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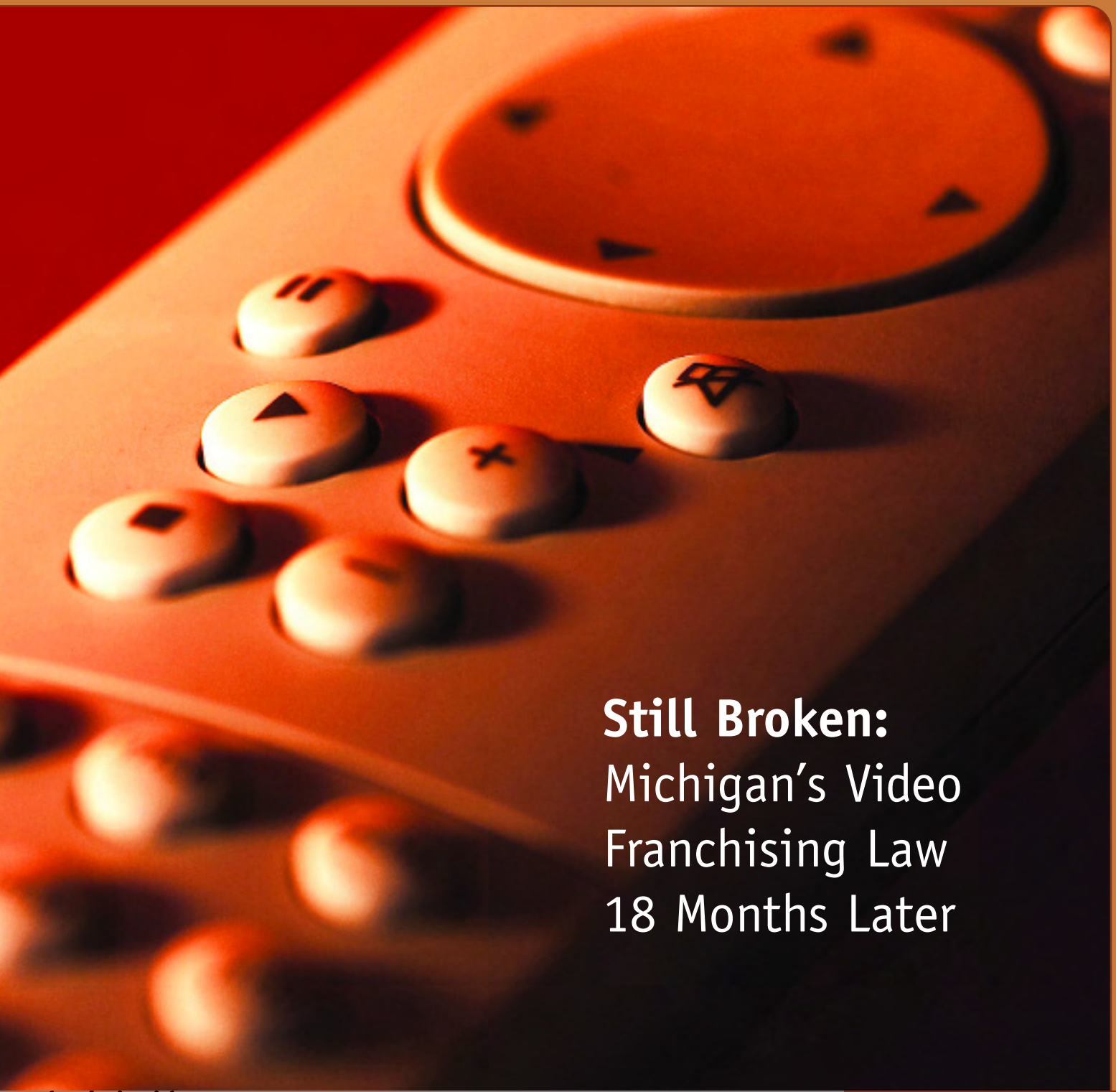

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Understanding Municipal Civil Infraction Proceedings

Since 1994, Michigan townships have been able to enforce township ordinances through municipal civil infraction proceedings. Prior to that time, a violation of a township ordinance always constituted a criminal misdemeanor offense. Most townships that have "decriminalized" some or all local ordinances, thus making violations of the ordinances *civil* infractions rather than criminal offenses, are generally pleased with the switch.

However, there are still some aspects of the civil infraction process that remain unclear and, at times, even bewildering.

SOME QUESTIONS REMAIN UNANSWERED

While the statutes that govern municipal civil infraction proceedings in Michigan townships offer general guidance, they do not, unfortunately, cover every aspect of the process. Accordingly, township officials throughout Michigan are often frustrated to encounter situations where questions about some areas of the municipal civil infraction process remain unanswered, or there are different approaches available to a township with no truly "correct" answer.

Not surprisingly, some district courts handle certain aspects of the municipal civil infraction process differently. In fact, even within a district court, the municipal civil infraction process can vary based on the judge assigned to the case or the division of the court in which the proceedings are held.

Some specific areas in which there appears to be no statewide uniformity include: whether—and how—a defendant should be "defaulted" if the defendant does not respond to a ticket; whether there is a "cap" on the amount of attorney fees that a district court can award a prevailing township; whether a magistrate should be permitted to issue injunctive relief to enforce the outcome of an informal hearing; and what specific process should be used when a township seeks to have a court order injunctive or extraordinary relief against a defendant who has been found responsible for a violation.

THE RIGHT DIRECTION

The purpose of this article is to provide some basic guidance to point township officials in the right direction when it comes to municipal civil infraction proceedings. By adhering to the principles and procedures outlined below, the court proceedings that follow the issuance of the civil infraction citation will run more smoothly.

In addition, the township will have a higher likelihood of being able to establish that the defendant is in fact responsible for the violation.

Prior to issuing a municipal civil infraction citation, often referred to informally as a "ticket," the township enforcement officer in a particular case—whether it be the township's zoning administrator, building inspector, zoning enforcement official, ordinance enforcement official, or other person—should perform his or her "due diligence" actions. Due diligence is a phrase often used by accountants, attorneys and businesspeople to denote "doing one's homework" before undertaking a project.

It is recommended that the township enforcement officer do *all* of the following after receiving a citizen complaint or where a township officer has observed a potential ordinance violation, but before issuing a civil infraction citation:

1. Open an internal case file.
2. Perform a full investigation.

3. Review the applicable ordinance(s).
4. Contact the potential defendant.
5. Send a warning or violation letter(s) or notice(s) to the potential defendant.
6. Consult with the township attorney (optional).
7. Prepare the ticket or citation.
8. File of a copy of the ticket or citation with the court, along with a cover letter addressed to the court clerk.

In addition, several general practices should be kept in mind with regard to the issuance of municipal civil infraction citations and the court proceedings that follow. First, everything should be handled "by the book." All technicalities specified in state statutes and local ordinances should be followed, including filling out a ticket correctly and properly serving the ticket on the defendant.

Second, document *everything*. The case file should contain copies of warning letters or notices sent to the defendant before issuance of the ticket, photographs of the violation, if possible, and copies of all correspondence with the court. It is especially important to utilize written correspondence with the district court if a particular aspect of the case is unusual or uncertainties are involved. For example, in many cases where a township believes that injunctive or remedial relief will be necessary, the township will simply bypass the informal hearing stage and request a formal hearing. If that is the case, the cover letter that accompanies the copy of the ticket filed in the court should specifically request that a formal hearing, rather than an informal hearing, be scheduled. It is important to document such a request to prevent the case from "falling through the cracks."

Third, if in doubt about any aspect of the municipal civil infraction process, consult with your township attorney, court officials or officials from other townships who have handled similar situations.

Finally, do not become discouraged. While townships prevail on the majority of civil infraction tickets issued, every township is bound to lose a case periodically, or even several cases in a row. If that happens, do not give up. Even though difficulties sometimes arise when utilizing the municipal civil infraction process, many townships in Michigan have found that prosecuting ordinance violations as municipal civil infractions rather than criminal misdemeanors has many advantages. Few townships ever go back to the old way of doing things once municipal civil infraction procedures have been adopted.

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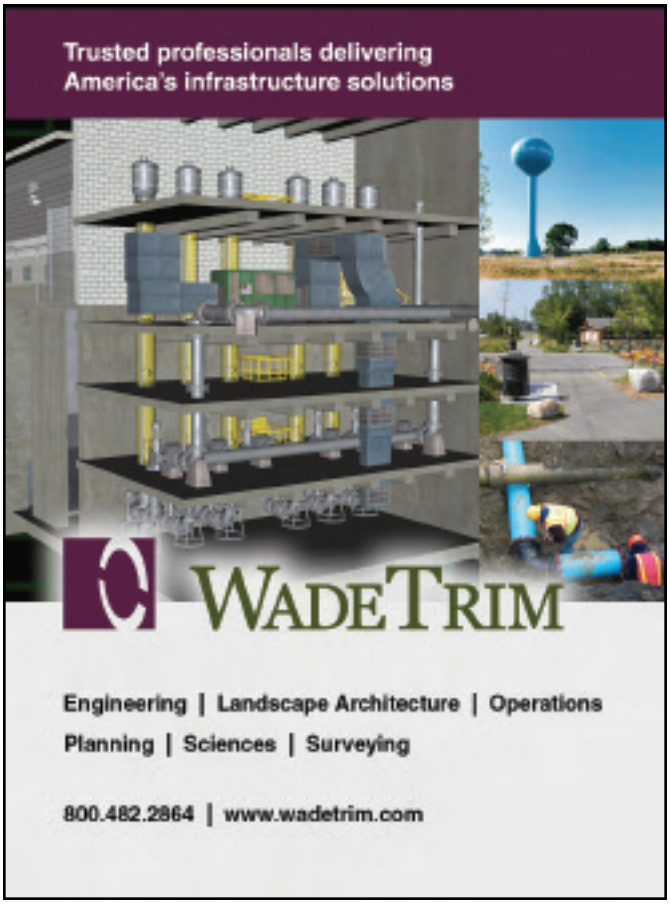
Want to Know More about Civil Infractions?

Want to know more about municipal civil infractions? MTA is holding a half-day workshop, *Ordinance Enforcement Strategies*, in July and August. Held at six locations around Michigan, the session will take place from 5:30 to 8:45 p.m., and delve into strategies for effective ordinance enforcement, powers of the enforcement officer and techniques to encourage compliance. Turn to page 24 for more information, or visit www.michigantownships.org to register or to download a brochure. You may also call the MTA office at (517) 321-6467 to have a brochure e-mailed, mailed or faxed to you.

MTA is debuting a brand-new publication, *Municipal Civil Infractions—The Process*, at our July and August workshops. Authored by attorney Cliff Bloom, this comprehensive guide provides an overview of the civil infractions process, from issuing tickets to working your way through court proceedings. Let MTA help your township maneuver the sometimes tricky civil infraction process. Look for availability information in the *Michigan Township News* and at www.michigantownships.org!