

HOMeward BOUND SERIES
“TOTAL REDEVELOPMENT – IN THE WORLD OF THE LAND DIVISION ACT –
PLATTED AND UNPLATTED PROPERTY”

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I. MUNICIPAL ISSUES

- A. Land Division Act provisions regarding municipal regulation of divisions of platted lots and un-platted parcels.
1. Unplatted (metes and bounds) parcels
 - (a) See MCL 560.102, 560.108, 560.109, and 560.109(a). Attachment A.
 - (b) All land divisions must receive municipal approval.
 - (c) Municipal approval or denial must occur within 45 days after the filing of a *complete* application.
 - (d) The review process is normally handled by the municipal assessor, zoning administrator, or other municipally designated official.
 - (e) If the municipality has a population of 2,500 or less, it can enter into an agreement with the county to take over land division review authority.
 - (f) An application is deemed “complete” if it:
 - (1) Contains information necessary to ascertain whether the requirements of Section 108 are met.
 - (2) Contains information necessary to ascertain whether the requirements of Section 109 are met.
 - (g) The municipality must provide the applicant with a written notice about whether the land division request is approved or disapproved and, if disapproved, the notice must state all the reasons for disapproval.
 - (h) Land division requests must be approved by a municipality if all of the following requirements are met.
 - (1) The application is complete.
 - (2) Each proposed resulting parcel has an adequate and accurate legal description.

- (3) All parcels are shown in a tentative parcel map showing compliance with the area, parcel lines, public utilities easements, accessibility and other requirements of Sections 108 and 109.
 - (4) The tentative parcel map must be drawn to scale and must show the approximate dimensions of the resulting parcels.
 - (5) *Lot width-to-depth ratio.* Each resulting parcel must have a depth of not more than four times the width (or if an ordinance covers the matter, a smaller width-to-depth ratio or a greater depth-to-width ratio). This requirement does not apply to parcels larger than 10 acres unless the municipality by ordinance covers such larger parcels. The same is true with regard to the remnant parcel.
 - (6) *Width.* Each resulting parcel has a width not less than the municipal ordinance requirement.
 - (7) *Area/Size.* Each resulting parcel has an area not less than the municipal ordinance requirement.
 - (8) Each resulting parcel is “accessible” (see MCL 560.102(j)).
 - (9) The number of parcels created does not exceed the limits of Section 108.
 - (10) Each resulting parcel has adequate easements for public utilities *from the parcel to existing public utility facilities.*
- (i) The municipality may adopt an ordinance setting forth the minimum lot width-to-depth ratio, width and area requirements for all resulting parcels.
 - (j) A local ordinance may establish a fee for land division reviews, but the fee shall not exceed the reasonable costs of providing the services for which the fee is charged.
 - (k) Approval of a land division and the resulting parcels is not a determination that the resulting parcels comply with all other local ordinance requirements.

2. Platted lots

- Please see MCL 560.263

B. The difficulty of sometimes determining what constitutes a “division.”

1. MCL 560.102(d) defines a “division” as follows:

‘Division’ means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 109 and 109. Division does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.

2. Under this definition, technically, all of the following would technically constitute a new “parcel” created by a “division”:

- (a) A telecommunication tower lease for a portion of a property for longer than one year.
- (b) A mineral mining lease for a portion of a property for longer than one year.
- (c) A ground lease at a mall or strip mall for longer than one year.
- (d) A “building development” site.

C. The reach of municipal authority in the real world.

- 1. Municipal land division authority has proven to be very broad.
- 2. Early on, there were arguments about limited municipal powers under the LDA.
- 3. In general, the requirements of the Land Division Act do not preempt stricter requirements by local municipalities.

D. The Michigan case law since 1997 regarding municipal land division reviews.

- 1. *Grant Twp v VanderWall* (unpublished, decided June 13, 2006; Case No. 258102). Townships could regulate land divisions by ordinance *before* the LDA became effective on March 31, 2006. The Court ordered the retroactive recombining of the illegal parcels as a remedy. [Grant Township prevailed.]
- 2. *For the Kids, LLC v Charter Twp of Chesterfield* (unpublished, decided November 2, 2006; Case No. 259986). What constitutes a “parcel” so that a property can be a parent parcel? [The landowner prevailed.]

3. *Orion Homes, Inc v City of Royal Oak* (unpublished, decided August 16, 2005; Case No. 262386). Implies that the division of platted lots is subject to MCL 560.108 and 109 as well as MCL 560.263. [The City of Royal Oak prevailed.]
4. *Camburn v Macon Twp* (unpublished, decided May 26, 2005; Case No. 260197). Through its zoning ordinance, Macon Township limited the number of single-family residential parcels which could be created in its agricultural zoning district. Such limits were stricter than the number of parcels which could be created under the LDA. The Court held that the density provisions of the zoning ordinance were not preempted or precluded by the LDA. [Macon Township prevailed.]
5. *Capital Region Airport Authority v Charter Twp of DeWitt*, 236 Mich App 576 (1999). Capital Region Airport Authority, a state agency charged with operating a city airport, was a corporation and thus a “proprietor” under the LDA, such that it is subject to the LDA. [DeWitt Township prevailed on this issue.]
6. *Brown v Ada Twp* (unpublished, decided May 9, 2000; Case No. 216099). Ada Township approved a land division. Neighbors sued and argued that the accessibility requirements of the LDA were not met. The Court held that the Township did not need to hold a public hearing before deciding the land division request. Also, courts should be fairly deferential to municipalities regarding this type of administrative decision. Finally, the Township was entitled to rely on the county road commission’s permit when assessing “accessibility.” [The Township prevailed.]
7. *Merry v Tyrone Twp* (unpublished, decided April 11, 2006; Case No. 265122). The Court held that there is no penalty or sanction for a municipality which does not act within 45 days (except being ordered by a court to act). Also, the Township can require that a landowner obtain a shared driveway permit from the county road commission (where new parcels will share a driveway) before an LDA lot split approval must be given. [The Township won.]
8. *Ribick v Inverrary, LLC* (unpublished, decided June 6, 2006; Case No. 257468). A platted lot (or lots) can be turned into a site condominium development without having to pursue a circuit court plat vacation or revision proceeding.
9. *Jaikins v Rose Twp* (unpublished, decided May 4, 2006; Case No. 264695). The township would not approve the landowner’s land division application before the landowner had obtained township approval for a new private road. The landowner asserted that the LDA preempted or precluded the township from requiring a private road approval before or as a condition of a land division approval. The Court disagreed and held in favor of the township. There is no preemption. Also, the 45-day time limit never ran because the land division application was not complete until the landowner had obtained a private road approval. [The Township prevailed.]

10. *Slater v DeWitt Charter Twp* (unpublished, decided April 1, 2006; Case No. 244791). An ordinance requirement that all new lots or parcels have frontage on a public road (and thus effectively banning new private roads and access easements) does not violate the LDA and a township can deny a land division application which would create a lot or parcel which does not have the required public road frontage. [The Township won.]
11. *Hilts v Sylvan Twp* (unpublished, decided November 22, 2005; Case No. 256797). The Township refused to approve a land division application until the applicant presented proof of approval of a driveway permit by the county road commission for each lot to be created by the proposed land division. The road commission refused to issue a driveway permit until and unless the property owner paid for the bed of the public roadway to be excavated and flattened. The Court rejected the landowner's contention that the LDA preempted township ordinance requirements regarding accessibility. The township had the authority to adopt an ordinance mandating a stricter driveway requirement than those provided in the language of the LDA. [The Township prevailed.]
12. *Swiecicki v City of Dearborn* (unpublished decision released September 12, 2006; Case No. 262892). Pursuant to the local subdivision ordinance, the city council decides land division applications. The Court rejected the complaining neighbors' contention that only the zoning board of appeals could hear this case initially, instead of the circuit court, since a zoning regulation was not involved. The Court held that the city council's decision regarding land division requests is administrative (rather than legislative) in nature. The Court also found that the two lots at issue were separate parcels as of March 31, 1997, and hence, each was a parent parcel. However, since they were adjacent to each other and under common ownership, they were also considered part of a "parent tract." Since the permitted number of land division rights had already been used up, the landowner was required to utilize a plat or site condominium now in order to create more lots or parcels. [The City prevailed in part and lost in part.]
13. *Orion Homes, Inc v City of Royal Oak* (unpublished decision decided August 16, 2005; Case No. 262386). The Court of Appeals noted that where a platted lot split or lot reconfiguration is involved, the provisions of the LDA governing unplatted parcels (*i.e.*, MCL 560.108 and 560.109) do not apply. Rather, the provisions of MCL 560.263 are applicable. Under that statute, a platted lot cannot be split and platted lot lines cannot be reconfigured unless either a formal replat occurs or if the municipality involved has an ordinance provision which governs platted lot line alterations and the municipality has approved the platted lot alteration involved.
14. *Rochau v Horan, LLC* (unpublished decision decided December 13, 2005; Case No. 256454). In this case, the sellers of property withheld a portion of the land involved in the sale (which made the excluded portion inaccessible) until the buyer paid off a certain amount of the funds owed on the portion of the parcel transferred to the buyer. The defendants alleged that such a financing scheme was

a *de facto* land division, which had not received municipal approval. The Court of Appeals essentially sidestepped the issue of whether or not a *de facto* land division was involved without municipal approval. Rather, the Court pointed out that the LDA primarily governs relationships between property owners and local municipalities, and that the local municipality had not been involved in this dispute. The Court noted that under MCL 560.267, a purchaser has the right to void a sale of land which is in violation of the LDA. The Court of Appeals also pointed out that the final land transfer either did occur or would occur, thus eliminating any potential violation of the LDA land division approval requirements.

15. *Reid v Lincoln Charter Twp*, unpublished opinion issued March 2, 2010 (Docket No. 287002). The Court held that a township board's quasi-judicial decision is final and subject to direct review by the circuit courts under Mich. Const. Art 6, § 28 where no further review is provided. Because neither the LDA nor the township's subdivision control ordinance provided for further review of the township board's decision to approve the plat, the township board's decision was final and subject to direct review by the trial court.
16. *Buchanan v Deerfield Twp*, unpublished opinion issued May 27, 2010 (Docket No. 289141). The plaintiff argued that the township should be bound by its supervisor's "agreement" to a proposed land division because the township generally had the authority to approve the lot split, in spite of the zoning ordinance, by granting a variance and the supervisor's act can be interpreted as approval in an irregular fashion. The Court noted the well-established principle requiring one who deals with an officer of a governmental authority to take notice of the limits of his or her authority. The Court held that because the township's land division ordinance required prior review and written approval of the township assessor before land could be divided, the plaintiff was charged with the knowledge that the supervisor lacked the authority to approve a lot split.
17. *Romeo Plank Investors, LLC v Macomb Twp*, unpublished opinion issued February 20, 2007 (Docket No. 266415). The plaintiff submitted a request to the township seeking to transfer a portion of one parcel of land to a neighboring parcel. The Court held that the transfer was not governed by the LDA because it did not involve an "exempt transfer," "division," or "subdivision" as those terms are defined in the LDA. However, the township still had authority to regulate or prohibit the transfer. The Court noted that "even where a division is allowed by the LDA, the LDA 'expressly allows municipalities to impose stricter requirements.' It therefore follows that where the LDA does not govern a property division, a township remains free to regulate the division." Thus, township ordinances may apply to a broader range of land transfers than are described in the LDA.

E. Municipal land division ordinances.

- Please see Attachment B.

F. The actual municipal review and approval process.

1. Preapplication—it is normally prudent to consult with one or more municipal officials before filing a land division application to determine the local application, zoning ordinance, etc., requirements.
2. Obtain a survey or tentative parcel map.
3. Obtain the particular municipality's land division form.
4. Ascertain the applicable fees.
5. File the completed land division application form (together with a survey or tentative parcel map showing all resulting parcels) together with the applicable fee or fees.
6. The land division application will be reviewed by the appropriate municipal official, officials, or bodies (for example, the municipal assessor, zoning administrator, supervisor, clerk, planning commission, and/or other body or person).
7. The municipality issues a written approval, approval with conditions, or denial. If a denial (either fully or partially), the municipality is supposed to indicate in writing why the denial occurred.
8. Appeals
 - (a) The municipal body
 - (b) Circuit court

G. Miscellaneous Issues

1. Remnant parcels
2. Utility easements
3. Incorporating the zoning ordinance
4. Escrow fees

Attachment A
Excerpts from Land Division Act

LAND DIVISION ACT (EXCERPT)
Act 288 of 1967

560.102 Definitions.

Sec. 102.

As used in this act:

- (a) “Plat” means a map or chart of a subdivision of land.
- (b) “Land” means all land areas occupied by real property.
- (c) “Preliminary plat” means a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.
- (d) “Division” means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109. Division does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.
- (e) “Exempt split” means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns that does not result in 1 or more parcels of less than 40 acres or the equivalent. For a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel, any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.
- (f) “Subdivide” or “subdivision” means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109. “Subdivide” or “subdivision” does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.

(g) "Parcel" means a continuous area or acreage of land which can be described as provided for in this act.

(h) "Tract" means 2 or more parcels that share a common property line and are under the same ownership.

(i) "Parent parcel" or "parent tract" means a parcel or tract, respectively, lawfully in existence on the effective date of the amendatory act that added this subdivision.

(j) "Accessible," in reference to a parcel, means that the parcel meets 1 or both of the following requirements:

(i) Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.

(ii) Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

(k) "Development site" means any parcel or lot on which exists or which is intended for building development other than the following:

(i) Agricultural use involving the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

(ii) Forestry use involving the planting, management, or harvesting of timber.

(l) "Forty acres or the equivalent" means 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

(m) "Lot" means a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat.

(n) "Outlot," when included within the boundary of a recorded plat, means a lot set aside for purposes other than a development site, park, or other land dedicated to public use or reserved to private use.

(o) “Proprietor” means a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not.

(p) “Governing body” means the legislative body of a city or village or the township board of a township.

(q) “Municipality” means a township, city, or village.

(r) “County plat board” means the register of deeds, who shall act as chairperson, the county clerk, who shall act as secretary, and the county treasurer. If the offices of county clerk and register of deeds have been combined, the chairperson of the board of supervisors shall be a member of the plat board and shall act as chairperson. In a county where a board of auditors is authorized by law such board may elect to serve on the county plat board by adopting a resolution so ordering. A copy of the recorded resolution shall be sent to the director of the department of energy, labor, and economic growth.

(s) “Public utility” means all persons, firms, corporations, copartnerships, or municipal or other public authority providing gas, electricity, water, steam, telephone, sewer, or other services of a similar nature.

(t) “Caption” means the name by which the plat is legally and commonly known.

(u) “Replat” means the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of an outlot within a recorded subdivision plat without changing the exterior boundaries of the outlot is not a replat.

(v) “Surveyor” means a professional surveyor licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(w) “Engineer” means a civil engineer who is a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(x) “Government survey” means the land surveyed, subdivided and monumented by the United States public land survey.

(y) “Michigan coordinate system” means the system defined in 1964 PA 9, MCL 54.231 to 54.239.

(z) “Alley” means a public or private right of way shown on a plat which provides secondary access to a lot, block, or parcel of land.

(aa) “Health department” means the department of environmental quality, a city health department, a county health department, or a district health department, whichever has jurisdiction.

(bb) “Public sewer” means a sewerage system as defined in section 4101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.4101.

(cc) “Public water” means a system of pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes, and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water to the public for household or drinking purposes.

(dd) “Topographical map” means a map showing existing physical characteristics, with contour lines at sufficient intervals to permit determination of proposed grades and drainage.

(ee) “Flood plain” means that area of land adjoining the channel of a river, stream, water course, lake, or other similar body of water which will be inundated by a flood which can reasonably be expected for that region.

History: 1967, Act 288, Eff. Jan. 1, 1968 ;-- Am. 1990, Act 156, Imd. Eff. June 28, 1990 ;-- Am. 1996, Act 78, Imd. Eff. Feb. 27, 1996 ;-- Am. 1996, Act 591, Eff. Mar. 31, 1997 ;-- Am. 2010, Act 63, Imd. Eff. May 6, 2010

Popular Name: Plat Act

Popular Name: Subdivision Control

LAND DIVISION ACT (EXCERPT)
Act 288 of 1967

560.108 Parent parcel or parent tract; number of parcels resulting from division; limitations; requirements.

Sec. 108.

- (1) A division is not subject to the platting requirements of this act.
- (2) Subject to subsection (3), the division, together with any previous divisions of the same parent parcel or parent tract, shall result in a number of parcels not more than the sum of the following, as applicable:
 - (a) For the first 10 acres or fraction thereof in the parent parcel or parent tract, 4 parcels.
 - (b) For each whole 10 acres in excess of the first 10 acres in the parent parcel or parent tract, 1 additional parcel, for up to a maximum of 11 additional parcels.
 - (c) For each whole 40 acres in excess of the first 120 acres in the parent parcel or parent tract, 1 additional parcel.
- (3) For a parent parcel or parent tract of not less than 20 acres, the division may result in a total of 2 parcels in addition to those permitted by subsection (2) if 1 or both of the following apply:
 - (a) Because of the establishment of 1 or more new roads, no new driveway accesses to an existing public road for any of the resulting parcels under subsection (2) or this subsection are created or required.
 - (b) One of the resulting parcels under subsection (2) and this subsection comprises not less than 60% of the area of the parent parcel or parent tract.
- (4) A parcel of 40 acres or more created by the division of a parent parcel or parent tract shall not be counted toward the number of parcels permitted under subsections (2) and (3) and is not subject to section 109, if the parcel is accessible.
- (5) A parcel or tract created by an exempt split or a division is not a new parent parcel or parent tract and may be further partitioned or split without being subject to the platting requirements of this act if all of the following requirements are met:
 - (a) Not less than 10 years have elapsed since the parcel or tract was recorded.
 - (b) The partitioning or splitting results in not more than the following number of parcels, whichever is less:
 - (i) Two parcels for the first 10 acres or fraction thereof in the parcel or tract plus 1 additional parcel for each whole 10 acres in excess of the first 10 acres in the parcel or tract.

(ii) Seven parcels or 10 parcels if one of the resulting parcels under this subsection comprises not less than 60% of the area of the parcel or tract being partitioned or split.

(c) The partitioning or splitting satisfies the requirements of section 109.

(6) A parcel or tract created under the provisions of subsection (5) may not be further partitioned or split without being subject to the platting requirements of this act, except in accordance with the provisions of subsection (5).

History: Add. 1996, Act 591, Eff. Mar. 31, 1997.

Popular name: Plat Act

Popular name: Subdivision Control

LAND DIVISION ACT (EXCERPT)
Act 288 of 1967

560.109 Approval or disapproval of proposed division; requirements; exemption from platting requirements; notice of transfer; form; sale of unplatted land; statement contained in deed; ordinance; approval not determination of compliance.

Sec. 109.

(1) A municipality shall approve or disapprove a proposed division within 45 days after the filing of a complete application for the proposed division with the assessor or other municipally designated official. However, a municipality with a population of 2,500 or less may enter into an agreement with a county to transfer to the county authority to approve or disapprove a division. An application is complete if it contains information necessary to ascertain whether the requirements of section 108 and this section are met. The assessor or other municipally designated official, or the county official, having authority to approve or disapprove a proposed division, shall provide the person who filed the application written notice whether the application is approved or disapproved and, if disapproved, all the reasons for disapproval. A complete application for a proposed division shall be approved if, in addition to the requirements of section 108, all of the following requirements are met:

(a) Each resulting parcel has an adequate and accurate legal description and is included in a tentative parcel map showing area, parcel lines, public utility easements, accessibility, and other requirements of this section and section 108. The tentative parcel map shall be a scale drawing showing the approximate dimensions of the parcels.

(b) Each resulting parcel has a depth of not more than 4 times the width or, if an ordinance referred to in subsection (5) requires a smaller depth to width ratio, a depth to width ratio as required by the ordinance. The municipality or county having authority to review proposed divisions may allow a greater depth to width ratio than that otherwise required by this subdivision or an ordinance referred to in subsection (5). The greater depth to width ratio shall be based on standards set forth in the ordinance referred to in subsection (5). The standards may include, but are not required to include and need not be limited to, exceptional topographic or physical conditions with respect to the parcel and compatibility with surrounding lands. The depth to width ratio requirements of this subdivision do not apply to a parcel larger than 10 acres, unless an ordinance referred to in subsection (5) provides otherwise, and do not apply to the remainder of the parent parcel or parent tract retained by the proprietor.

(c) Each resulting parcel has a width not less than that required by an ordinance referred to in subsection (5).

(d) Each resulting parcel has an area not less than that required by an ordinance referred to in subsection (5).

(e) Each resulting parcel is accessible.

(f) The division meets all of the requirements of section 108.

(g) Each resulting parcel that is a development site has adequate easements for public utilities from the parcel to existing public utility facilities.

(2) The right to make divisions exempt from the platting requirements of this act under section 108 and this section can be transferred, but only from a parent parcel or parent tract to a parcel created from that parent parcel or parent tract. A proprietor transferring the right to make a division pursuant to this subsection shall within 45 days give written notice of the transfer to the assessor of the city or township where the property is located on the form prescribed by the state tax commission under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a. The state tax commission shall revise the form to include substantially the following questions in the mandatory information portion of the form:

(a) “Did the parent parcel or parent tract have any unallocated divisions under the land division act, 1967 PA 288, MCL 560.101 to 560.293? If so, how many?”

(b) “Were any unallocated divisions transferred to the newly created parcel? If so, how many?”

(3) A person shall not sell a parcel of unplatted land unless the deed contains a statement as to whether the right to make further divisions exempt from the platting requirements of this act under this section and section 108 is proposed to be conveyed. The statement shall be in substantially the following form: “The grantor grants to the grantee the right to make [insert number] division(s) under section 108 of the land division act, Act No. 288 of the Public Acts of 1967.” In the absence of a statement conforming to the requirements of this subsection, the right to make divisions under section 108(2), (3), and (4) stays with the remainder of the parent tract or parent parcel retained by the grantor.

(4) All deeds for parcels of unplatted land within the state of Michigan after the effective date of this act shall contain the following statement: “This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act..”

(5) The governing body of a municipality or the county board of commissioners of a county having authority to approve or disapprove a division may adopt an ordinance setting forth the standards in section 109(1)(b), (c), and (d). The ordinance may establish a fee for reviews under this section and section 108. The fee shall not exceed the reasonable costs of providing the services for which the fee is charged.

(6) Approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.

History: Add. 1996, Act 591, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 87, Imd. Eff. July 28, 1997

Popular Name: Plat Act

Popular Name: Subdivision Control

LAND DIVISION ACT (EXCERPT)
Act 288 of 1967

560.109a Parcel less than 1 acre.

Sec. 109a.

(1) If a parcel resulting from a division is less than 1 acre in size, a building permit shall not be issued for the parcel unless the parcel has all of the following:

(a) Public water or city, county, or district health department approval for the suitability of an on-site water supply under the same standards as set forth for lots under rules described in section 105(g).

(b) Public sewer or city, county, or district health department approval for on-site sewage disposal under the health department standards as set forth for lots under rules described in section 105(g).

(2) The municipality or county approving a proposed division resulting in a parcel less than 1 acre in size and its officers and employees are not liable if a building permit is not issued for the parcel for the reasons set forth in this section. A notice of approval of a proposed division resulting in a parcel of less than 1 acre in size shall include a statement to this effect.

(3) A city, county, or district health department may adopt by regulation a fee for services provided under this section. The fees shall not exceed the reasonable costs of providing the services for which the fees are charged.

History: Add. 1997, Act 87, Imd. Eff. July 28, 1997.

Popular name: Plat Act

Popular name: Subdivision Control

Attachment B
Sample Land Division Ordinance

LAND DIVISION ORDINANCE

TOWNSHIP OF ACME

COUNTY OF NORTH, STATE OF MICHIGAN

ORDINANCE NO. ____ - _____

Adopted: _____

Effective: _____

An ordinance to regulate the creation, alteration, partitioning and division of parcels or tracts of land, enacted pursuant but not limited to Michigan Public Act 288 of 1967, as amended, being the Michigan Land Division Act, Act 359 of 1947, as amended, and Act 246 of 1945, as amended, being the Township General Ordinance statute; to provide a procedure therefore; to repeal any ordinance or provision thereof in conflict herewith; and to prescribe penalties and enforcement remedies for the violation of this Ordinance.

THE TOWNSHIP OF ACME NORTH COUNTY, MICHIGAN ORDAINS:

Article 1

TITLE

This ordinance shall be known and cited as the “Acme Township Land Division Ordinance.”

Article 2

PURPOSE AND SCOPE

2.1 The purpose of this Ordinance is to implement the provisions of the Michigan Land Division Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act) (“Act”), to prevent the creation of parcels of property (as well as boundary line changes, alterations or adjustments) and access easements which do not comply with applicable ordinances, zoning regulations and said Act, to minimize potential boundary disputes, to monitor the creation of new parcels and easements, to prevent illegal land divisions and to ensure that newly-created parcels are not landlocked, to prevent the creation of unusable lots due to noncompliance with the Acme Township Zoning Ordinance or other ordinances, to assure orderly development within the community, and to otherwise provide for the health, safety and welfare of the residents and property owners of Acme Township by establishing reasonable standards for prior review and approval of all land divisions within Acme Township (“Township”).

2.2 Approval of any land division pursuant to this Ordinance shall not provide, constitute, infer or imply use or zoning approval of any such division or the resulting parcels or assure or imply buildability. Such use of land must still comply with the Township Zoning Ordinance and any other applicable ordinances, laws or regulations, and it remains the responsibility of the property owner to ensure such compliance.

2.3 It is not intended by this Ordinance to repeal, abrogate, annul, or in any other way impair or interfere with provisions of the Township Zoning Ordinance or of other laws or ordinances or of any private restrictions placed upon property by covenant, deed, or other private agreement; provided, however, that where any provision of this Ordinance imposes more stringent requirements, regulations, restrictions, or limitations upon the division or use of land, easements or buildings than are imposed or required by the provisions of any restrictions or any other law or ordinance, or any of said rules, regulations or permits, then the provisions of this Ordinance shall govern.

Article 3 DEFINITIONS

For purposes of this Ordinance, certain terms and words used herein shall have the following meaning:

3.1 “Act” - Public Act No. 288 of 1967, as amended (including, but not limited to, Public Act No. 591 of 1996, being the Michigan Land Division Act (MCLA 560.101 *et seq.*)

3.2 “Applicant” - a natural person, firm, association, partnership, corporation, limited liability company, estate, entity, or combination of any of them that holds an ownership interest in land whether recorded or not.

3.3 “County” - North County, Michigan.

3.4 “Divided” or “Division” - the creation, partitioning or splitting of a parcel or tract of land by the owner thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale, transfer or lease of more than one (1) year, or of building development that results in one or more parcels. For purposes of this definition, “divided” or “division” shall include, but not be limited to, the creation of one or more access easements, parcels, lots or site condominium units whether created by partition, deed, land contract, a lease over one (1) year or other written agreement, whether or not recorded with the county register of deeds records. “Divided” or “division” shall also include the adjustment, alternation, changing or reconfiguration of property lines and the creation or development of site condominium units or projects.

3.5 “Governing body” - the Acme Township Board.

3.6 “Township” - Acme Township, North County, Michigan.

3.7 Except as expressly otherwise stated in this Ordinance, the definitions of the Act, as amended, are hereby incorporated by reference and are made a part of this Ordinance.

3.8 For purposes of Sections 105(b) and 109(1)(d) of the Act, the word “area” shall mean any dimensional or space requirement of the Acme Township Zoning Ordinance, as amended, including, but not limited to, size, road frontage, easement regulations and similar requirements.

3.9 For purposes of Sections 105(b) and 109(1)(c) of the Act, the word “width” shall be as defined in the Acme Township Zoning Ordinance, as amended, and shall also include road or street frontage requirements of that Zoning Ordinance.

3.10 For purposes of this Ordinance, “lot” or “parcel” shall be used interchangeably.

Article 4 PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS

Land in the Township shall not be divided and access easements shall not be created without the prior review and approval of the Township Zoning Administrator (or such other official as is designated by the Acme Township Board by resolution from time to time) in accordance with this Ordinance and the Act, except that a parcel proposed for subdivision through a recorded plat pursuant to the Township’s Land Subdivision Ordinance (if any) and the Act shall be exempted from this requirement. If a proposed land division involves the division of one or more existing platted lots or the reconfiguration, alternation, changing or adjustment of a boundary line of an existing platted lot, this Ordinance (including, but not limited to, its review and approval requirements) shall also be applicable. The creation or alteration of site condominium units and developments shall also be subject to the review and approval requirements of this Ordinance.

Platted lots shall not be split or divided (nor shall platted lot lines be altered) without the prior written approval of the Township Board and in compliance with any and all other applicable Township ordinances. Anyone who desires to so alter a platted lot shall comply with all of the other requirements of this Ordinance.

Article 5 APPLICATION FOR LAND DIVISION APPROVAL

An applicant shall file all of the following with the Township Zoning Administrator or other official designated by the Township Board for review and approval of a proposed land division before making any division either by recorded or unrecorded deed, land contract, lease for more than one year, or for building development:

5.1 A completed application form, together with all required supporting materials.

5.2 Written proof of fee ownership of the land proposed to be divided and a signature on the application by the fee title owner of the property.

5.3 A survey map of the land proposed to be divided, prepared pursuant to the survey map requirements of 1970 Public Act 132, as amended (MCL 54.211), by a land surveyor licensed by the state of Michigan, and showing the dimensions and legal descriptions of the existing parcel, the parcels proposed to be created by the division(s) (including “remnant”

parcels or those to be retained by the owner) and any easements, the location of all existing structures and other land improvements, and the accessibility of the parcels for vehicular traffic and utilities from existing public roads.

In lieu of such survey map, at the applicant's option, the applicant may waive the 45 day statutory requirement for a decision on the application until such survey map and legal description are filed with the Township and submit a tentative preliminary parcel map drawn to scale of not less than 1" = 60' including an accurate legal description of each proposed division, and showing the boundary lines, dimensions, easements, and the accessibility of each division from existing or proposed public roads for automobile traffic and public utilities, for preliminary review, approval, and/or denial by the Township Zoning Administrator or other designated official prior to a final application (with the survey(s)) under this Section 5. Additionally, the Township may waive the survey requirement for good cause shown if the materials submitted by the applicant are sufficient for an adequate and accurate legal description and to also show that all requirements of this Ordinance and the Act have been met.

5.4 Proof that all standards of the Act, this Ordinance and other applicable ordinances and laws have been met.

5.5 The history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish that the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the Act. The Township may require that the applicant provide a title search by a title insurance company if it is reasonably necessary for the Township to determine whether the proposed land division will meet the requirements of this Ordinance and the Act.

5.6 Proof that all due and payable property taxes or installments of special assessments pertaining to the land proposed to be divided are paid in full.

5.7 If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.

5.8 Unless a division creates a parcel which is acknowledged and declared to be "not buildable" under Section 8 of this Ordinance, the applicant shall provide sufficient information to show that all divisions shall result in "buildable" parcels containing sufficient "buildable" area outside of unbuildable wetlands, flood plains and other areas where buildings are prohibited therefrom, and with sufficient area to comply with all required setback provisions, minimum floor areas, off-street parking spaces, on-site sewage disposal and water well locations (where public water and sewer service is not available), and maximum allowed area coverage of buildings and structures on the site.

5.9 The full fee in an amount as may from time to time be established by resolution of the Township Board for land division reviews pursuant to this Ordinance to cover the costs of review of the application and administration of this Ordinance.

Article 6
PROCEDURE FOR REVIEW OF APPLICATIONS
FOR LAND DIVISION APPROVAL

6.1 Upon receipt of a complete land division application package from an applicant, the Township Zoning Administrator or other official designated by the Township Board shall forthwith submit the same to the Township Zoning Administrator or other designated official for decision. The Township Zoning Administrator or other designee shall (i) approve, (ii) approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety and welfare, or (iii) disapprove the land division applied for within 45 days after receipt of the complete application package conforming to this Ordinance's requirements (including any and all required zoning and private road approvals) and shall promptly notify the applicant in writing of the decisions and the reasons for any denial.

If the application package does not conform to this Ordinance's requirements and the Act, the Township Zoning Administrator or other designee shall return the same to the applicant for completion and refile in accordance with this Ordinance and the Act.

6.2 Any person or entity aggrieved by the decision of the Township Zoning Administrator or designee may, within 30 days of said decision, appeal the decision to the Township Planning Commission (or such other board or person designated by the Township Board) which shall consider and resolve such appeal by a majority vote of said Board or by the designee at its next regular meeting or session affording sufficient time for a 20-day prior written notice to the applicant (and the property owner where other than the applicant) of the time and date of said meeting and appellate hearing. Any such appeal shall be in writing and must be filed with the Township Clerk within said thirty (30) day time limit.

6.3 Land division approvals shall be valid only for a period of ninety (90) days from the date of approval by the Township. If such lots, easements, parcels or site condominium units proposed by the land division are not properly recorded and accepted by the County Register of Deeds within this period, the land division approval shall be considered null and void and a new application must thereafter be submitted in compliance with the requirements of this Ordinance. If an amendment to the Township Zoning Ordinance or other Township ordinance becomes effective prior to the land division being recorded and the amendment applies to any of the resulting parcels, easements, lots or site condominium units in a way which would make the proposed lots, easements, parcels or site condominium units violate the Township Zoning Ordinance or other Township ordinance, the land division approval shall be null and void even if the 90-day time limit has not expired.

6.4 The Township Zoning Administrator or designee shall maintain an official record of all approved and accomplished land divisions or transfers.

6.5 Approval of a land division does not grant or imply approval for the use of such resulting lots or parcels. Any lot, easement, parcel or site condominium unit created by a land division must still comply with the requirements of the Township Zoning Ordinance (including, but not limited to, minimum lot area and width, road and lake frontage and width requirements, and where applicable, private road requirements) and any other applicable ordinances or regulations.

6.6 No permanent parcel number or property tax identification number shall be issued for any new parcel, lot or site condominium unit until and unless a land division approval by the Township has been granted pursuant to this Ordinance and the deed, land contract or memorandum of land contract creating the land division has been recorded with the County Register of Deeds.

6.7 If the land division involves the use or creation of a private road, approval of the private road must be obtained from the Township in accordance with the Township Zoning Ordinance prior to the approval of the land division. Additionally, the applicant must submit evidence of review and approval of the private road location and entry by the North County Road Commission.

6.8 The Township and its officers, officials, and employees shall not be liable for approving a land division if one or more of the resulting parcels prove unbuildable or unusable or if building permits or construction on any of the parcels are subsequently denied because of inadequate water supply, sewage disposal facilities, or any other reason. Any notice of land division approval may include a statement to this effect.

Article 7 STANDARDS FOR APPROVAL OF LAND DIVISIONS

A proposed land division shall be approved only if the following criteria are met:

7.1 All the parcels and easements to be created by the proposed land division(s) fully comply with the applicable lot (parcel) yard access and area requirements of the Township Zoning Ordinance and other applicable Township ordinances, including, but not limited to, minimum lot (parcel) frontage/width, minimum road frontage, minimum lot (parcel) area, minimum lot width to depth ratio, setback areas and maximum lot (parcel) coverage and minimum setbacks for existing buildings/structures.

7.2 The proposed land division(s) must comply with all requirements of the Act, this Ordinance and all other applicable ordinances.

7.3 All parcels created and remaining have existing adequate accessibility, or an area available therefor, to a public road for public utilities and emergency and other vehicles not less than the requirements of the Township Zoning Ordinance, major thoroughfare plan, private road regulations and this Ordinance. All proposed parcels shall have frontage on an improved public street or approved private street, at a minimum, equal to the required lot width for the zoning district in which the lot is located, as well as compliance with all applicable public or private street regulations.

7.4 The ratio of depth to width of any parcel created by the division (including remnant parcels) shall not exceed 3:1 unless otherwise provided by the Township Zoning Ordinance.

7.5 Where accessibility is to be provided by a proposed new dedicated public road, proof that the County Road Commission or Michigan Department of Transportation has

approved the proposed layout and construction design of the road and of utility easements and drainage facilities connected therewith.

7.6 The Township may require such additional conditions and safeguards as are deemed necessary to ensure compliance with the requirements of this Ordinance.

7.7 The Township Board may establish reasonable fees for Township review and approval of land divisions, easements, and condominiums hereunder. Additionally, the Township may require the applicant to reimburse the Township for fees and costs incurred by the Township Attorney and/or Township Engineer in reviewing the proposed land division, easements, or condominium units. No land division or easement approval or permit shall be effective until all such fees and reimbursements have been paid to the Township in full.

7.8 Within ten (10) days of the date the applicant receives the recorded copy of the deed, land contract, memorandum of land contract or easement agreement back from the County Register of Deeds Records (with the county stamps thereon), the applicant shall provide the Township with copies of the same so that the Township can verify that the resulting lots, parcels, condominium units and/or easements created by the recordings complies with the Township approval.

7.9 No land division shall be approved until all ad valorem property taxes due and owing on the original parcel have been paid in full to the Township and/or County, and all special assessments and charges in lieu of special assessments, due and owing against the original parcel have been paid to the Township in full. Additionally, no land division shall be approved until all indebtedness of the owners of the original parcel have been paid in full to the Township.

Article 8

ALLOWANCE FOR APPROVAL OF OTHER LAND DIVISIONS

Notwithstanding disqualification from approval pursuant to this Ordinance, a proposed land division which does not fully comply with the applicable lot, yard, accessibility and area requirements of the Township Zoning Ordinance or this Ordinance may be approved by the Township Zoning Administrator (or other person designated by the Township Board) in any of the following circumstances:

8.1 Where the applicant executes and records a permanent deed restriction with the County Register of Deeds, in a form acceptable to the Township, designating the parcel as “not buildable” and also not usable for anything other than agricultural or passive uses, which restrictions shall be enforceable by the Township.

Any such parcel shall also be designated as “not buildable” in the Township records, and shall not thereafter be the subject of a request to the Zoning Board of Appeals for variance relief from the applicable lot and/or area requirements, and shall not be developed with any building or above ground structure exceeding 1 foot in height or used except for agricultural or passive uses.

8.2 Where the proposed land division involves only the minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not

result in either parcel violating this Ordinance, the Township Zoning Ordinance, or the Act and the Township Zoning Administrator (or designee) determines the boundary adjustments to be minor.

Article 9
CONSEQUENCES OF NONCOMPLIANCE WITH THE
LAND DIVISION APPROVAL REQUIREMENT

Any parcel or easement created or altered in violation of or noncompliance with this Ordinance shall not be eligible for any building permits or zoning approvals such as special land use approval and site plan approval. Furthermore, no parcel, lot, site condominium unit or easement created or altered in violation of this Ordinance or the Act shall be utilized for any purpose whatsoever, nor shall such land division be recognized. In addition, a violation of this Ordinance shall also subject the violator to the penalties and enforcement actions set forth in Section 10 of this Ordinance, and as may otherwise be provided by law.

In addition to the other remedies provided herein, the Township Zoning Administrator is authorized to deny or rescind a permanent parcel number or property tax identification number for any lot, parcel or site condominium unit created or altered in violation of this Ordinance and to also formally request that County officials either rescind or refuse to issue such a property tax identifying number for any lot, parcel or site condominium unit created or altered in violation of this Ordinance, where applicable.

Article 10
PENALTIES AND ENFORCEMENT

Each and every day during which any violation continues shall be deemed a separate offense.

A violation of this Ordinance is a municipal civil infraction, for which the fine shall be not less than \$100 nor more than \$500 for the first offense, and not less than \$250 nor more than \$1,000 for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, expenses, and other remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible; provided, however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses.

Any person who aids or abets anyone in the commission of a violation of this Ordinance shall also be deemed to be in violation of this Ordinance. Furthermore, where a violation of this Ordinance occurs, both the person selling or transferring title to a property which is in violation of this Ordinance and the buyer or person receiving title to a property in violation of this Ordinance shall each be deemed to be in violation of this Ordinance, and both parties can be subject to the penalties and enforcement provisions provided herein.

Any person who violates any of the provisions of this Ordinance shall also be subject to civil action seeking invalidation of the land division and appropriate injunctive or other relief.

Any parcel, lot, easement, or land division created in violation of this Ordinance is hereby also declared to be a nuisance which is subject to abatement by the Township.

Any person who violates any of the provisions of this Ordinance shall also be subject to civil action seeking invalidation of the land division and appropriate injunctive or other relief.

Any parcel, lot, site condominium unit, easement or land division created or altered in violation of this Ordinance is hereby declared to be a nuisance which is subject to abatement by the Township.

Article 11
SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

Article 12
REPEAL

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of any such conflict, except that this Ordinance shall not be construed to repeal any provision in the Township Zoning Ordinance or the Township's building code.

Article 13
EFFECTIVE DATE

This Ordinance shall take effect upon the expiration of 30 days following its publication (or a summary thereof) after adoption.

The above Ordinance was offered for adoption by Township Board Member _____, and was seconded by Township Board Member _____, the vote being as follows:

YEAS: _____

NAYS: _____

ABSENT: _____

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Acme Township Board at a _____ meeting held at the Acme Township Hall on _____, 20__, at _____ p.m., pursuant to the required statutory notice and procedures.

Respectfully submitted,

By _____

Acme Township Clerk

The materials were originally prepared for Homeward Bound 2010-2011: Total Redevelopment in the World of the Land Division Act - Platted and Unplatted Property presented by the Institute of Continuing Legal Education, Ann Arbor, on February 3, 2011. www.icle.org.