity;
- The moral fitness of each parent;
- The mental and physical health of each parent;
- The home, school and community record of the child;
- The reasonable preference of the child, if the Court believes the child is sufficiently mature to express a preference;
- Each parent’s willingness and ability to encourage a close relationship between the other parent and the child; and
- Any other factor the Court believes is relevant.

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Another frequent question is:

WILL I HAVE TO PAY SPOUSAL SUPPORT (ALIMONY) AND, IF SO, FOR HOW LONG?

A Court will look at some or all of the following factors to determine if spousal support should be awarded and if so, how long:

- The past relations and conduct of the parties;
- The length of the marriage;
- The ability of the parties to work;
- The age of the parties;
- The ability of the parties to pay spousal support;
- The present situation of the parties;
- The needs of the parties;

- The health of the parties;
- The standard of living during the term of the marriage;
- Whether either party is responsible for the economic support of others; and
- General principles of equity.

At Cummings, McClorey, Davis & Acho, we pride ourselves on representing our clients in divorce and other family law cases in a manner which will make this often unhappy process as smooth and economical as possible. We recognize that the people we serve have very different circumstances. Since no divorce case is identical to any other, we recognize that your divorce needs and deserves personal attention from our lawyers and staff.

Derek J. Brackon



IS A PERSON ALWAYS ENTITLED TO DAMAGES BECAUSE OF A POLICE OFFICER'S UNCONSTITUTIONAL USE OF A SEARCH WARRANT?

The answer is “NO” according to *Armstrong v City of Melvindale*. Police officers in *Armstrong* wanted to search Mr. Armstrong’s business for evidence to support the prosecution of one of Mr. Armstrong’s friends. The officers consulted with the County Prosecutor about what they wanted to do and then obtained a search warrant. When they searched Mr. Armstrong’s business they did not find what they were looking for but they did find a quantity of marijuana. The officers then requested a second search warrant and went back to the business to seize the marijuana. A judge in the criminal trial ruled that both searches were unconstitutional. Mr. Armstrong then sued the police officers alleging that he should be awarded money damages. The Court of Appeals ruled that even though the criminal

judge said that the searches were unconstitutional, because the officers first consulted with the County Prosecutor, their mistake was not unreasonable. The Court’s ruling is important to all members of law enforcement. Police officers are entitled to what the courts call “qualified immunity” and cannot be sued if their decisions were reasonable — even if those decisions are later found to be unconstitutional. If officers have concerns about the legality of a search warrant, they might want to first consult with a prosecutor. That simple step should help eliminate any concerns about the reasonableness of the officers’ conduct and prevent the officers from being successfully sued by the target of the investigation.

Gary Hudson

THINK ABOUT “UNCAPPED” TAX ASSESSMENTS WHEN TRANSFERRING REAL PROPERTY

Corporations need to be aware that transfers of real properties to new corporations can result in significant increases in property taxes. In Michigan, property may be assessed at no more than 50% of its fair market value. The annual increase in taxable value is also limited as long as the ownership of the property does not change. Once the property is sold to a new owner, the “capped” taxable value becomes “uncapped,” and the assessment can increase up to 50% of the fair market value.

A recent Court of Appeals case (Signature Villas, LLC v City of Ann Arbor) reminds us that even a sale of a corporation that owns a another corporation which owns real

property can result in an “uncapping” of the existing assessed value. As long as the sale involves more than a 50% interest in the company, there is a transfer sufficient to allow the taxing authority to use an “uncapped” assessment.

The likelihood of higher tax assessments needs to be carefully considered when discussing the sale of corporations that own real property. Attorneys from CMDA’s business section are ready to assist your company in making appropriate decisions in the sale and purchase of businesses.

Patrick R. Sturdy

NEW ADDITION TO CMDA FAMILY
 CMDA congratulates our Editor-In-Chief/
 Graphic Designer Jennifer Sherman and
 her husband, Eric, on the birth of their
 second son, Alexander. On Law has
 missed its Editor and we all look forward
 to Jennifer’s return from maternity leave
 in time for the next edition.

In the Law

Compiled by Patrick R. Sturdy



The cases featured in this section do not necessarily involve CMDA. They are interesting cases we thought you would enjoy reading. To read additional cases, visit our website at www.cmda-law.com. Each Monday new articles are posted on our homepage.

Don’t File Fraudulent Liens to harass Your Enemies!

In one of the more absurd cases to confront the Michigan Court of Appeals this year, the Court said that a person cannot record a lien against a piece of real property unless he or she has a legitimate legal interest in the property. (People v Cynar.) The defendant had filed approximately two dozen liens with the Register of Deeds against the property owned by individuals in local government. None of the individuals owed the defendant any money.

In upholding the defendant’s felony conviction, the court said that the prosecution presented sufficient evidence to prove, beyond a reasonable doubt, that the defendant filed the liens with the intent to harass or intimidate the property owners. Filing fraudulent liens can be a felony and is not an appropriate way of showing your displeasure with government officials.

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Our Vision

*To meld our legal
expertise, professional
support staff, technical
resources and variety
of locations to deliver
first rate legal services
at a fair value to a full
range of business,
municipal, insurance
and individual clients.*

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