

*Update
on the* **Land
Division Act**

Still Confusing After All These Years?

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On
March
31, 1997,
Michigan's
Land Division Act
(LDA) [Public Act 591 of
1996, MCL 560.101, *et seq*]
went into effect, renaming and
significantly changing the Subdivision
Control Act and the way land is divided for
development. The act provided a new,
significantly more complex formula for permitted
land splits—and *required local officials to review
certain proposed land divisions.*

More than seven years later, many local officials are still struggling with the responsibilities of the LDA and how to apply them to their duties. This month's cover story looks back at the origination of the act, outlines the complicated formulas for dividing land, and delves into rulings handed down by the courts and how they impact the law.

To understand the LDA, it's vital to have an historical perspective on land division.

Under the Subdivision Control Act, there were basically two types of land division: those that involved a subdivision and required the creation of a plat, and those that were exempt from the platting requirement. The act allowed the division of land four times every 10 years without regard to the size of the original parcel and without the requirement of platting—resulting in an unlimited number of re-divisions. Any split resulting in *parcels larger than 10 acres* was exempt from the platting process.

The Subdivision Control Act was condemned as confusing, and the platting requirements were criticized as cumbersome and expensive. The result: unplatted splits were—perhaps unintentionally—encouraged, resulting in land fragmentation and oddly shaped parcels. Complaints abounded that the act contributed to the problems of loss in open space and farmland. With the LDA, the Legislature sought to address the negative impacts of these unplatted land splits.

Additional Administrative Duties

One of the most significant changes made to the LDA by PA 591 was to involve local government units in the review and approval of unplatted splits. Section 109 of the act requires that a township must approve or disapprove the proposed division within 45 days after the filing of a complete application for division with the assessor, or other official designated by the municipality.

Each township must designate a public body or individual to administer the township's land division ordinance (or the LDA in lieu of a local ordinance). The act appears to default administrative responsibility to the local assessor, unless the township has officially appointed another party. (MCL 560.109(1)) *If the township has a land division ordinance*, the township may establish a fee to review division requests. A good practice is to include a provision for charging a fee in the ordinance, stating the board may establish a fee by resolution, rather than specifying an amount in the ordinance. There is no authority in the LDA for *townships with-*

out a land division ordinance to charge a fee to defer the cost of reviewing and approving land divisions.

Under Public Act 87 of 1997, a township with a population 2,500 or less can transfer authority to the county to approve or disapprove a division. However, if the county does not wish to assume LDA administration, responsibility remains with the township.

Division of Land Checklist

The number of divisions permitted under PA 591 depends on the description of the original property intended to be split. The original property is defined as either a *parent tract* or *parcel*. A *parent tract* is comprised of two or more parcels under the same ownership that share a common property line. A *parent parcel* is defined as a continuous area or acreage of land. Whether property qualifies as a parent tract or a parcel is determined by its status on March 31, 1997. The parent tract or parcel must have legally existed by that date.

Two categories are used to calculate the number of permitted splits in a tract or parcel. Depending on how the property is intended to be split, the resulting new parcels will fall into one of two categories:

1) A division of a parcel or tract results in *one or more parcels of less than 40 acres each*. The number of divisions a landowner is entitled to depends on the size of the parent parcel or tract that is split.

2) An exempt split of a parcel or tract results in *any number of new parcels that are each 40 acres or larger*.

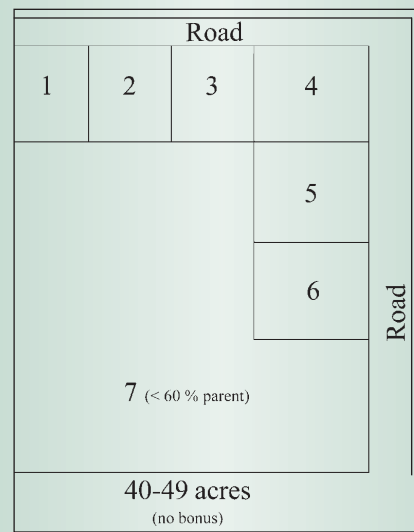
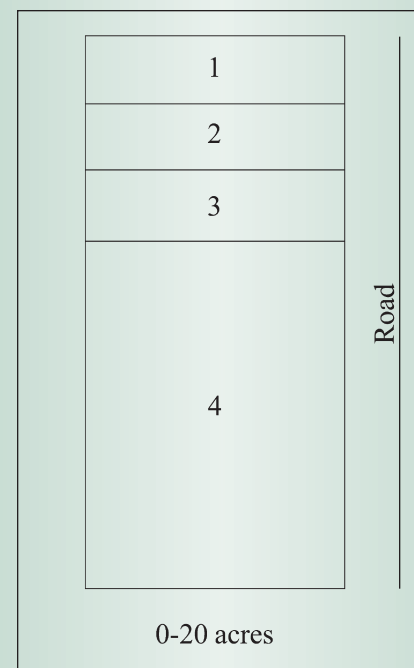
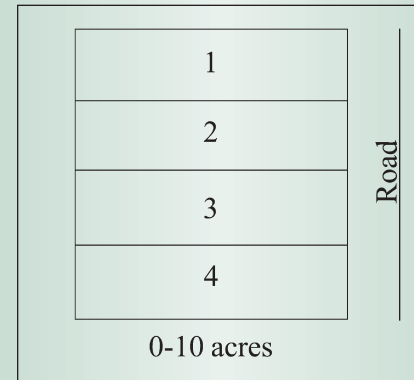
Basic Formula

Once the property is determined to be a parent parcel or parent tract, and assuming there is no conflict with zoning, according to Section 108 of the act, the number of divisions permitted is as follows (*see examples at right*):

- For the first 10 acres: 4 parcels;
- For each whole 10 acres in excess of the first 10 acres, up to 120 acres: one additional parcel, up to a maximum of 11 additional parcels. A parent parcel/tract of 120 acres would be allowed 15 resulting parcels; and
- For each whole 40 acres in excess of the first 120 acres: one additional parcel.

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Examples of Permitted Splits Under the LDA



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A township must approve or disapprove the proposed division within 45 days after the filing of a complete application for division.

✔ Bonus Splits

To encourage good planning and efficient land use, bonus parcels are available. When the initial parcel size is not less than 20 acres, two bonus divisions are available, in addition to the permitted divisions listed on page 11 if one or both of the following conditions apply:

1) Because of the establishment of one or more new roads, no new driveway access to an existing public road is created or required for any of the resulting parcels, and/or

2) One of the resulting new parcels comprises not less than 60 percent of the area of the parent parcel or tract.

✔ Exempt Splits

Exempt splits (parcels of 40 acres or more) created by dividing a parent parcel or tract are not counted as one of the divisions permitted if the parcel is accessible. Under PA 591, a parcel is "accessible" if one or both of the following conditions apply:

1) It has or could have a driveway that provides access to an existing road or street and meets all applicable location standards, and/or

2) It can be served by an existing or proposed easement that provides access to an existing road or street that meets all applicable location standards.

PA 591 *does* permit redividing a parcel or tract created by an exempt split or division if 10 years have elapsed since the parcel or tract was recorded. A separate formula is used to calculate the number of these permitted redivisions.

✔ Re-divisions

The proposed division may in fact be a "re-division" if the parent parcel or tract has been previously partitioned. A parcel or tract that was created by an exempt split or by a previous "division" may be re-divided or re-split if all of the following are true:

1) Not less than 10 years has elapsed

since the parcel or tract proposed for division was recorded.

2) The re-division results in the lesser of: a) two parcels for the first 10 acres plus one additional

parcel for each whole 10 acres; or b) seven parcels (10 if one of the resulting is at least 60 percent of the area of the parcel being divided).

Once a parcel or tract has been re-divided, it cannot be split again without platting.

Platting Parcels

If the number of resulting parcels exceeds that which is allowed by the basic, bonus and re-division formulas, the parcel/tract must be platted to achieve the number of divisions sought. If the number of resulting parcels is allowed by one or more of the formulas, the application must meet the requirements of Section 109 of the act, which requires that an application be approved if it complies with Section 108 as to the number of resulting parcels, and if the following conditions are met:


- Each parcel has an adequate and accurate legal description and is included in a tentative parcel map that shows area, parcel lines, public utility easements, accessibility, and other requirements. The tentative parcel map must be drawn to scale and show approximate dimensions of the parcels.

- Each parcel has a depth of not more than four times the width, unless there is a local ordinance requiring a smaller or larger depth-to-width ratio. Unless specified by the ordinance, the depth-to-width ratio requirement does not apply to

resulting parcels larger than 10 acres. The requirement does not apply to the remainder of the parcel/tract retained by the owner.

- Each parcel has a width and area not less than that required by local ordinance.
- Each parcel is accessible.
- Each parcel has adequate easements for public utilities.

According to Section 109(2), the right to make divisions without platting may be transferred from a parent parcel/tract to a parcel created from the parent parcel/tract. All deeds must include a statement as to how many divisions under Section 108 are being conveyed by a grantor to a grantee. The act implies, if not explicitly states, that an application may be denied because the applicant does not have the right as owner of the parent parcel or by deed from the parent parcel to make the number of divisions proposed. The Supreme Court recently issued a ruling (see page 13) on a similar instance in *Sotelo v Township of Grant*.



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**Michigan Courts Rule on
LDA Issues**

In the years since the LDA has taken effect, Michigan courts have issued rulings on several cases involving the complex issues of the act. Among the numerous cases, several are worth noting:

Sotelo v Township of Grant

Just prior to press time, the Michigan Supreme Court overturned a Court of Appeals ruling in the case *Sotelo v Township of Grant* (255 Mich App 466 (2003)). The Court of Appeals had considered whether a particular division had violated the LDA and noted that, since the act was a “derogation” of the common law right to freely alienate property, it must be narrowly construed.

The case involved two adjacent parcels in the township—a 2.35-acre parcel owned by the plaintiff Jeffrey Sotelo and a 7.63-acre parcel owned by another resident, Robert Filut. Filut conveyed 3.25 acres of his parcel to the Sotelo parcel on July 15, 1999. The remainder of the parcel was divided into four separate parcels, each at least one acre in size. The “new” Sotelo parcel was also split into four separate parcels of more than an acre each.

The township denied approval for the divisions, asserting that resulting parcels exceeded the number allowed under the LDA, and that the act’s platting requirements should have been followed.

The trial court noted that the act allowed a parent parcel of less than 10 acres—which both the original parcels were—to be divided into up to four parcels. The court also noted that the township had not argued that either parcel was part of a parent which had been previously

divided. The trial court had ruled that, since the Filut parcel was divided into four parcels, the portion of the Filut parcel that was transferred to the Sotelo parcel could not be further split. Therefore, the trial court reasoned that the Sotelo parcel split violated the act.

The Court of Appeals disagreed, and held that the “transfer” from Filut to the Sotelo parcel was not a “division,” since the definition of “division” specifically states that division does not include a property transfer between two or more adjacent parcels. The court further reasoned that the transfer was not an exempt split because it was a split resulting in parcels of less than 40 acres. It was simply not a division at all, and since the transfer was not an exempt split or a division, the “re-division” formula was not applicable. It was not counted in the total number of resulting divisions of the parent parcel—i.e., the Filut parcel.

The court then concluded that the division of the reconstituted Sotelo parcel was in compliance with the act. However, the Supreme Court reversed that decision, and held that where division rights were not transferred to Sotelo, and Filut used up his division rights on his remaining parent parcel, Sotelo could not divide the property acquired from Filut

It seems likely that the Legislature will consider more changes to the already complicated provisions of the LDA.


without platting the land. In other words, the maximum number of divisions of a “parent parcel” cannot be increased by a transfer of property to an adjoining parcel.

Trachsel v Auburn Hills City Council

In the unpublished opinion, *Trachsel v Auburn Hills City Council* (Docket Number 236545, decided November 26, 2002), the Michigan Court of Appeals considered whether a municipality had properly denied an application for land division based upon lack of compliance with a local ordinance governing land divisions. In the case, the court noted that the act requires approval of an application if it complies with Sections 108 and 109.

The city had denied the application because it had found that the proposed split was not harmonious or compatible


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with the character of the surrounding neighborhood. The city's local ordinance had provided it discretion to deny a division on this basis. The Court of Appeals held that the statute did not allow for consideration of compatibility in the local ordinance except with regard to allowing a depth-to-width greater than that provided in statute or the ordinance. Therefore, the court reasoned that the city was pre-empted from requiring compatibility in its local ordinance, and ruled that the city was required to approve the application for split. Since this opinion was not published, it does not provide strict precedent but should be considered instructive as to the reasoning of the court.

Conlin v Scio Township

In the unpublished case of *Conlin v Scio Township* (Docket Number 243886, decided April 22, 2004), the Michigan Court of Appeals seemed to rule that a township could require compliance with dimensional standards in its local ordinance governing land division beyond merely area, width, and depth-to-width ratio. The court held that density limitations in the zoning ordinance, applied by the township to restrict the number of land divisions/subdivisions allowed, were not pre-empted by the Land Division Act. The court ruled that plats need not be allowed in all zoning districts.

What Will The Future Bring?

There continues to be confusion in the application of the Land Division Act's provisions regarding unplatted splits, even after all the years following its enactment. As its 10th anniversary approaches, it seems likely that the Legislature will consider more changes to these already complicated provisions. For example, since parent parcels could have been divided and re-divided since March 31, 1997, many properties will have reached their maximum number of parcels which may result without platting. It is likely that as these maximums are reached, property developers will continue to push for revisions that will allow for further partitioning without resorting to the expensive platting process.

Others, such as farmland preservation advocates, urge amendments to the act to eliminate the re-division of property after 10 years. Other changes which have been urged include changes to the platting process to reduce cost, time and bureaucracy. Revisions to require site condominiums to comply with either the unplatted division or with the platting provisions of the act have been suggested, along with specific authorization for municipalities to withhold approval for divisions that do not comply with the local zoning ordinance.

Perhaps future legislative amendments will increase the clarity of the act and decrease the conflicting interpretations that abound. However, it seems probable that a decade from now another article written on the Land Division Act may conclude that it is "still confusing after all these years." ■

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