The Gavel

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A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
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The Gavel gets off the back burner

Sorry for not getting another issue out sooner. As many of you know, our office has been deluged with requests for legal services. Virtually all these requests came from existing client referrals, and we appreciate the confidence shown in us. Since client service comes first, *The Gavel* had to go on a back burner for a short while. We hope it was worth the wait. *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

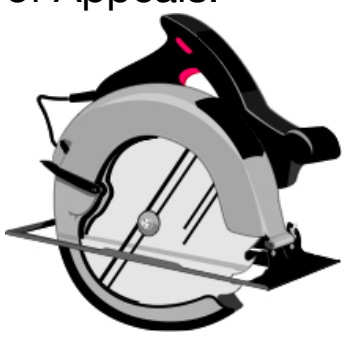
Home Improvement: No license, No pay

Residential builders as well as contractors who perform maintenance or alterations for residences must be licensed by the State of Michigan. This law was enacted to help ensure that unqualified and unscrupulous businesses were not preying upon unwitting home owners.

To ensure that this law is followed, **a severe penalty befalls any builder or contractor that does not follow the licensing requirement: they cannot get paid for work performed.** Any one (other than the homeowner) who performs work at a residence that involves building, repair, alteration, demolition, etc. of the house or garage (even laying concrete) must be licensed as either a builder or a maintenance and alteration contractor (except other licensed trades such as plumbers, electricians, etc.). If they are not, then state law prohibits them from bringing an action (suing) for collection of compensation; in other words, if they are unlicenced and unpaid, they cannot go to court to get paid. MCL § 339.2412. Under state law, a court cannot even fashion some type of a remedy (compensation) for someone who is otherwise barred from relief. The unlicenced builder or contractor is out of luck and out the money they were due to be paid.

Or are they? **It appears there is one loophole that an unlicenced builder or contractor might be able to use.** In a recent case, an unlicenced roofing contractor got into a dispute with a homeowner and was not paid. The contractor placed a construction lien against the house, and the homeowner responded by an action to remove the cloud on their title (i.e. remove the lien). The contractor

countered claimed for payment on the materials and labor used. The case wound up in the Court of Appeals.



The court recognized the statutory prohibition against collection by an unlicenced contractor. However, because the Court was bound by an earlier decision, a strange result occurred. Since the homeowner went to court seeking equity (to clear title), one of the oldest equitable principles came into play: “He who seeks equity must be prepared to do equity.” Even though the contractor was unlicenced, and even though the contractor did not have a right to place a lien on the house because of the licensure issue, the Court ***reluctantly*** granted the existence of the lien and declared that if the lien was to be removed (‘seeking equity’), then the contractor’s bill must be paid (‘do equity’).

The Court was very frustrated that the earlier decision had created **“a road map for unlicenced contractors who want to avoid the licensing requirements of the act,”** and only allowed the situation to stand because of the earlier decision. The Court was practically begging for this loophole to be closed in the future by the Supreme Court or the Legislature. Stokes v Milled Roofing Co.

How far can a divorced parent move the children?

Michigan divorce courts retain jurisdiction over the residence of the minor children of a divorce. The custodial parent can not move out of Michigan without the court’s blessing. However, the custodial parent was free to move anywhere within the state, which could cause real problems for visitation. As explained by State Senator Bill Bullard, Jr.: “You needed court intervention and approval to move 15 miles to Toledo, but none to move 700 miles to the Upper Peninsula. A move of a certain distance can disrupt and destroy the bond between a parent and a child.” Therefore, Bullard was one of the sponsors of a recently passed law that now limits long moves within the state.

Under the new law, the custodial parent cannot unilaterally move more than 100 miles from where the children were living at the time the divorce proceedings started. The rationale is obvious: moving far away will affect and possibly severely limit parenting and visitation time for the non custodial parent. However, the new law was not written without some flexibility. The move can still be made if both parents agree, there is a threat of domestic violence, or the Court permits the move. The Court will look at a number of factors in deciding whether to permit the 100+ mile move. Foremost of these factors is whether the change will improve the quality of life for the custodial parent and the minor child, and whether the parenting time schedule can be modified so that the parental relationship between the noncustodial parent and the child can be preserved and fostered.

Bottom line: a custodial parent is now even more restricted from moving far away without first receiving permission.

When the Engagement Ends, who gets the Ring?

As many of you know, I have been teaching business law classes at Macomb College for many years. When I teach the segment on contract law, a number of students over the years have posed the same basic question: if the engagement is broken off before the marriage, **does the prospective bride get to keep the engagement ring, or must it be returned to the prospective groom?**

Finally, there is a definitive answer. An Oakland County couple got engaged in August of 1996 when he presented her with an engagement ring. But it was no ordinary ring: it featured a 2.2 carat diamond and cost $19,500. After three months, he suggested that she sign a prenuptial agreement (for background, see "Prenuptial Agreement" *The Gavel* Issue 1-00, available at www.forestlaw.com/gavelindex). For whatever reason, probably precipitated by the request, the engagement broke off that night. He sued her for return of the ring, and the case dragged on for four years before the **Michigan Court of Appeals finally ruled in the prospective groom's favor**.

The Court declined to get into a 'fault' determination regarding the breakup, deciding that fault was irrelevant. Rather, it decided that the ring was a **"conditional gift"**, and the gift was not complete unless the marriage actually took place. Since the engagement broke off, for whatever reasons, the donor (prospective groom) gets the ring back. Meyer v Mitnick.

CASE IN POINT: **Cordless Phone Privacy**

In a prior issue, the topic of recording phone conversations was discussed (see "Can you get (Linda) Tripped up for Michigan Eavesdropping?" *The Gavel* Issue 2-99, available at www.forestlaw.com/gavelindex). **A related question is: Can you legally listen in on someone else's cordless phone conversation?**

The issue arose in a criminal case involving a married couple in the process of divorce proceedings. The husband moved out of the house, then found out from his wife's next door neighbor that her cordless phone conversations could be picked up on his police scanner. The Husband asked the neighbor to "keep on top of things and find out what was going on."

Acting on a criminal complaint, the police obtained a search warrant and found fifteen cassette tapes of the wife's phone conversations at the homes of the neighbor and the husband. The husband was charged with eavesdropping on a private conversation, in violation of Michigan law. He defended

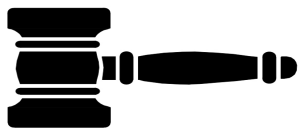
on the theory that cordless phone conversations were not "private", and that the user of a cordless phone could not have a reasonable expectation of privacy, particularly in light of the technological devices that can intercept cordless phone conversations.

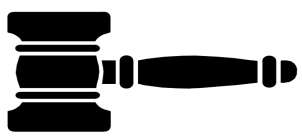
The case eventually wound up in the Michigan Supreme Court. The Court first had to interpret

Michigan law as to exactly what a **"private conversation"** was. The Court determined that it was "a conversation that a person reasonably expects to be free from casual or hostile intrusion or surveillance."

Having reached this interpretation, the rest of the case was easily decided: since the wife did have a reasonable expectation of privacy in her cordless phone conversation, the husband and neighbor violated those expectations and thus violated Michigan's eavesdropping statute.

Bottom Line: Just because you have the ability to hear someone else's phone conversation does not mean you can legally do so. People v Stone.





➥REFERRALS

If you are 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 to serve your associates and friends. If we cannot 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!

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