

DETROIT

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Services

Litigation and Dispute Resolution
Real Estate and Construction
Litigation
Appeals
Financial Services

Industries

Financial Institutions

Education

Wayne State University Law
School, J.D., 1985

University of Michigan-Dearborn,
B.A. 1979

Bar Admissions

Michigan

Court Admissions

U.S. Court of Appeals

- Sixth Circuit

U.S. District Courts

- Eastern District of Michigan
- Western District of Michigan



LeRoy L. Asher Jr.

Principal

LeRoy Asher Jr.'s practice focuses on real estate litigation with particular emphasis on title insurance defense, land use and zoning matters and construction disputes.

LeRoy has defended numerous commercial lenders in construction disputes of all types. He represents a number of national title insurance underwriters in all aspects of title insurance defense and has litigated and arbitrated numerous construction and real estate disputes. LeRoy also regularly appears before city, township, county and state agencies regarding real estate development projects and has litigated numerous zoning and land use cases to verdict.

He began his career as a trial attorney involved in complex commercial disputes, real estate partnership disputes, non-compete agreements, commercial landlord tenant matters, environmental claims, franchise litigation and zoning and land use disputes.

He has been recognized by *Best Lawyers in America* for Commercial Litigation and Real Estate Litigation since 2013.

Representative Matters

Title Insurance Matters

- Represented a national title insurance underwriter and its agent in a case establishing, for the first time in a Michigan appellate decision, that neither title insurers nor their agents are subject to tort liability.
- Represented a national title insurance underwriter, its agent and employees in obtaining summary judgment in a case filed by the insured alleging fraudulent misrepresentation, tortious interference with a contractual relationship, breach of

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fiduciary duty and conspiracy. Affirmed on appeal by the Michigan Court of Appeals and leave to appeal denied by the Michigan Supreme Court.

- Represented a national lender in a claim brought by the bankruptcy trustee seeking to avoid two mortgages on the debtor's property as preferential transfers on the grounds that the mortgages were not properly perfected because they contained defects in their notarization. In granting the lender's motion to dismiss, the Court held that when the validity of the signatures is not an issue, a defect in the notarization does not rebut the presumption of validity of an instrument that is received and recorded by a register of deeds.
- Represented a national title insurance underwriter in an arbitration proceeding involving a denial of title insurance coverage. Defeated coverage based on the "created subsequent to the Date of Policy" exception and the insured having sold the property condition/stipulation.
- Represented a national title insurance underwriter in defending a claim involving an undisclosed easement, based upon the "assumed or agreed" exception.
- Represented a property owner in successfully defending a claim by the neighboring property owner seeking to block access to the insured's property based upon claims that the use of an easement across the neighbor's property for ingress and egress would constitute an overburdening of the easement.
- Represented a national title insurance underwriter in defending a claim for breach of contract. Obtained a settlement that limited the loss to five percent of the amount claimed based upon the failure to notify the insurer exception and the insured having settled the claim without the insurer's consent.
- Represented a property owner in successfully defending a claim by the neighboring property owner seeking to take 20 percent of the property under the acquiescence doctrine.
- Represented a national title insurance company in defending a claim by the insured involving the failure to identify a deed restriction.
- Represented property owners in a case involving the statutory interpretation of the Plat Act regarding the vacating of a paper street. Obtained a settlement to avoid having to tear down two industrial buildings that were built over the property line.
- Represented a national lender in successfully defending a claim brought to set aside a mortgage transaction based upon the borrower's alleged lack of capacity to enter into the transaction.

Land Use and Zoning Matters

- Represented Fortune 500 companies including multiple fast food restaurants and oil companies in appearances before Planning Commissions, City Councils, Township Boards and Board of Zoning Appeals in obtaining re-zonings, site plan approvals and variances to permit the development of restaurants and gas stations.
- Represented national restaurant chain in proceedings before the State of Michigan Barrier-Free Design Board involving claims that restaurant bathroom facilities were not in compliance with the Americans with Disabilities Act and State Handicap Civil Rights Act.
- Represented national fast food chain in proceedings before the Michigan Department of Environmental Quality in order to obtain construction approval to locate a new restaurant in a 100 year flood plain.

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- Represented national fast food chain in condemnation proceedings involving municipal road widening projects.
- Represented restaurant property owner in dispute with adjoining property owner involving use restrictions which could limit development for a competing restaurant use.
- Represented restaurant property owner in dispute with national big box retail developer in claims involving big box retailers' attempts to limit access to the restaurant property during demolition/reconstruction of the adjoining big box shopping center site.
- Represented national restaurant chain in defending litigation brought by adjoining property owners alleging that the proposed restaurant development on a shopping center out parcel resulted in an overburdening of the easement involving a shared driveway.
- Represented restaurant property owner in dispute with adjoining property owner involving cross access and cross parking agreement rights.
- Represented property owners in obtaining revisions to private subdivision deed restrictions which otherwise limited the use of the property to residential use.
- Represented property owners in vacating "paper" streets and public alleyways in order to permit development of the clients' property.
- Represented property owners in boundary disputes involving disputed claims to property based upon adverse possession and/or prescriptive easement claims.

Other Matters

- Represented a large regional shopping center owner in a dispute with a very litigious tenant, who had claimed damages of more than \$50 million. After a four-week trial, the court not only entered a verdict of no cause of action, but also ordered the tenant to vacate the shopping center and determined that the owner was entitled to recover its attorney fees.
- Represented the general partner in a real estate partnership dispute seeking to enforce guarantees against former limited partners and defending the limited partners' claims for breach of fiduciary duty and negligence against the general partner. After a 14 week trial, the court entered a judgment of more than \$1 million in favor of the general partner with regard to the claims on the guarantees and entered a verdict of only \$22,000 with regard to all of the limited partners' claims.

Honors

Best Lawyers in America, Commercial Litigation and Real Estate Litigation, 2013-present

DBusiness Magazine, Top Lawyers, 2014-present:

Land Use & Zoning

Appellate Law

Leading Lawyers, Commercial Litigation; Land Use, Zoning & Condemnation Law; Real Estate Law: Commercial

LeRoy L. Asher Jr.

Martindale Hubbell, 5.0 out of 5.0 Peer Rating

Professional Activities

American Bar Association since 1986, Real Property Section; Urban, State and Local Government Law Section

State Bar of Michigan since 1985, Litigation Law Section; Real Property Law Section; Public Corporation Law Section; Antitrust Law Section

Oakland County Bar Association since 1985

Michigan Supreme Court Historical Society

Michigan Land Title Association

Michigan Society of Planning Officials, Past Member

Civic, Cultural & Social Activities

Garden City Planning Commission, Past Member

Southeast Michigan Council of Governments, Past Member

Speeches

"Tailoring Your Land Development Presentation for Different Audiences," The Institute of Continuing Legal Education and Real Property Law Section Land Use and Development Seminar, 2005

"Making Effective Presentations to the Planning Commission" (Co-presenter), The Institute of Continuing Legal Education and Real Property Law Section Land Use and Development Seminar, 2004

Publications

Author with Joseph F. Galvin of chapter on "Zoning," in Local Government Law and Practice in Michigan, published by the Michigan Municipal League and the Michigan Association of Municipal Attorneys, 2000

Articles

Protecting Your Investment from Costly Building Code Violations Following Galvan Ruling

Bankruptcy Court Says Force Majeure Clause Partially Excuses Rent Payment Due To COVID-19 Executive Order

Courts Are to Remain Open Under Michigan's Shelter In Place Order