

Staff Paper

The Land Division Amendments to the Subdivision Control Act

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Abstract:

On January 21, 1997, Governor Engler signed into law 1996 P.A. 591, the Land Division Act. This Act replaced the Subdivision Control Act after 30 years and changed the rules on how land is divided in Michigan. 1997 P.A. 87, effective July 28, 1997, amended the recently created 1996 Land Division Act. While some hailed these as positive changes allowing improved land use, others strongly disagree.

This paper is an attempt to alleviate the frustration by providing a history of land division legislation in Michigan because past laws creates an assumed set of rights which are not easily changes. The second focus of the paper is to lessen the confusion level by defining the main points of the law.

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The Land Division Amendments to the Subdivision Control Act 1996 P.A. 591

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On January 21, 1997, Governor Engler signed into law 1996 P.A. 591, the Land Division Act. This Act replaced the Subdivision Control Act after 30 years and changed the rules on how land is divided in Michigan. 1997 P.A. 87, effective July 28, 1997, amended the recently created 1996 Land Division Act. While some hailed these as positive changes allowing improved land use, others strongly disagree.

So what were the goals of this policy? Reports such as the Michigan Farmland and Agriculture Task Force established by Governor Engler had stated as one of its goals the amending of the Subdivision Control Act citing the need to eliminate the incentive to create 10.1 acre lots. Other published goals for the Land Division Act were to: change the pattern of development from long narrow lots, reduce the linear sprawl along roads, lessen the "cost" to plat, and reduce the amount of farmland and open space converted to residential use.

In addition, these changes in State law have many township officials, real estate agents, farmers and others in Michigan both frustrated and confused. This paper is an attempt to alleviate the frustration by providing a history of land division legislation in Michigan because past laws creates an assumed set of rights which are not easily changed. The second focus of the paper is to lessen the confusion level by defining the main points of the law.

History

In 1820, before Michigan acquired statehood and its population was under 9,000, land division was already an issue. The response was Territorial Laws 816 of 1821. When a town was to be created, the proprietors of such town were to cause a true map or plat to be recorded in the registry of the county where it was located before any sales were made. And if any such sales were made before such recording, the guilty persons were to forfeit \$10 per lot they had sold.

For the next 100 years platting legislation was added randomly, granting various authority to different municipalities until the 1929 Plat Act which replaced the old statute. At this time Michigan's rural population alone was 1,540,250.

The Plat Act of 1929 defined "subdivide" as

"Subdivide" shall mean the partitioning or dividing of a lot, tract or parcel of land into 5 or more lots, provided however, that this shall not apply to the

partitioning or dividing of agricultural lands into tracts or parcels of land 10 acres or more in area for continuing agricultural use.

[* Note that 10 acres referred to in the definition was to be used as agricultural lands.]

Therefore, when land was divided for 5 or more residential lots, the divisions were defined as "subdivide" therefore platting was required.

As Michigan's population continued to increase, this continued the demand for new housing. However, many of the land divisions for the new housing were exempt from platting due to the "loose" definition of subdivision. In addition, there was confusion on length of time for the 5 exempt parcels. These issues eventually led to the need for additional revisions to the Plat Act.

On the last day of the 1967 legislative session, the Subdivision Control Act was passed replacing the Plat Act. One of the more significant changes was the amending of the definition of subdivision:

"Subdivide" means the partitioning or dividing of a parcel or tract of land by the proprietors thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale . . . where the act of division creates 5 or more parcels of land each of which is 10 acres or less . . . within a period of 10 years.

The addition of the 10 year clause allowed a restarting of the clock on all parcels after 10 years. This change along with the tightening of the definitions of a "parent parcel" and the increased requirements for platting, lead to a greater incentive to avoid platting.

Since the enactment of the 1967 Subdivision Control Act, property could be split into any number of parcels over 10 acres without platting, but only 4 parcels 10 acres or less in every 10 years. The difficulty of platting -- in time, expense, and trouble -- encouraged the creation of parcels 10.1 acre or even 10.01 acres in size as unplatted splits. Many are long and narrow, often described as bowling alley lots. This pattern was due to the increased incentive to avoid platting; and many communities had minimum road frontage requirements, with no restrictions on depth to width ratios.

The Land Division Act

1996 P.A. 591, effective March 31, 1997, replaces the Subdivision Control Act and specifically addresses land splitting that are exempt from platting. Three types of land division are created: "subdivisions," "divisions," and "exempt splits." *Subdivisions*, as in the past, must be platted. *Exempt splits* are actually exempt from any governmental review. *Divisions* must go through a simplified approval process.

Exempt splits:

If the splitting and sale of a parcel does not create any parcel less than 40 acres, the split is exempt from regulation so long as it is accessible. "Accessible" simply means access to the property by easement or driveway at a location where the state or county would permit a driveway. (See "Access requirements"). Zoning ordinances, building codes, and other applicable laws may still regulate the **use** of the property.

To be exempt, the split cannot create **any** parcel less than 40 acres. If you own 60 acres and sell a 40 acre parcel from it, you have created two parcels, one 40 acres, the other 20 acres; that is not an exempt split.

Some land, especially in the Upper Peninsula, cannot meet the statutory definition of “accessible.” For example, land surrounded by State-owned land – the State may allow you to go across its land but will not give you an easement. Does that mean it can never be split or sold? No, 1997 P.A. 87 added a new section that says those areas can be divided into parcels 20 acres or larger, but the buyer must receive clear, written notice that the parcels do not meet the statutory standard for access [new section 109].

What is not exempt? If a split creates at least one parcel under 40 acres, the split may be either a division or a subdivision:

Divisions:

When only a limited number of parcels under 40 acres are created, the splits may qualify as a “division.” Divisions are subject to limited regulation, but need not be platted. If the land split creates at least one parcel under 40 acres, but not more than the number described below, it is a *division* and must go through a simplified local approval process, with specific, objective standards. The owner must submit an accurate legal description and parcel map showing area, lot lines, public utility easements, access, and the dimensions and number of lots.

The division is submitted to the city, village or township. (Municipalities with populations of 2,500 or less can petition the county to review land divisions.) The division must be approved within 45 days if it meets the stated requirements. If the lot is a development site the only standards are the depth to width ratio, access, local minimum area and width rules, and public utility easements.

The 45-day clock runs from the day you file a “complete application.” A “complete” application, the statute says, means one with information showing how the division meets all the approval standards and exhibits that the number of lots created is within the legal limit.

Lot shape - The depth of a parcel cannot be more than 4 times its width. That ratio does not apply to any parcel larger than 10 acres, unless a local ordinance provides otherwise. The ordinance may allow variances and may specify a smaller depth-to-width ratio, such as 3-to-1, as found in some areas for residential lots. No ratio applies, regardless of any local ordinance, to the remainder of a parent parcel kept by the owner.

Width - Each parcel must have at least the width required by a land division ordinance, if there is one. This is not the zoning ordinance width; it is the width stated in a land division ordinance.

Area - Each parcel must have an area not less than that required by the local land division ordinance, if there is one.

Access requirements - The parcels in a division must be "accessible." That means meeting state, county, city or village standards for driveway location, either by an existing driveway or easement, or by a proposed one. The state and county rules come under 1969 Public Act 200, the Driveways, Banners, and Parades Act, MCL 247.321 to 247.329. Only the location standards apply, not the construction standards.

Development site standard - A "development site" must meet one additional standard. The statute defines that to mean any parcel which has or is intended for building development other than agricultural or forestry use. Those parcels must also have adequate easements for public utilities from the parcel to existing public utility facilities.

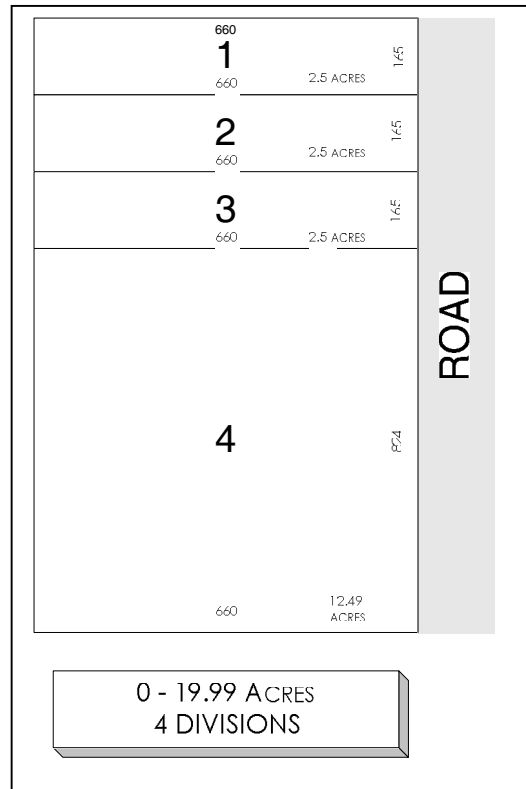
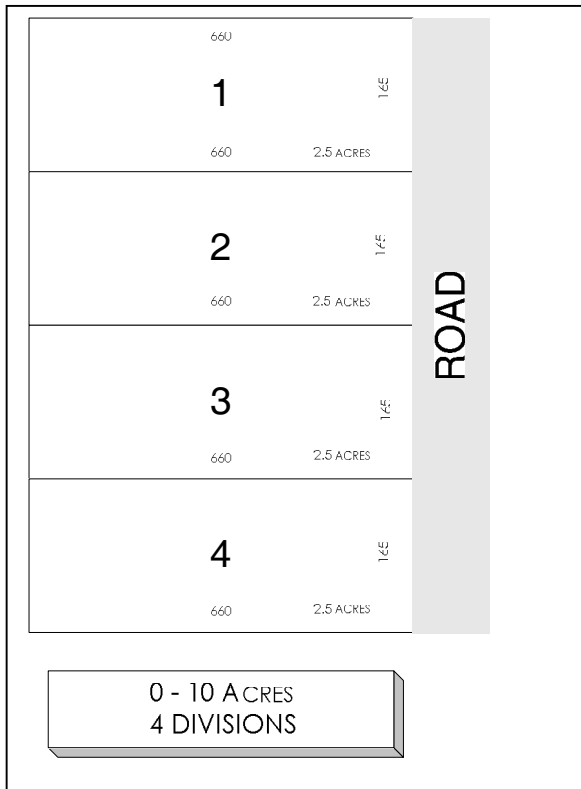
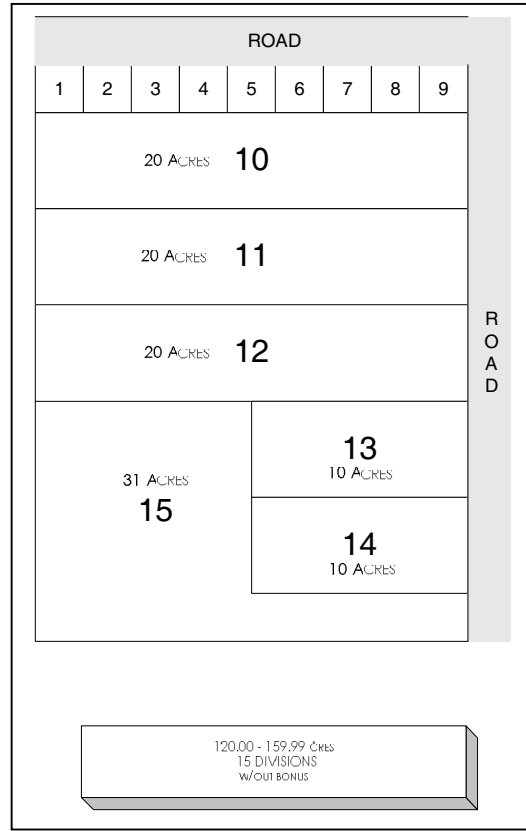
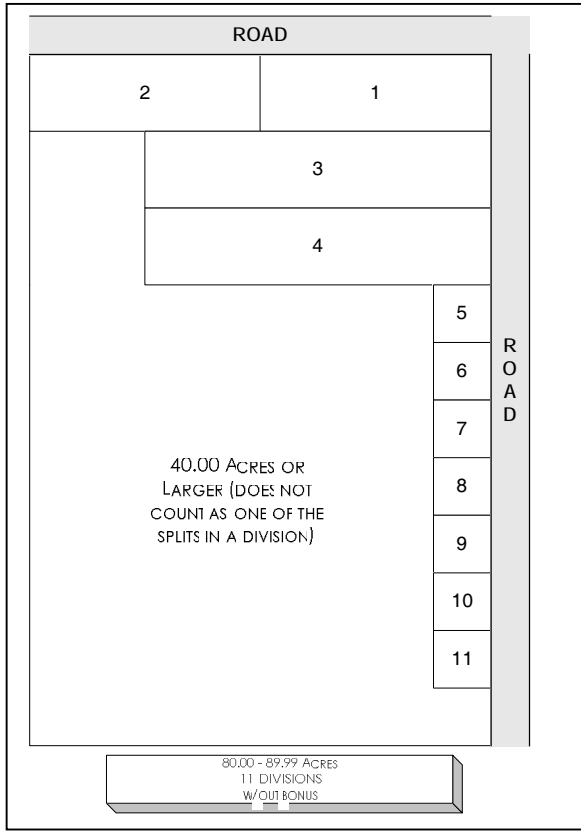
Sewer and water - Before 1997 P.A. 87 took effect on July 28, development sites also needed approval for sewage disposal and water supply. Now they do not. Instead, when you apply for a building permit, you will need to show approved sewage disposal and water supply. That does not mean you should not check before buying, but you do not need "approval." (Of course, this is the way the world worked before March 31, with one exception: new lots under 1 acre will follow Department of Environmental Quality rules for sewer and water approvals. Lots 1 acre and over will once again use the local sanitary code.)

Other standards - No other standards apply to land divisions. Local governments can adopt ordinances but only to set a fee (which must be reasonable for the service) and to set lot width, area, and depth-to-width ratio. But, remember, the statute now says: "Approval of a division is not a determination that the resulting parcels comply with other ordinances and regulations." Zoning, wetlands, and other regulations will affect the use of those new parcels, even though they cannot control whether you can divide and buy or sell them.

Parent Parcel

The number of parcels allowed in a division depends on the size of the original property, called a "parent parcel" or "parent tract." On March 31, 1997, you begin your calculations with any parcel "lawfully in existence" on that day. What is "lawfully in existence"? At the least, it means a parcel not created in violation of the Subdivision Control Act, for example, one created by too many splits in 10 years. The discussions on the bill and various proposed amendments suggest that the phrase should mean whatever was lawfully divided under the Subdivision Control Act. The Attorney General issued numerous opinions and letter opinions interpreting the meaning of "partitioned or divided" under that Act. Those opinions should define a parcel "lawfully in existence" to include, for example, a parcel sold by an unrecorded land contract. Although copies of some opinions can be obtained from the Department of Consumer and Industry Services, Corporations, Securities, and Land Development Bureau office, or from the Office of the Attorney General, advice from an attorney on how to apply those opinions is really needed.

Property 10 acres or less can be divided into 4 parcels. For each additional 10 acres up to 120, another parcel is allowed. As shown below, each added 10 acres is counted only after the first whole 10 acres. Above 120 acres, another parcel is added for every 40 acres in the original parent property.

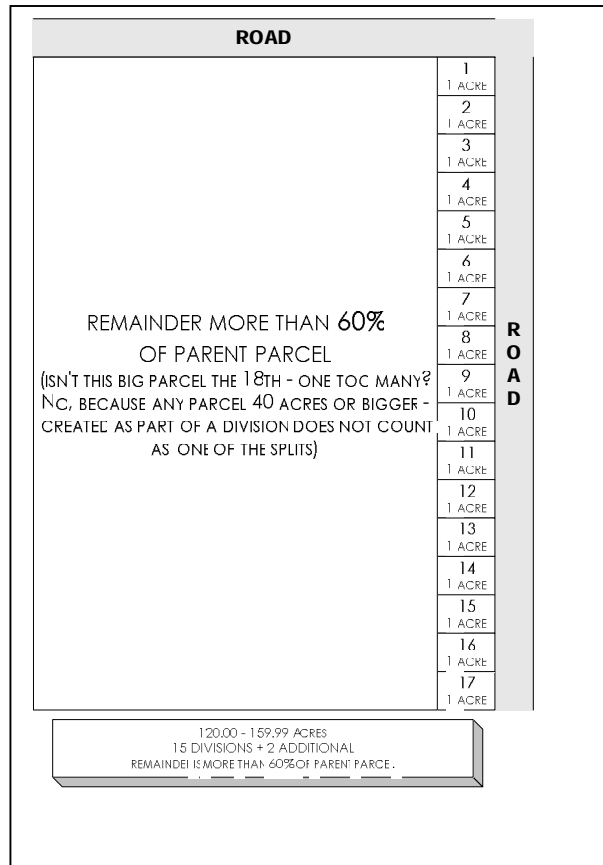
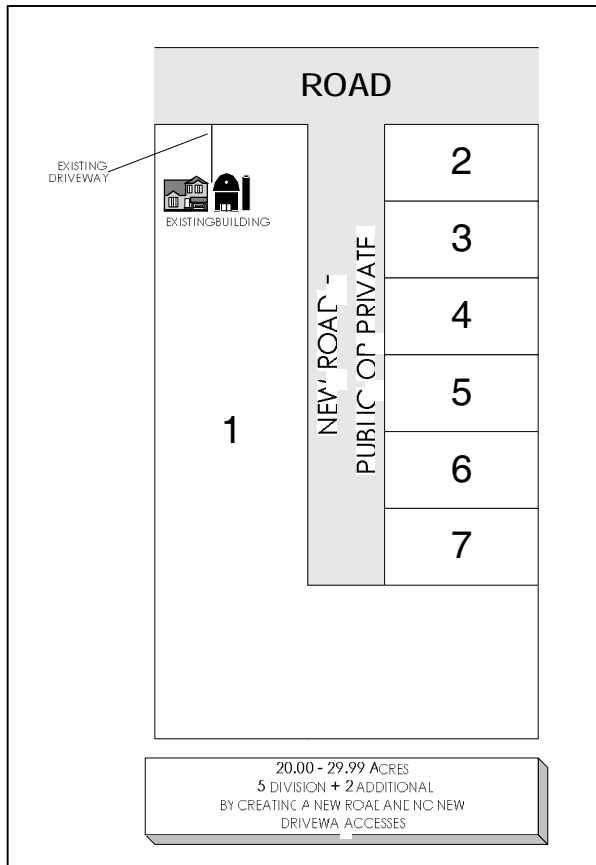


The formula decides the **number** of parcels, not their size. They may be any size the buyer and seller wish. Size makes a difference for only two purposes. First, parcels 40 acres or bigger can be *exempt splits* and require no approval. If a *division* creates parcels both smaller and larger than 40 acres, the parcels 40 + acres do not count against the total number of parcels created, provided they are accessible. Second, in the absence of a local ordinance, the minimum depth-to-width ratios do not apply to parcels over 10 acres.

For parent parcels at least 20 acres in size, the law also creates incentives for better land use by offering additional splits. The land owner may make up to 2 additional splits if:

1. 60 percent of the original parcel remains intact; **OR**
2. a new road (public or private) is created so no new driveway access is needed for any of the parcels. [Section 108(3)] Two extra parcels are the maximum; the owner cannot get four extra splits by adding a road and keeping 60 percent intact.

For example, from a 20 acre parcel, the owner could create up to 5 parcels -- 4 for the first 10 acres and 1 for the additional whole 10 acres. To use the bonus: if one piece is at least 12 acres, the owner may have up to 7 splits (4 for the first 10 acres, 1 for the next 10, and 2 extra splits for keeping 60 percent together). One resulting parcel must be 12 acres or bigger. Each of the 6 others (if they were all the same size) could then be 1.33 acres, they need not be the same size.



Splitting The Resulting Parcels

Can the buyers of the 12 acre parcel and the six smaller parcels created in the above example resplit them again without platting? Yes. There are two possible ways.

1) Transferring split rights One way to split a resulting parcel is transferring split rights from the parent parcel. [Section 109(2)] The seller of a lot who has the right to make more splits can transfer a split right to the purchaser.

Using the example above, the 20 acre parent parcel, with the bonus, had 7 splits. The owner could keep 12 acres, and sell off 5 parcels, i.e., 4 parcels of 1 acre each and 1 parcel of 4 acres. The parent parcel still has one extra split right remaining. The original owner can transfer that right in the deed to one of the parcels. The buyer of one of those pieces can then split it once without waiting 10 years. That may make sense for someone buying the 4 acre parcel in the preceding example.

For any division, the deed must state whether or not any split rights are transferred. If the deeds do not address the split right, those rights stay with the remainder of the parent parcel kept by the grantor. When you transfer split rights, you must now report the transfer to the assessor on the property transfer affidavit form (L4260a) to allow local governments to track split rights ownerships.

2) Redivision after 10 years - Each parcel resulting from an exempt split or division can also be split again in 10 years, but under a different formula than the one for original parent parcels. If the deed does not address split rights at all, the new parcel can still be redivided in 10 years [Subsections 108 (5) and (6)] The 10 years runs from the date of recording of the original split.

Like the first formula, the number of splits depends on the size of the original parcel. Property under 10 acres can be divided into 2; for each additional 10 acres another division is allowed. The maximum number is 7, regardless of the size of the parcel. As another incentive to encourage keeping larger acreage together, the maximum can go up to 10 if 60 percent of the parcel remains intact. This is not like the bonus splits -- it only raises the maximum splits possible. That is, you must have a parcel big enough for the formula to allow more than 7 splits before it can apply. As a result, it only applies to parcels over 70 acres, as illustrated below.

Using the parcels created in one of the examples above: the buyer of the 12 acre parcel could split it into 2 parcels (2 for the first 10 acres; and no more because the parcel does not include an additional whole 10 acres. A parcel any fraction below the next whole 10 acres only gets the initial number of splits. Of course, this sets a premium on accurate surveying.) The owners of those 1.33 acre parcels could split them under the same formula. (2 for the first 10 acres or less) Of course, whether they could be used for anything at that size depends on the zoning. In ten years, each one may be split again. Obviously, the marketability of smaller lots, as well as road frontage and minimum lot size rules, cuts off the practical effect of the formula for many parcels. None of these parcels can be split 7 times or more, so the incentive to preserve 60 percent cannot apply.

This example illustrates the incentive. If an individual buy 60 acres, after 10 years it could be re-split into 7 parcels -- 2 for the first 10 acres, 1 for each of the five additional whole 10 acres; the incentive still does not raise the total. A 90-acre parcel, however, could be re-split into 10 pieces by the formula -- 2 for the first 10 acres and 8 for the additional whole 10 acres. But, the law sets a maximum of 7 parcels unless at least 60 percent is kept intact. Then, up to 10 parcels could be created. Ten is maximum, regardless of how the owner makes the splits.

Contracts - Agreements to sell unplatted land should include specific agreement on the transfer of division rights. The buyer and seller should agree at the outset how many, if any, divisions the seller will transfer to the buyer.

At closing - New language must appear in all deeds for unplatted property. Also, new questions on the transfer affidavit form allow local government to track transfers of split rights.

A deed for unplatted property must first state whether the right to make further divisions is transferred with the property. The statement must 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.

As noted above, in the absence of the statement to this effect, the right to make further division stays with the remainder of the parent parcel retained by the grantor. The new parcel cannot be divided again (except by plat or site condo) until 10 years have passed from the recording of the division. In addition, all deeds for parcels of unplatted land must 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.

Penalties - A sale of land split in violation of the act is voidable at the option of the purchaser. The seller must forfeit any consideration and is liable to the purchaser for damages. As of October 1, 1997, a violation of the division and exempt split provisions is punishable by a \$1,000 civil fine for each parcel sold. Other violations may be a misdemeanor.