

The Gavel

Issue 1/97 January, 1997

A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
42657 Garfield, Suite 211, Clinton Township, Michigan 48038 (810) 263-5690

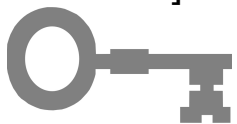
The Gavel is Back!

A little later than originally planned, the GAVEL is back. *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

LANDLORD EVICTION

While rather majestic in name, being a landlord can be difficult in practice... or sometimes a difficult individual to deal with. One of the most common property questions is: "My landlord is trying to kick me out; How much time do I have before actually moving?" Another common question, from the opposite side, is "How long before I can evict someone?"

Whether residential or commercial, there are normally five different eviction situations. [A possible sixth situation, wherein the landlord takes matters into his own hands, is illegal and can result in a wrongful eviction and detainer action, where triple damages are assessed to the landlord.]



The first situation is when the leased premises are **vacant or abandoned**: so long as the lease period has expired, the Landlord can retake possession immediately.

For the rest of the situations, the landlord must go to court if the renter does not leave the premises voluntarily. When a landlord files a complaint in the local District Court (where all landlord-tenant cases are heard), the case is scheduled approximately two weeks later before a Judge. Presuming the landlord wins, the renter is given ten days from the date of the hearing to move out. If the renter fails to do so, the landlord can go back to the District Court and have the court clerk issue a Writ of Restitution, which commands a court officer or bailiff to restore the landlord to possession of the premises. Upon payment of the bailiff's fee, the renter and all personal items will be physically removed and put out near the curb. Total running time from filing the complaint: about 25 to 40 days. However, depending upon the type of eviction sought, more time is added on to the beginning; i.e. before the landlord can file a complaint with the court.

The shortest time situation assumes that the party to be evicted has no right to possession of the premises, hence the name **Trespasser**. More common than some people think, this can include a

live-in friend who has overstayed the welcome. In this situation, the landlord (homeowner?) can immediately file the complaint.



The last three all require a notice period: if the action is for **Nonpayment of Rent** or because the renter is creating a **Health Hazard** that must be abated right away, a Notice to Quit must be given to the renter at least seven days before the complaint is filed. However, if the action is for **Termination of Tenancy** (your lease has expired, I want you out no matter what), the notice period is at least 30 days.

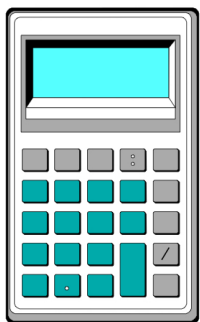
ISO 9000 - will the law change with it?

A new buzzword within industrial circles is **ISO 9000**. ISO 9000 was created ten years ago by the International Organization for Standardization, a federation of national standard organizations from 89 countries. ISO 9000 is a sort of 'scorecard' on supplier performance and procedures, and more and more business supplier organizations are adopting it. In Michigan, the Big 3 auto manufacturers are increasingly making adoption of ISO 9000 (or as they sometimes refer to it, QS 9000) a requirement for Tier I suppliers. In a sense, this pushes more quality control responsibility from the buyer to the seller supplier.

While a supplier can implement ISO 9000 on its own, many local companies have hired outside consultants to assist in implementing the standards and getting certified.



So what has this got to do with the law? Adoption of ISO 9000 could significantly affect the contract between an ISO 9000 seller and its' buyer. Currently, a contract involving the sale of goods is controlled by the Uniform Commercial Code (UCC), which is a set of statutory (legislatively passed) laws.



Adoption of ISO 9000 could be construed as an unspoken but binding supplier statement that the goods supplied will not only meet the UCC warranty requirements, but also met ISO 9000 standards. While UCC warranty requirements focus on **seller's** product quality or quality control (i.e. did the supplier make it right?), the ISO 9000 requirement focuses on the **buyer's** satisfaction. While similar, the difference is significant: irrespective of whether the goods were made the right way, if the buyer is not satisfied, it could be found that the supplier has nonetheless failed in its performance, and therefore be in breach of contract. Another example: under the UCC, if a seller's product is somehow defective when delivered to the buyer, the seller usually has the right to *cure* (fix it up and get it right). Under ISO 9000, the buyer may be able to reject the nonconforming product out of hand, without a chance to cure.

No one knows yet exactly how ISO 9000 will change the existing law of supplier - buyer relationships, but caution is well advised at this stage. Source: Legal Implications of ISO 9000 Under the UCC, Michigan Bar Journal, October 1996, p. 1076.

Why Can't I recover my Attorney Fees?

One frustrating aspect of law is not being able to recover attorney fees from litigation. Whether you are plaintiff or defendant in a civil action, it seems very unfair that you cannot also recover your expenses (especially attorney fees) incurred in having to prosecute or defend a claim in which you are ultimately proven right. "The Judge ruled that I was right, but I still wind up losing



because it cost me

money to defend myself. Shouldn't the loser also have to pay my expenses to put me back to even?"

Maybe the loser should pay, but that is not the way our legal system works. Under the "American Rule", each party pays for their own attorney fees. Across the Atlantic, the "English Rule" provides that the losing party must pay the prevailing party's reasonable expenses incurred, including attorney fees. The reason for the American Rule is to facilitate access to the courts by people of all types of means. If a potential litigant knew that she or he faced the possibility of having to pay the other side's costs (which would be sizable), many otherwise proper and meritorious claims would never be brought, even if the potential litigant knew that he or she was in the right. The risk could be too great.

CASE IN POINT:



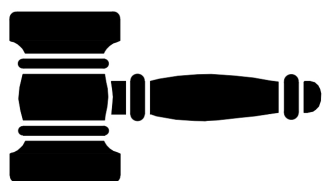
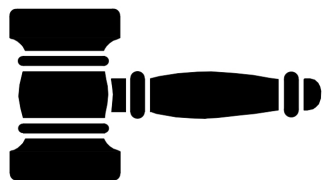
Fraudulent Conveyances

Most people know that when you owe a debt to another, it is not sufficient to say "Sorry, I just don't have any money to pay you." And many suspect there may be something illegal in transferring all of a debtor's assets to a spouse, friend or related business in advance of a creditor coming around to collect. What many don't know is that these rules are contained in a set of laws called "Fraudulent Conveyances."

In brief, a fraudulent conveyance is a transaction in which a debtor conveys (sells, transfers or assigns) property to another party in exchange for insufficient consideration. In some fraudulent conveyances, the effect is to leave the debtor insolvent; in others, the Court only looks to see if the transaction harmed creditors' claims.

The ends that some debtors will go to in fraudulent conveyances, thinking they have outwitted their creditors, never ceases to amaze. In a recent Michigan Court of Appeals case, owners of one corporation transferred to another corporation they owned a bank debt of almost \$400,000 (which the owners had personally guaranteed). Now the new corporation was saddled with a huge debt, and got nothing in return. Unknowingly, a supplier kept sending goods to the new corporation, and got stuck for \$700,000 when it folded with only enough assets to pay off the bank (and extinguish the guarantee). The supplier sued the corporations, owners and the bank, claiming a fraudulent conveyance. The supplier lost in the trial court, but got the case (and the transaction) overturned on appeal as the appeals court found this transaction to be a fraudulent

conveyance. The Court addressed how far reaching the fraudulent conveyance law is: "The power of equity [this type of law] is far-flung; no device to defraud is so circuitous that it can avoid pursuit by its searching principles. Equity will not allow itself to be outwitted or cheated, or to be frustrated or lost in mazes; it will go the lengths requisite to achieve to achieve results ... No masquerade is too subtle for detection by equity." Foodland Distributors v Metropolitan Grocers, Inc.



REFERRALS

If you have been pleased with the service and professionalism you have received from our office, it would be greatly appreciated if you passed the good word along. **Referrals are always appreciated and encouraged**, and we look forward to the opportunity of being of service to your associates and friends. If we can not immediately service their needs, we will be happy to **refer them to the appropriate attorney specializing** in their specific area of need.

However, if you have not been pleased, contact us directly!

David B. Forest, JD, MBA
Attorney and Counselor at Law
(810) 263-5690