

# MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

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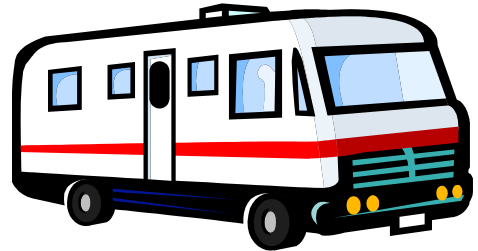
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## Introductory Edition

Welcome to the introductory edition of Michigan RV Law. This is an independent publication developed by lawyers who defend RV manufacturers and dealerships in Michigan and throughout the country. It is intended to assist people working in the RV industry with the defense of claims against them through insights on the law, litigation tips and strategies, and communication with the RV industry network and its attorneys.

The lead attorney behind this publication is Michael Dolenga. If you have questions about this publication, Michigan Law or the defense of claims against RV manufacturers or deal-



erships throughout the United States you may contact Michael Dolenga at (248) 988-9922 or by e-mail at [mdolenga@mich.com](mailto:mdolenga@mich.com).

We intend to publish this newsletter on a quarterly basis and would welcome any input regarding issues you would like addressed or topics you would like to see covered in this newsletter.

## **MICHIGAN GOES FROM 42 to 45 FEET**

The legislature of Michigan recently approved legislation that had been introduced by the Michigan Association of Recreational Vehicles and Campgrounds. The legislation increases the maximum allowable length for motor homes on Michigan highways from 42 feet to 45 feet.

Interestingly, three other states passed the same type of legislation in 2002, and there are now 42 states that allow motor homes up to 45 feet in length on their highways. The other three states enacting this

type of legislation in 2002 were Illinois, Massachusetts and South Carolina. In addition, length legislation is currently pending in Delaware, New York and Pennsylvania.

It has been reported by the Recreational Vehicle Industry Association that they have a goal of nationwide uniformity on the 45 feet issue. If you are interested in more information regarding this we recommend that you contact RVIA at (703) 620-6003, or check out their website at [www.rvia.org](http://www.rvia.org).



## Legal Tidbits

### Michigan Mediation

For years, “Michigan Mediation” has been different than almost every state in the United States. Recent modifications to the Michigan Court Rules will change that, and bring Michigan into conformity with the rest of the United States. In short, the court rules have been changed to modify Michigan mediation to a process now called “case evaluation.” What the rest of the country has been calling mediation, Michigan has called facilitation or facilitative mediation. With case evaluation replacing what was known as Michigan mediation, Michigan will continue with facilitations and facilitative mediations, but that process is now called mediation. Unfortunately, many Michigan practitioners, and judges, are still using the old terminology, and people are still learning the new court rules. This article explains the difference.

### Case Evaluation

As noted, what use to be Michigan mediation is now known as case evaluation. Under the Michigan Court Rules, all civil actions go through a mandatory case evaluation process. In the RV setting, attorneys for the consumer, dealership, manufacturer, and, if applicable, component part manufacturers, present the facts and law of the case to a panel of three experienced attorneys during a case evaluation hearing. The panel is comprised of an attorney who spends the majority of his or her practice representing Plaintiffs, an attorney who spends the majority of his or her practice representing Defendants and an attorney who represents both. However, often times in RV cases, the court assigns RV litigation to commercial panels. With commercial panels, there is usually not a designated Plaintiff evaluator, neutral evaluator or defense evaluator. Instead, all three members of the panel are attorneys, or retired judges, who are suppose to be familiar with commercial or consumer litigation.

The case evaluation process is somewhat unique since the panel is not suppose to engage in settlement negotiations

with the parties, and the panel has no authority to issue a binding award on the parties. Moreover, the panel does not evaluate the case for its true value; rather, its job is to evaluate the case at a figure that the panel reasonably believes will help the parties settle. As a result, case evaluation panels almost never evaluate a case at zero. On the other hand, they almost never give the Plaintiff, or consumer, the full value of their case, even if they believe a buy back is appropriate.

*“its job is to evaluate the case at a figure that the panel reasonably believes will help the parties settle”*

In addition, the Michigan Court Rules have sanction provisions in them after case evaluation. Generally speaking, if all parties accept the case evaluation award the case is settled. If any party rejects the award, the case proceeds towards trial. Although the rules are somewhat complicated depending on who accepts and who rejects in regards to sanctions, generally, the rules provide that a party must obtain a result ten percent better than the case evaluation or they will be sanctioned. Sanctions are normally an amount equal to the opposing parties’ costs of litigation. These costs include attorney fees, and can often times be substantial. If a case settles these sanctions do not apply. If there is any type of judgment or dismissal order they apply.

## Mediation

Michigan has also recently added a new court rule for mediation (formally known in Michigan as facilitation or facilitative mediation). The new court rule allows a judge to send the parties and their attorneys to mediation at any time during the course of a civil lawsuit. This process is similar to what is done throughout the country in mediations. The Michigan Court Rules now define "mediation" as "a process in which a neutral third party facilitates communications between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power."

Generally, the attorneys and the parties meet with a mediator who helps them explore settlement options. Under the current Michigan Court Rules, the parties may agree upon a neutral mediator. If they do not, the judge handling the case will appoint a mediator. However, the judge is limited to appointing only mediators who are on that judge's court's approved list. The approved court list is developed

*"The new court rule allows a judge to send the parties and their attorneys to mediation at any time during the course of a civil lawsuit"*

through each court's ADR plan. In order to meet the requirements of the Michigan Court Rules, each plan must specify how its list of mediators will be developed and maintained.



The rules for qualifying as a mediator are somewhat varied, but, essentially, every mediator must be an attorney, or hold a graduate degree in conflict resolution, and they must complete a state court administrator approved training program, which

takes 40 hours to complete. In addition, they must participate in a certain number of mediations under the supervision of an approved mediator. Then, they must apply to each court to be placed on that court's list of approved mediators. Notably, however, the list of mediators is only used if the parties do not agree on a mediator. If the parties agree on a mediator, the judge must appoint that mediator. If

the parties do not agree on a mediator, the judge may only appoint a mediator off that judge's court's approved list. The judge is supposed to take the next name off of the list, so that it is used on a rotational basis.

## Conclusion/Recommendation

The rules pertaining to case evaluation and mediation are somewhat complex in Michigan, and they are in a state of flux. It is highly recommended that you consult with a Michigan attorney prior to making decisions on these issues. Fur-

thermore, the alternative dispute resolution section of the Michigan State Bar is on the cutting edge of these changes and how they may influence civil litigation in Michigan. Consultation with representatives from that section of the state bar may also be warranted.

# **LEMON LAW DOES NOT APPLY**

Almost every state in the United States has a lemon law or some other type of consumer protection act that consumer's attorneys use to file lawsuits against various companies, including RV dealerships and manufacturers. Michigan has a lemon law, but it does not apply to recreational vehicles. Specifically, Michigan's lemon law, Michigan Compiled Laws 257.1401(f), defines a motor vehicle as follows:

*A motor vehicle is designed as a passenger vehicle, or sport*



*utility vehicle, but does not include a motor home.*

As a result of this, if you are an RV dealership or manufacturer you cannot be sued under Michigan's lemon law. This is extremely important as attorneys often attempt to use the lemon law to force Defendants to pay the cost of litigation, including the consumer's attorney's fees. For more information on Michigan's lemon law and other consumer protection act statutes please watch for future issues of the Michigan RV Law Newsletter.

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