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ATTORNEYS AND COUNSELORS

And BOOM Go the Fireworks

by Jeffrey S. Kragt



I have to admit that I became a bit nostalgic when I received the fireworks catalogue a couple months ago in the mail. It took me back to my early teens, flipping through the catalogue wondering what, if anything, my parents would let me buy. At that time, you could not buy fireworks in Michigan, except for sparklers, smoke balls, and other fairly uninteresting items.

Now, thanks to the Michigan Fireworks Safety Act, which became effective January 1, 2012, the once prohibited fireworks are now legal to sell, purchase and use in Michigan. No longer is ordering from magazines required for access to the “good stuff,” as temporary fireworks stands and strip-mall stores are popping up everywhere. If you do not think fireworks are big business, then you certainly did

not go into one of these fireworks stores on July 3.

While people generally know of these recent events, there remain several questions as to what the general public can do with fireworks. We recently celebrated Independence Day. While everyone knows (and expects) that fireworks will be set off on July 4 to celebrate, the “celebration” appears to occur for days (and weeks) before and after the holiday. In fact, fireworks can be heard year round. Some people are annoyed by the fireworks; others are not.

Representing municipalities, we enjoy a unique perspective. Numerous residents voice their displeasure over the fireworks at city council meetings, to administration, and to the police departments. People are looking to their local municipality for help.

When the Michigan Fireworks Safety Act initially was enacted, it allowed municipalities to

News from the Firm

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Attorney and CEO, Timothy Currier, was recently nominated and selected to be a member of Leading Lawyers and the Leading Lawyers Advisory Board, a division of Law Bulletin Publishing in Chicago. Leading Lawyers are selected by licensed lawyers in a particular state as a result of a survey. The Advisory Board is made up of lawyers who received the highest number of votes in their area(s) of law and/or their region of the state. Because of their experience, lawyering skills, professional ethics, and the respect of their peers, the lawyers on the Leading Lawyers Advisory Board are the “best of the best.”



enact ordinances regulating the “ignition, discharge, and use of consumer fireworks,” but not on the day before, day of, or the day after a national holiday.

National holidays are specifically identified in federal statute (5 U.S.C. §6103) as:

- New Year’s Day
- Martin Luther King, Jr. Day
- Washington’s Birthday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

Thus, local municipalities could not regulate consumer fireworks at all for 30 days of the year.

While on its face it may not seem unreasonable, just ask people who live next door to the person who thought lighting off fireworks at 3:00 a.m. was a good idea.

After outcries across the state, the legislature gave municipalities the added ability to regulate the use of fireworks on those 30 days, between the hours of midnight and 8:00 a.m. (1:00 a.m. and 8:00 a.m. on New Year’s Day). In more rural areas (municipalities with less than 50,000 in population located in counties with less than 750,000 in

population) the hours are between 1:00 a.m. and 8:00 a.m.

While the state law contains some regulations on the use of fireworks, they are not all encompassing. For example, the state law regulates consumer fireworks as follows:

- Consumer fireworks cannot be used on public property, school property, church property, or property of someone else without the express permission of those persons or entities.
- Fireworks cannot be used by persons who are under the influence of alcohol and/or controlled substances.

With the increased ability to regulate, some municipalities have enacted their own regulations, while others have opted not to. You will need to check your local municipality to see what is required or prohibited in your jurisdiction. Some municipalities have enacted regulations that include the following:

- Persons under 18 years old must be under the direct supervision of adults when using fireworks.
- You cannot let remnants of fireworks land on

public property or property of others.

- You cannot use fireworks during burn bans.
- You cannot use consumer fireworks without a fire extinguisher or hose readily accessible.
- Specifically prohibiting the use of consumer fireworks during the hours and days not specifically allowed by state law.

Did you know...

A sparkler burns at a temperature of over 15 times that of boiling water!

Most regulations concern the use of “consumer fireworks.”

Consumer fireworks are defined in the state statute as follows:

Fireworks devices that are designed to produce visible effects by combustion are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission...and that are listed in APA standard 87-1, 3.1.2, 3.1.3 or 3.5. Consumer fireworks does not include low-impact fireworks.

What does this definition mean? Essentially it means things that

used to be prohibited in Michigan, such as roman candles, bottle rockets, firecrackers and other fireworks that explode or shoot in the air. Specifically excluded from this definition are low-impact fireworks. Low impact fireworks are defined as ground and hand-held sparkling devices, such as sparklers, snakes and smoke balls.

Violations of state law and local ordinances can be addressed by way of district court citations. Police departments are often unable to identify the specific location where fireworks are being ignited contrary to law. Other than the occasional neighbor informing the police department as to the source of

the violations, the police departments are left trying to somehow locate their sources. Even if they are able to locate the source of the wrongful use, it often becomes hard to determine the responsible person. In response, some municipalities have enacted ordinances making the property owner responsible for the fireworks that are wrongfully utilized on their property.

While some people find fireworks a great way to celebrate national holidays, some find them disruptive to daily lives. There is certainly a struggle to find the middle ground of community acceptability. There can be a

difference between what is permitted under state and local law and what is proper and decent for persons living in close proximity to others. While I see the same excitement for fireworks in my children's eyes that I once felt, common sense and courtesy are what I hope to instill in their enjoyment of fireworks, regardless of what the laws may permit.◊

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So Your Child is Off to College...

by Katherine B. Albrecht

If you will soon be sending a child off to college, you and your child have probably spent a good deal of time thinking about and

meningitis vaccine, books, microwave, mini-refrigerator and many other comforts of home, and the necessary funds to pay

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You no longer have the automatic right to
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You do not even have the right to receive
information about your child's care."*

acquiring items the child will need to be ready for the year away from home. Things you may have considered are clothes, bedding, computer, printer, TV,

for college. Have you, however, acquired the legal tools your child may need if a catastrophic illness or injury happens?

At age 18 your child is considered an adult. You no longer have the automatic right to control that child's medical care and treatment. You do not even have the right to receive information about your child's care. Similarly, while the college and your child both expect you to pay college expenses, you have no automatic right to information about your child's education because your child is now an adult. Most children realize that they still need and want parents to help them tackle the adult problems they may face

in college. However, if the child becomes unable to ask for help or grant you permission to help, you and the child are helpless. You may have to resort to a court proceeding to be the appointed as your child's guardian and conservator of your child's assets.

You can provide peace of mind for both you and your child by having your child execute a durable power of attorney, a designation of parent advocate and a waiver of the child's medical privacy before heading off to college. These legal documents will give you authority to obtain information and act on your child's behalf in the event the child needs you to become involved. Please call us to assist you in this back-to-school preparation.◇

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Michigan Supreme Court Weighs in on Shareholder Oppression



On July 15, 2014 the Michigan Supreme Court rendered its long-awaited decision in [Madugula v Taub](#), holding that claims of shareholder oppression are to be decided by the judge and not a jury, and that a violation of the parties' shareholder agreement can be evidence of shareholder oppression. This decision will impact shareholders litigating oppression claims under Michigan's shareholder oppression statute. That statute provides various forms of relief (including a court-ordered buyout) to minority shareholders where they can establish that the majority unlawfully interfered with the minority's rights as shareholders (or committed other illegal or fraudulent acts.) A more detailed analysis of this case and its expected impact will follow.

Is the Bank Requiring Your Spouse to Sign a Guarantee? That May Not be Legal

by Peter Gojcaj

With financial institutions finally loosening their credit standards, it is important to review certain proscriptions that creditors cannot impose on "guarantor spouses." In summary, the Equal Credit Opportunity Act (ECOA) (Regulation B) provides:

- If an individual is deemed creditworthy and the individual requests credit for himself or herself individually, the financial institution may not demand the individual to secure another guarantor signature.
- If an individual is deemed *not* creditworthy and the individual requests credit for himself or herself individually, the financial institution may demand another signature, but the financial institution cannot demand that the guarantor be a spouse of the applicant.
- If a loan is sought for businesses, financial institutions can require partners, directors, officers and/or shareholders to provide guarantees, but this requirement must be based on the guarantor's relationship with the business. However, a financial institution cannot single out a

- partner, director, officer or shareholder of the business because he or she is a spouse of the applicant.¹

There are, of course, exceptions to these rules. For example, a financial institution may require the signature of an applicant's spouse on a mortgage "to make

the property being offered as security available to satisfy the debt in the event of default."

Whether seeking personal loans for businesses, it is important to familiarize yourself with the Equal Credit Opportunity Act regulations so that you (applicant) can know what banks

can and can't do. Spousal signatures on loans can change the financial landscape for every family.◇

¹ Guidance on the Spousal Signature Provision of Regulation B, <http://www.fdic.gov/news/financial/2002/fil0209a.html#ft9>

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