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Supplement No. 8 to 6th Edition (May 2021)**

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SIXTH EDITION

Standard	22.5B
Standard	30.1
Standard	30.3
Standard	31.1
Standard	31.2

SUPPLEMENT No. 8

MICHIGAN LAND TITLE STANDARDS

SIXTH EDITION

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of the State Bar of Michigan

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PREFACE TO MICHIGAN LAND TITLE STANDARDS

SIXTH EDITION (through Supplement No. 8)

Cite this Edition as *Mich Land Title Standards* (Land Title Stds Comm, Real Prop Law Section, State Bar of Michigan), 6th ed through Supp No 8 (2022).

The Sixth Edition of Michigan Land Title Standards (including Supplement Nos. 1 through 8) has been prepared by the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan and published by the Real Property Law Section.

First published in the 1950s, the Michigan Land Title Standards is a series of selected statements of the law of land titles, as supported by applicable statutes and case law. Each Standard is a concise statement of a principle of law, accompanied by problems which illustrate the proper application of the principle. Each Standard includes specific references to the statutes and cases which provide the legal authority for the principle addressed. Some of the Standards include explanatory comments by the Committee.

The Committee has taken care to include only those principles of land title law which are clearly supported by the law of Michigan or, where applicable, by the law of the United States, and for which there are supporting statutes or published cases which are definitive in their effect or holding. Points of law that are subject to dispute or uncertainty, or as to which there are conflicting opinions, have not been included in the Standards, even if a particular interpretation may be commonly accepted in practice. The Standards are not intended as a treatise on land title law, but rather consist of selected statements of legal principles to guide lawyers on the legal effect of land title instruments.

The Standards have played a significant role in promoting the certainty and continuity of Michigan's principles of real property law, the importance of which was noted in a decision of our Supreme Court:¹

[I]f there is any realm within which the values served by stare decisis -- stability, predictability, and continuity -- must be most certainly maintained, it must be within the realm of property law. For this reason, "[t]his Court has previously declared that stare decisis is to be strictly observed where past decisions establish 'rules of property' that induce extensive reliance."

* * * * *

The justification for this rule is not to be found in rigid fidelity to

¹ 2000 *Baum Family Trust v Babel*, 488 Mich 136, 172; 793 NW2d 633 (2010), citing *Bott v Natural Resources Comm*, 415 Mich 45, 77-78; 327 NW2d 838 (1982).

precedent, but conscience. . . . Judicial “rules of property” create value, and the passage of time induces a belief in their stability that generates commitments of human energy and capital.

During the more than 60 years since their initial publication, the Standards have come to be regarded as an authoritative reference on the law of land titles and other aspects of real property law as developed and interpreted in Michigan. Trial and appellate courts have frequently cited the Standards in support of the legal principles relied upon in decisions in real property cases. Indeed, the Michigan Land Title Standards are generally regarded as among the most complete and authoritative of all the state land title standards in the United States.

The Committee has been ably guided by the following Chairpersons: Ralph W. Aigler (1953-54), James H. Hudnut (1954-55), Ralph Jossman (1955-59), Cyrus M. Poppen (1959-61), Ray L. Potter (1961-63), Clarence W. Videan (1963-64), Reuben M. Waterman (1964-65), F. Norman Higgs (1965-66), T. Gerald McShane (1966-69), Frank L. Charbonneau (1969-71), James W. Draper (1971-74), Myron Winegarden (1974-76), Andrew Cooke (1976-78), Paul A. Ward (1978-80), John R. Baker (1980-83), Carl A. Hasselwander (1983-85), Janet L. Kinzinger (1985-88), Thomas C. Simpson (1988-90), Gerard K. Knorr (1990-91), Russell A. McNair, Jr. (1991-92), Anne H. Hiemstra (1992-93), C. Robert Wartell (1993-95), James R. Brown (1995-98), Dennis W. Hagerty (1998-2001), James E. Reed (2001-04), Robert D. Mollhagen (2004-07), Russell E. Prins (2007-10), James M. Marquardt (2010-13), Brian J. Page (2013-15), Catharine B. LaMont (2015-17), Lawrence M. Dudek (2017-19), C. Kim Shierk (2019-21), and Kelly A. Myers (2021- current).

The Committee continuously reviews and revises the Standards and prepares new Standards to include new subject matter and authorities and to reflect changes in the law. New and revised Standards are published in periodic supplements. The Committee welcomes comments and suggestions from all interested members of the Bar.

MICHIGAN LAND TITLE STANDARDS COMMITTEE

Lansing, Michigan
May 2021

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2021 - 2022
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SIXTH EDITION (through Supplement No. 8)

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STANDARD 22.5B

DEED OF REAL PROPERTY FORECLOSED PURSUANT TO MCL 211.78 – 211.78T

STANDARD: A DEED BY A FORECLOSING GOVERNMENTAL UNIT OF REAL PROPERTY ACQUIRED FOR DELINQUENT REAL PROPERTY TAXES PURSUANT TO MCL 211.78 - 211.78t VESTS FEE SIMPLE TITLE IN THE GRANTEE IF THE FORECLOSING GOVERNMENTAL UNIT COMPLIED WITH THE NOTICE PROVISIONS OF THE GENERAL PROPERTY TAX ACT.

Problem: In 2017, Oakland County acquired title to Blackacre as the foreclosing governmental unit by judgment dated March 1, 2017, in proceedings under MCL 211.78-211.78t for the sale of lands for delinquent real property taxes. Oakland County deeded Blackacre to John Doe in November, 2017. The deed contained a recital that it was executed pursuant to Section 78m(2) of the General Property Tax Act. The deed was recorded. Did Doe acquire fee simple title to Blackacre?

Answer: Yes, provided that Oakland County complied with the notice provisions of the General Property Tax Act, but in certain circumstances, additional reasonable measures may be required to satisfy due process. See, Caveat 2.

Authorities: MCL 211.78k(6). *Republic Bank v Genesee County Treasurer*, 471 Mich 732, 690 NW2d 917 (2005); *In re Petition by Wayne County Treasurer*, 478 Mich 1, 732 NW2d 458 (2007).

Comment A: If the State is the foreclosing governmental unit, mineral, coal, oil and gas rights may be reserved in deeds executed pursuant to the General Property Tax Act. MCL 324.503. The term “mineral rights” as used in MCL 324.503 does not include sand, gravel, clay and other non-metallic minerals. A deed of tax-reverted land may also reserve to the State (1) aboriginal antiquities and the right to explore and excavate for them, MCL 324.76104, and (2) the right of ingress to and egress from a watercourse, MCL 324.503.

Comment B: The title to land conveyed by a foreclosing governmental unit pursuant to the General Property Tax Act may be subject to certain interests therein, including, among others, future installments of special assessments, certain visible or recorded easements and private deed restrictions. See, Standard 22.9-2.

Comment C: *Rafaeli, LLC v Oakland County*, 505 Mich 429, 952 NW2d 434 (2020) held that although former property owners whose properties are foreclosed and sold to satisfy delinquent real property taxes retain no interest in the foreclosed property itself, such former owners “have a cognizable, vested property right to the surplus proceeds resulting from the tax-foreclosure sale of their properties.” MCL 211.78t sets forth procedures for recovery of surplus proceeds resulting from the sale of foreclosed properties.

Caveat 1: The General Property Tax Act provides that, if forfeited delinquent taxes, interest, penalties and fees are not paid on or before the March 31 immediately following entry of a judgment of foreclosure or, in a contested case, within 21 days after entry of the judgment, fee simple title will vest absolutely in the foreclosing governmental unit except for interests described in Standard 22.9-2. MCL 211.78k(5) and (6). The Act further provides that the owner of an extinguished interest who claims that he or she did not receive notice as required by the Act, may not bring an action for possession, but is limited to an action for damages. MCL 211.78l. The Michigan Supreme Court in *In re Petition by Wayne County Treasurer*, 478 Mich 1, 732 NW2d 458 (2007) held this provision to be unconstitutional as to property owners who had not been accorded due process.

Caveat 2: In *Jones v Flowers*, 547 US 220, 126 S Ct 1708, 164 L Ed2d 415 (2006), the U.S. Supreme Court held that when a certified-mail notice of a tax sale is returned unclaimed, the foreclosing entity must take additional reasonable measures to attempt to provide notice to the property owner before selling the property, if it is practicable to do. In such event, the Court suggested that notice by first class mail, sent to the owner at the property address or sent to “occupant” at the property address, or notice by posting the property, would be reasonable notice.

STANDARD 30.1

ENFORCEABILITY OF RESTRICTIVE COVENANT

STANDARD: A CLEAR AND UNAMBIGUOUS RESTRICTIVE COVENANT IS ENFORCEABLE.

Problem: John Murphy owned several lots in a subdivision which were subject to a restrictive covenant that prohibited the construction of structures other than a single family dwelling and private garage for not more than two cars. Murphy submitted plans for governmental approval to construct a shopping center on his lots. Several owners with single family dwellings on their lots in the subdivision sought to enforce the restrictive covenant. Is the restrictive covenant enforceable?

Answer: Yes.

Authority: *Cooper v Kovan*, 349 Mich 520, 84 NW2d 859 (1957).

Comment: The interpretation and enforcement of a restrictive covenant is fact specific. If no ambiguity is present, it is improper to enlarge or extend the meaning of a restrictive covenant by judicial interpretation. *Mazzola v Deeplands Dev Co*, 329 Mich App 216, 942 NW2d 107 (2019). Restrictive covenants are construed strictly against those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property. *Id.* Context is relevant. The text of a restrictive covenant should be construed in connection with the surrounding circumstances. *Webb v Smith (After Remand)*, 204 Mich App 564, 570, 516

NW2d 124 (1994); *Thiel v Goyings*, 504 Mich 484, 939 NW2d 152 (2019).

Note: See Standard 30.2 for equitable exceptions to enforceability of restrictive covenants.

STANDARD 30.3

RECIPROCAL NEGATIVE EASEMENT

STANDARD: A GRANTEE WHO ACQUIRES A PARCEL OF REAL PROPERTY BY AN INSTRUMENT THAT DOES NOT INCLUDE AN EXPRESS RESTRICTION ACQUIRES TITLE SUBJECT TO A RESTRICTION ARISING FROM THE DOCTRINE OF RECIPROCAL NEGATIVE EASEMENTS IF THERE IS ACTUAL OR CONSTRUCTIVE NOTICE OF THE FOLLOWING:

(A) A COMMON GRANTOR;

(B) A GENERAL PLAN; AND

(C) RESTRICTIVE COVENANTS RUNNING WITH THE LAND IN ACCORDANCE WITH THE PLAN AND WITHIN THE PLAN AREA IN DEEDS PREVIOUSLY GRANTED BY THE COMMON GRANTOR.

Problem: John Doe owned Blackacre. Doe divided Blackacre into 91 lots and began to sell the lots for residential use. Deeds conveying the first 21 lots included an express restriction that only single family dwellings could be constructed on the lots. Some, but not all, of Doe's later conveyances included the residential restriction. Dwellings were built on all of the lots and all of the lots were used solely for residential purposes for many years. Doe's conveyance of Lot 86 did not include the residential restriction. Martha Roe later acquired Lot 86 and began constructing a gas station on it. Owners of other lots in the subdivision sued to enjoin construction of the gas station, asserting that Lot 86 was restricted to use for residential purposes only. Is Roe's lot subject to the residential restriction?

Answer: Yes. The uniform residential character of the plan area indicated that lots had been developed and used in accordance with a general plan and put Roe on inquiry notice. An inquiry into the title derived from Doe would reveal conveyances of lots in the plan area by Doe while he owned Lot 86 that included restrictions designed to implement the general plan. Roe was therefore bound by constructive notice that Lot 86 was burdened

by a restriction arising from the doctrine of reciprocal negative easements.

Authorities: *Allen v Detroit*, 167 Mich 464, 133 NW 317 (1911); *McQuade v Wilcox*, 215 Mich 302, 183 NW 771 (1921); *Sanborn v McLean*, 233 Mich 227, 206 NW 496 (1925); *Indian Village Ass'n v Barton*, 312 Mich 541, 20 NW2d 304 (1945); *Stark v Robar*, 339 Mich 145, 63 NW2d 606 (1954); *Lanski v Montealegre*, 361 Mich 44, 104 NW2d 772 (1960); *Civic Ass'n of Hammond Lake Estates v Hammond Lake Estates No 3*, 271 Mich App 130, 721 NW2d 801 (2006).

Comment: The doctrine of reciprocal negative easements imposes the same restrictions on a parcel conveyed by a common owner of a larger tract without an express restriction that the common owner imposed on previously conveyed, expressly restricted parcels. If there are restrictive covenants that apply to all lots or other parcels of land in the general plan area, the doctrine would not apply. *Mazzola v Deeplands Dev Co*, 329 Mich App 216, 942 NW2d 107 (2019).

STANDARD 31.1

DISPOSITION OF REAL PROPERTY IN OPERATION OF ORDINARY COURSE OF OWNER'S BUSINESS BY RECEIVER APPOINTED PURSUANT TO RECEIVERSHIP ACT

STANDARD: A RECEIVER OF REAL PROPERTY APPOINTED PURSUANT TO THE RECEIVERSHIP ACT MAY SELL, LEASE, LICENSE, EXCHANGE, OR DISPOSE OF RECEIVERSHIP REAL PROPERTY IN THE OPERATION OF THE ORDINARY COURSE OF THE REAL PROPERTY OWNER'S BUSINESS EXCEPT AS LIMITED BY ORDER OF THE COURT APPOINTING THE RECEIVER OR APPLICABLE LAW.

Problem A: Acme Subdivision Developers LLC's ordinary course of business was developing land into residential subdivisions and selling the resulting unbuilt residential lots. The circuit court entered an order appointing a receiver of one of Acme's subdivision developments, Blackacre Subdivision, pursuant to the Receivership Act. Acme owned several unbuilt lots in the Subdivision, including Lot 20. The order appointing the receiver did not limit the receiver's power to sell unbuilt lots in Blackacre Subdivision in the operation of the ordinary course of Acme's business. Pursuant to a sales agreement entered into by the receiver, the receiver gave a deed describing Lot 20 of Blackacre Subdivision to Betty Builder Co. Did Betty Builder Co. acquire Acme's title to Lot 20?

Answer: Yes.

Problem B: Keystone Shopping Centers LLC's ordinary course of business was owning and operating commercial shopping centers for

lease to tenants. The circuit court entered an order appointing a receiver of one of Keystone's shopping centers, The Shoppes, pursuant to the Receivership Act. The order appointing the receiver did not limit the receiver's power to lease space in The Shoppes in the operation of the ordinary course of Keystone's business. The receiver entered into a lease agreement with Gwendolyn's Store, Inc. for the lease of Retail Suite A in The Shoppes for three years. Did Gwendolyn's Store, Inc. acquire a leasehold interest in Retail Suite A under the terms of the lease?

Answer: Yes.

Authorities: MCL 554.1015(2) and 554.1022(1)(b).

Comment A: The Receivership Act, 2018 PA 16, as amended, MCL 554.1011, *et seq.* became effective May 7, 2018.

Comment B: MCL 554.1014(1) provides that, except as otherwise provided in MCL 554.1014(2) or (3), the Receivership Act applies to a receivership for an interest in any of the following commercial property: “(a) Real property, fixtures, and any personal property related to or used in operating the real property” and “(b) Personal property”.

MCL 554.1014(2) provides that the Receivership Act does not apply to “a receivership for an interest in real property improved by 1 to 4 dwelling units unless 1 or more of the following applies: (a) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence. (b) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes. (c) The owner planned or is planning to develop the property into 1 or more dwelling units to be sold or leased in the ordinary course of the owner's business. (d) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.”

Under MCL 554.1014(3), if a governmental unit or an individual acting in an official capacity on behalf of the governmental unit is acting as a receiver pursuant to Michigan

law other than the Receivership Act, the Receivership Act applies only if and to the extent provided by the other Michigan law.

Comment C: The Receivership Act does not contain a definition of “ordinary course of business.” See Comment 2 to Section 12 of the National Conference of Commissioners on Uniform State Laws’ published Uniform Commercial Real Estate Receivership Act with Prefatory Notes and Comments dated July 29, 2016.

Note: See Standard 31.2 regarding transfers of receivership real property not in the ordinary course of the business of the real property owner.

STANDARD 31.2

TRANSFER OF REAL PROPERTY NOT IN ORDINARY COURSE OF OWNER'S BUSINESS BY RECEIVER APPOINTED PURSUANT TO RECEIVERSHIP ACT

STANDARD: A RECEIVER OF REAL PROPERTY APPOINTED PURSUANT TO THE RECEIVERSHIP ACT MAY TRANSFER THE RECEIVERSHIP PROPERTY BY SALE, LEASE, LICENSE, EXCHANGE, OR OTHER DISPOSITION NOT IN THE ORDINARY COURSE OF THE PROPERTY OWNER'S BUSINESS AFTER:

- (A) THE TRANSFER IS APPROVED BY ORDER OF THE CIRCUIT COURT WITH JURISDICTION OVER THE RECEIVERSHIP; AND**
- (B) NOTICE AND AN OPPORTUNITY FOR A HEARING IS GIVEN TO ALL CREDITORS AND OTHER KNOWN INTERESTED PARTIES UNLESS THE COURT ORDERS OTHERWISE FOR CAUSE.**

UNLESS THE AGREEMENT OF SALE PROVIDES OTHERWISE, THE SALE IS FREE AND CLEAR OF A LIEN OF THE PERSON THAT OBTAINED APPOINTMENT OF THE RECEIVER, ANY SUBORDINATE LIEN, AND ANY RIGHT OF REDEMPTION, BUT IS SUBJECT TO A SENIOR LIEN.

Problem A: Investment LLC owned Blackacre, which was improved with a four-story office building and encumbered by three separate mortgages. The second-priority mortgagee obtained a circuit court order appointing a receiver pursuant to the Receivership Act. The order included Blackacre in the description of the receivership property. After notice and an opportunity for a hearing was given to all creditors and other known interested parties, the circuit court entered an order approving the sale of Blackacre by the receiver to Acquisition LLC not in the ordinary course of Investment LLC's business, pursuant to a sales agreement that was silent on whether the sale was free and clear of liens or redemption rights. At the closing of the sale, the

receiver gave a deed describing Blackacre to Acquisition LLC. Did Acquisition LLC acquire Investment LLC's title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that neither the order appointing the receiver nor the order approving the receiver's sale of Blackacre included Blackacre in the description of the receivership property. Did Acquisition LLC acquire Investment LLC's title to Blackacre?

Answer: No.

Problem C: Same facts as in Problem A. Did Acquisition LLC acquire Investment LLC's title to Blackacre free and clear of the second- and third-priority mortgages and corresponding redemption rights?

Answer: Yes.

Problem D: Same facts as in Problem A. Did Acquisition LLC acquire Investment LLC's title to Blackacre free and clear of the first-priority mortgage and corresponding redemption rights?

Answer: No.

Authorities: MCL 554.1012(q) and 554.1026(3).

Comment A: Unless the court otherwise orders for cause, the owner of the receivership property shall "within 7 days after the entry of the order appointing the receiver, deliver to the receiver a list containing the name and address of all creditors and other known interested parties of the receivership estate." MCL 554.1023(1)(d).

Comment B: A lien on receivership real property that is extinguished by a transfer under MCL 554.1026(3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien. MCL 554.1026(4).

Comment C: A creditor holding a valid lien on receivership real property to be

transferred under MCL 554.1026(3) may purchase the property and offset against the purchase price part or all of the allowed amount secured by its lien if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer. MCL 554.1026(5).

Comment D: If an order approving a transfer of receivership real property under MCL 554.1026(3) is reversed or modified on appeal, that action does not affect the validity of the transfer to a person that acquired the property in good faith, nor does it revive against that person any lien extinguished by the transfer, even if the person knew of the request for reversal or modification, unless the court stayed the order approving the transfer of the property before the transfer occurred. MCL 554.1026(6). “Good faith” for this purpose is defined in MCL 554.1026(1) to mean “honesty in fact and the observance of reasonable commercial standards of fair dealing.”

Comment E: The Receivership Act does not contain a definition of “ordinary course of business.” See Comment 2 to Section 12 of the National Conference of Commissioners on Uniform State Laws’ published Uniform Commercial Real Estate Receivership Act with Prefatory Notes and Comments dated July 29, 2016.

Note: See Standard 31.1 regarding dispositions of receivership real property in the operation of the ordinary course of the business of the real property owner.

MICHIGAN LAND TITLE STANDARDS

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