

## MICHIGAN LAND TITLE STANDARDS – Supplement No. 4 to 6<sup>th</sup> Edition (December 2017)

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1 “Preface to...” to end of Table of Contents (03-15)

2 – STANDARD 3.4 (05-07) -

3 STANDARD 3.8 (05-07) -

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5 STANDARD 4.1 (12-14)

6 STANDARD 4.2 (05-07)

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17 – STANDARD 6.7 (05-07)

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STANDARD 3.4 (05-17)

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STANDARD 4.1 (05-17)

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20 – STANDARD 7.1 (05-07)	STANDARD 7.1 (05-17)
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23 – STANDARD 11.2 (05-07)	STANDARD 11.2 (05-17)
24 - INDEX TO THE SIXTH EDITION (through Supplement No. 3, March 2015) (03-15)	INDEX TO THE SIXTH EDITION (through Supplement No.4, May, 2017) (05-17)

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**SUPPLEMENT No. 4**

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**SUPPLEMENT No. 4**

**MICHIGAN LAND TITLE STANDARDS**

**SIXTH EDITION**

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# **PREFACE TO MICHIGAN LAND TITLE STANDARDS**

## **SIXTH EDITION (through Supplement No. 4)**

The Sixth Edition of Michigan Land Title Standards (including Supplement No. 1, Supplement No. 2 and Supplement No. 3) 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 recent decision of our Supreme Court:<sup>1</sup>

[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 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.

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<sup>1</sup> 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).

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) and Lawrence M. Dudek (2017-\_\_\_\_).

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.

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Lansing, Michigan  
January, 2018

**2016 - 2017**  
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**MICHIGAN LAND TITLE STANDARDS**  
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## STANDARD 3.4

### FAILURE TO STATE MARITAL STATUS OF MALE GRANTOR

**STANDARD:** AN INSTRUMENT OF CONVEYANCE OFFERED FOR RECORDING BEFORE APRIL 6, 2017 WHICH FAILS TO STATE THE MARITAL STATUS OF A MALE GRANTOR, IF RECORDED FOR AT LEAST TEN YEARS, CONSTITUTES CONSTRUCTIVE NOTICE OF THE CONVEYANCE.

**Problem:** John Doe conveyed Blackacre by a deed which failed to state his marital status. The deed was recorded in 1990. In 2001, is the deed constructive notice of the conveyance?

**Answer:** Yes.

**Authority:** MCL 565.221.

**Comment:** Although an instrument of conveyance lacking a statement of the marital status of a male grantor is not entitled to be recorded before April 6, 2017, the recording thereof may constitute constructive notice of the interest conveyed before the expiration of 10 years. MCL 565.221 and 565.604. *Aultman v Pettys*, 59 Mich 485 (1886).

**Note:** An instrument conveying or mortgaging real property or any interest therein and offered for recording on or after April 6, 2017 need not state the marital status of a male grantor or mortgagor. MCL 565.221.

## **STANDARD 3.8**

### **APPLICABILITY OF MICHIGAN RECORDING REQUIREMENTS TO CONVEYANCE OR MORTGAGE EXECUTED OR ACKNOWLEDGED OUTSIDE OF MICHIGAN**

**STANDARD: A CONVEYANCE OR MORTGAGE OF MICHIGAN REAL PROPERTY, ALTHOUGH EXECUTED OR ACKNOWLEDGED OUTSIDE OF MICHIGAN, IS SUBJECT TO ALL MICHIGAN RECORDING REQUIREMENTS EXCEPT THOSE MADE INAPPLICABLE BY LAW.**

**Problem A:** George Davis mortgaged Blackacre, a parcel of real property in Michigan, by a mortgage executed and acknowledged in another state in conformity with the laws of that state. The marital status of George Davis—was not stated in the mortgage. The mortgage was offered for recording after April 5, 2017. Is the mortgage entitled to be recorded?

**Answer:** Yes.

**Problem B:** Martha Davis, describing herself as the survivor of George Davis, deceased, conveyed Blackacre, a parcel of real property in Michigan, by a deed executed and acknowledged in another state in conformity with the laws of that state. No certified copy of the death certificate or other recordable proof of George Davis's death was attached to the deed or previously recorded. Is the deed entitled to be recorded?

**Answer:** No.

**Problem C:** George Davis, a single man, conveyed Blackacre, a parcel of real property in Michigan, by a deed executed and acknowledged in another state in conformity with the laws of that state. The address of the grantee—was not stated in the deed, the name of the notary public was not typed or printed on the instrument, and the first page of the instrument did not contain at least a two-and-one-half-inch top margin. Is the deed entitled to be recorded?

**Answer:** Yes. The statute which imposes these and certain other recording requirements is expressly made inapplicable to instruments executed or acknowledged outside of Michigan.

**Problem D:** Same facts as in Problem C, except that the deed was dated May 1, 1997 and purports to evidence more than one recordable event. Is the deed entitled to be recorded?

**Answer:** No. The statute prohibiting the register of deeds from recording an instrument executed after April 1, 1997 if the instrument purports to evidence more than one recordable event applies to instruments executed or acknowledged both within and outside of Michigan.

**Authorities:** Problem A: MCL 565.221.

Problem B: MCL 565.48.

Problem C: MCL 565.201, 565.201a and 565.203.

Problem D: MCL 565.201(3).

**Comment A:** The Attorney General has opined that the statute requiring the marital status of male grantors and mortgagors to be stated in an instrument of conveyance does not apply to a male grantor or mortgagor acting in a representative capacity whose wife holds no interest in the real property conveyed or mortgaged. OAG 1915, p. 166 (September 22, 1915).

**Comment B:** MCL 565.202 permits certain deficiencies in names stated in an instrument of conveyance to be cured by the recording of a corrective affidavit with the recording of the instrument containing the deficiencies in names. *In re: Estate of Charles E. Duke*, 312 Mich App 574, 887 NW 2d 1 (2015).

**Note 1:** See Standard 3.4 regarding the absence of a statement of the marital status of a male grantor. See Standard 6.13 for the requirements for recording a conveyance by a survivor. See Standard 3.9 regarding requirements for the witnessing of a deed executed outside of Michigan.

**Note 2:** An instrument conveying or mortgaging real property or any interest therein and offered for recording on or after April 6,

2017 need not state the marital status of a male grantor or mortgagor. MCL 565.221.

## STANDARD 3.20

### **Affidavit to Correct Deficiencies in Names as Stated in Deed or Other Instrument Conveying or Encumbering Real Property**

**STANDARD: A DEED OR OTHER INSTRUMENT CONVEYING OR ENCUMBERING REAL PROPERTY THAT (A) FAILS TO INCLUDE THE PRINTED, TYPEWRITTEN OR STAMPED NAME OF THE GRANTOR OR NOTARY PUBLIC BELOW THE SIGNATURE OF SUCH PERSON OR (B) HAS A DISCREPANCY BETWEEN THE NAME OF A PERSON AS PRINTED, TYPEWRITTEN OR STAMPED BENEATH THE PERSON'S SIGNATURE, AND THE NAME AS STATED IN THE ACKNOWLEDGMENT, MAY NEVERTHELESS BE RECORDED IF A PERSON HAVING PERSONAL KNOWLEDGE OF THE FACTS CONCURRENTLY RECORDS AN AFFIDAVIT IN RECORDABLE FORM WHICH CORRECTS THE DEFICIENCY IN THE NAME(S) STATED IN THE DEED OR OTHER INSTRUMENT.**

**Problem A:** Jane Doe, the owner of Blackacre, deeded Blackacre to Edward Lane. Doe's name was printed below her signature on the deed, but in the acknowledgement her name was stated to be Janice Doe. The deed was otherwise in recordable form. Lane signed an affidavit in recordable form, attesting that the name stated in the acknowledgement was erroneous and that the correct name was Jane Doe. Lane presented the deed and the affidavit for recording. Are the deed and the affidavit recordable and is the affidavit sufficient to correct the discrepancy in names?

**Answer:** Yes.

**Authorities:** MCL 565.202 and 565.201

**Problem B:** Jane Doe, the owner of Blackacre, deeded Blackacre to Edward Lane. The deed was dated and acknowledged in 2007, but when Lane submitted it for recording in 2010, he also submitted an affidavit in recordable form, attesting that the deed was actually signed and acknowledged in 2009. The deed and the affidavit were recorded. Is the affidavit sufficient to change the date of the deed and the acknowledgement to the date attested in Lane's affidavit?

Answer: No.

**Authorities:** MCL 565.202. *In re: Estate of Charles E. Duke*, 312 Mich App 574, 887 NW2d 1 (2015)

**Comment:** Though a deed or other instrument may not be recordable, it may nevertheless be effective as between the parties, according to its terms. MCL 565.604. *In re: Estate of Charles E. Duke, supra*.

## CHAPTER IV

### DOWER



#### STANDARD 4.1

#### ESTATES TO WHICH DOWER ATTACHES

**STANDARD:** DOWER ATTACHES ONLY TO REAL PROPERTY OF A HUSBAND WHO DIED BEFORE APRIL 6, 2017 AND IN WHICH THE HUSBAND WAS SEIZED OF AN ESTATE OF INHERITANCE DURING THE MARRIAGE.

**Problem A:** John Doe, a married man, owned Blackacre. Doe, as a married man, deeded Blackacre to Richard Roe. Doe's wife did not sign the deed. Doe died on March 31, 2017. Is Roe's interest in Blackacre free of any dower of Doe's wife?

**Answer:** No.

**Problem B:** John Doe, a married man, was the lessee of Blackacre under a ninety-nine year lease. During the term of the lease, Doe, as a married man, assigned his interest in Blackacre to Richard Roe. Doe's wife did not sign the lease. Is Roe's interest in Blackacre free of dower of Doe's wife?

**Answer:** Yes. An estate of inheritance means a fee simple estate. An estate for a term for years is not an estate of inheritance.

**Problem C:** John Doe, a married man, owned Blackacre. Doe, as a married man, deeded Blackacre to Richard Roe on March 1, 2017. Doe's wife did not sign the deed. Doe died on April 15, 2017. Is Roe's interest in Blackacre free of any dower of Doe's wife?

**Answer:** Yes.

**Authorities:** Generally: MCL 554.2, 558.1, 558.30.

**Problem B:** *Redman v Shaw*, 300 Mich 314, 1 NW2d 555 (1942).

**Comment A:** See Standard 7.9 as to the effect of dower on probate sales.

**Comment B:** Other interests in real property, in addition to those set forth above, to which dower does not attach, are tenancies by the entireties (*Agar v Streeter*, 183 Mich 600, 150 NW 160 (1914)); joint tenancies, including joint life estates with remainder to the survivor if at all times during coverture a husband held title to real property with one or more persons as joint tenants (*Midgley v Walker*, 101 Mich 583, 60 NW 296 (1894); *Smith v Smith*, 290 Mich 143, 287 NW 411 (1939); *Schmidt v Jennings*, 359 Mich 376, 102 NW2d 589 (1960)); estates in partnership (MCL 449.10, 449.25; *Scheurman v Farbman*, 245 Mich 688, 224 NW 604 (1929); vendors' interests in land contracts if at all times during coverture a husband's interest was subject to an executory land contract (*Detroit Trust Co v Baker*, 230 Mich 551, 203 NW 154 (1925), overruling *In re Estate of Pulling*, 97 Mich 375, 56 NW 765 (1893); *In re Estate of McBride*, 253 Mich 305, 235 NW 166 (1931); *Pungs v Hilgendorf*, 289 Mich 46, 286 NW 152 (1939)); vendees' interests in land contracts if at all times during coverture a husband's interest was that of a land contract vendee (*Stephens v Leonard*, 122 Mich 125, 80 NW 1002 (1899); *Dalton v Mertz*, 197 Mich 390, 163 NW 912 (1917)); life estate interests (*Spears v James*, 319 Mich 341, 29 NW2d 829 (1947); *Case v Green*, 53 Mich 615, 19 NW 554 (1884)); oil and gas leasehold interests (*Redman v Shaw*, 300 Mich 314, 1 NW2d 555 (1942)); and the interest of a husband as trustee of a trust of which the husband is not the sole beneficiary. (*Sagendorph v Lutz*, 286 Mich 103, 281 NW 653 (1938)).

**Comment C:** A wife who is a voluntary non-resident of Michigan has no inchoate dower in the real property of her husband, whether or not he is a resident of Michigan. MCL 558.21, 565.453; *Pratt v Tefft*, 14 Mich 191 (1866); *Putney v Vinton*, 145 Mich 219, 108 NW 655 (1906); *Ligare v Semple*, 32 Mich 438 (1875); *First Nat'l Bank of Buchanan v Twombly*, 265 Mich 555, 252 NW 777 (1933); *Gluc v Klein*, 226 Mich 175, 197 NW 691 (1924).

**Note 1:** See Chapter V with regard to possible homestead rights.

**Note 2:** See Standard 4.11 with regard to barring dower by lapse of time and MCL 700.2202 with regard to the time period within which a surviving wife may elect dower.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## **STANDARD 4.2**

### **DOWER – VENDOR’S INTEREST**

Standard 4.2 has been withdrawn; common law dower and statutory dower were abolished as of April 6, 2017. MCL 558.30. See, Comment B and the Caveat in Standard 4.1.

## **STANDARD 4.3**

### **DOWER – VENDEE’S INTEREST**

Standard 4.3 has been withdrawn; common law dower and statutory dower were abolished as of April 6, 2017. MCL 558.30. See, Comment B and the Caveat in Standard 4.1.

## **STANDARD 4.4**

### **DOWER – JOINT TENANCY**

**Standard 4.4 has been withdrawn; common law dower and statutory dower were abolished as of April 6, 2017. MCL 558.30. See, Comment B and the Caveat in Standard 4.1.**

## STANDARD 4.5

### PRIORITY OF PURCHASE MONEY MORTGAGE OVER DOWER

**STANDARD:** THE LIEN OF A PURCHASE MONEY MORTGAGE EXECUTED BY A MARRIED MAN ALONE HAS PRIORITY OVER HIS WIFE'S DOWER IN THE MORTGAGED REAL PROPERTY

**Problem:** In connection with his purchase of Blackacre on December 14, 2010, John Doe, a married man, gave a purchase money mortgage of Blackacre. Mary Doe, his wife, did not sign the mortgage. John Doe died on March 23, 2017. The mortgage was later foreclosed and the redemption period expired. Was Mary Doe's dower in Blackacre extinguished?

**Answer:** Yes.

**Authorities:** MCL 558.4. *Burrall v Bender*, 61 Mich 608, 28 NW 731 (1886).

**Comment:** A mortgage is a purchase money mortgage if the mortgage proceeds are applied on the purchase price. But see, *Graves v American Acceptance Mortgage Corp*, 469 Mich 608, 677 NW2d 829 (2004).

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 4.6

### DESIGNATION OF MARRIED MALE GRANTOR AS “UNMARRIED” OR “SINGLE”

**STANDARD:** NOTWITHSTANDING THE DESIGNATION IN A CONVEYANCE OF A MALE GRANTOR AS “A SINGLE MAN” OR “AN UNMARRIED MAN,” IF HE IS A MARRIED MAN AND DIED BEFORE APRIL 6, 2017, THE DOWER OF HIS WIFE SURVIVES THE CONVEYANCE UNTIL BARRED BY DEATH, DIVORCE, LAPSE OF TIME OR OTHERWISE.

**Problem:** John Doe deeded Blackacre, designating himself as “a single man,” although at the time of the deed he was married to Mary Doe. Mary Doe did not sign the deed. John Doe died on March 24, 2017. Does the grantee take title to Blackacre free of Mary Doe’s dower?

**Answer:** No.

**Authorities:** MCL 558.1, 558.30. *Greiner v Klein*, 28 Mich 12 (1873).

**Comment A:** In the absence of recorded notice to the contrary, title examiners generally accept a statement in a conveyance that a male grantor is “single” or “unmarried” as establishing a rebuttable presumption of his unmarried status. See MCL 565.221, which provides for the recording of an affidavit as to the marital status of a male grantor whose marital status was not disclosed on a conveyance that had been accepted for recording.

**Comment B:** Title examiners generally accept a designation of a male grantor as “a widower” as equivalent to a designation as “single” or “unmarried,” although in other contexts a man may still be a widower notwithstanding his remarriage. See, e.g., *In re Rhead’s Estate*, 288 Mich 220, 284 NW 706 (1939), involving the former Michigan inheritance tax statute. The Committee considers the designation of a male grantor as “a single man” or “an unmarried man” preferable to the use of the term “a widower.”

**Note:** See Standard 3.4 concerning instruments offered for recording on or after April 6, 2017 in which the marital status of a male grantor is not stated.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished

common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## **STANDARD 4.7**

### **NON-RESIDENT WIFE HAS NO INCHOATE DOWER IN REAL PROPERTY OF HER HUSBAND**

Standard 4.7 has been withdrawn; common law dower and statutory dower were abolished as of April 6, 2017. MCL 558.30. See, Comment B and the Caveat in Standard 4.1.

## STANDARD 4.8

### BARRING DOWER BY CONVEYANCE TO HUSBAND'S SUCCESSOR IN INTEREST

**STANDARD:** A MARRIED WOMAN MAY BAR HER DOWER BY JOINING IN HER HUSBAND'S CONVEYANCE OF REAL PROPERTY OR BY A LATER CONVEYANCE TO THE THEN HOLDER OF THE INTEREST CONVEYED.

**Problem A:** John Doe, a married man, owned Blackacre. Doe deeded Blackacre to Richard Roe. Doe's wife, Mary Doe, did not sign the deed. Later, Mary Doe deeded Blackacre to Roe, reciting in the deed her intention to bar her dower. Does Roe own Blackacre free of the dower of Mary Doe?

**Answer:** Yes.

**Problem B:** James Doe, a married man, owned Blackacre. Doe mortgaged Blackacre to Richard Roe, but Doe's wife, Mary Doe, did not sign the mortgage. Later, Mary Doe executed a mortgage of Blackacre to Roe, reciting in the mortgage her intention to bar her dower. Does Roe have a mortgage on Blackacre free of the dower of Mary Doe?

**Answer:** Yes.

**Authorities:** Mich Const 1963, art 10, § 1. MCL 557.21 and 558.13.

**Note:** See Standard 4.9 with regard to the barring of dower by written contract, agreement or waiver.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 4.9

### BARRING DOWER BY WRITTEN CONTRACT, AGREEMENT OR WAIVER

**STANDARD:** A MARRIED WOMAN AFTER FAIR DISCLOSURE, AND IN THE ABSENCE OF FRAUD OR DURESS, MAY WAIVE HER DOWER IN WHOLE OR IN PART BY A WRITTEN CONTRACT, AGREEMENT OR WAIVER, WHICH MAY BE SIGNED BY HER EITHER BEFORE OR AFTER MARRIAGE.

**Problem A:** John Doe, a married man, and the sole owner of Blackacre, deeded Blackacre in 2013 to Richard Roe. Doe's wife, Mary, did not sign the deed. Later, Mary executed a written instrument waiving her dower in Blackacre. The instrument was recorded. Did Roe then hold Blackacre free of the dower of Mary?

**Answer:** Yes. However, if Roe had knowledge that fair disclosure had not been made to Mary or that she was the victim of fraud or duress, Mary's dower would not be barred as to Roe, but would be barred as to a subsequent bona fide purchaser for value.

**Problem B:** John Doe, a married man and the sole owner of Blackacre, deeded Blackacre in 2010 to Richard Roe. Doe's wife, Mary, did not sign the deed. In 2012, Mary signed an agreement with her husband waiving her dower in all real property which John Doe owned, previously owned, and which he might later acquire. Fair disclosure was made to Mary and neither fraud nor duress was practiced on her. Later, John Doe acquired title to Greenacre and deeded Greenacre as a married man. Mary did not sign the deed. Still later, John Doe acquired title to Whiteacre and owned it when he died in 2015. Is the dower of Mary in Blackacre, Greenacre and Whiteacre barred?

**Answer:** Yes.

**Problem C:** John Doe, a married man and the sole owner of Blackacre, deeded Blackacre in 2012 to Richard Roe. Doe's wife, Mary, did not sign the deed. In 2013, Doe acquired title to Greenacre and Whiteacre. In 2014, Mary deeded Blackacre, Greenacre and Whiteacre to Doe, reciting in the deed her intention to bar and waive her dower in Blackacre, Greenacre and Whiteacre. The deed was recorded. In 2015, Doe, as a married man, deeded Greenacre to Richard Roe. Doe owned Whiteacre when he died in 2016. Is the dower of Mary in Blackacre, Greenacre and Whiteacre barred?

**Answer:** Yes. The waiver is valid, whether or not Doe then owned Blackacre, Greenacre, and Whiteacre and whether or not he later conveyed them without Mary signing the deeds.

**Authorities:** Mich Const, Article 10, § 1. MCL 702.74a (repealed by 1962 P.A. 83, being MCL 700.993, effective July 1, 1979); 700.291 (repealed by 1998 P.A. 336, § 8102); 700.2205, effective April 1, 2000.

**Comment A:** Before March 20, 1970, when MCL 702.74a took effect, a wife could bar dower by joining in her husband's conveyance or releasing it to his successor in interest. See, Standard 4.8. There was, however, no statutory provision expressly authorizing the release of dower, whether inchoate or consummate, to the husband after marriage. MCL 702.74a permitted a married woman to waive her dower by her written agreement or waiver delivered to her husband before or after marriage. The Revised Probate Code, effective July 1, 1979, repealed MCL 702.74a, by MCL 700.993, but enacted MCL 700.291, which contained a like provision. MCL 700.993 was in turn repealed by the Estates and Protected Individuals Code (EPIC) by MCL 700.8102. EPIC included a like provision at MCL 700.2205, effective April 1, 2000. None of the cited statutes requires that adequate consideration be given for a release of dower, as was the case in certain earlier decisions recognizing the right of a wife to release dower. *Rhoades v Davis*, 51 Mich 306, 16 NW 659 (1883); *Wright v Wright*, 79 Mich 527, 44 NW 944 (1890); *In re Estate of Pulling*, 93 Mich 274, 52 NW 1116 (1892); *Bechtel v Barton*, 147 Mich 318, 110 NW 935 (1907); *Rockwell v Estate of Leon Rockwell*, 24 Mich App 593, 180 NW 2d 498 (1970). But see *In re Greenfield*, 273 BR 128 (ED Mich 2002), in which the court held that the value of dower did not constitute reasonably equivalent value for fraudulent conveyance purposes in connection with the conveyance by one spouse to both spouses as tenants by the entireties.

**Comment B:** Dower may also be barred by a jointure settled on the wife before marriage. MCL 558.14.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017; or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 4.10

### BARRING DOWER BY EXERCISE OF POWER OF ATTORNEY

**STANDARD:** A POWER OF ATTORNEY GIVEN BY A MARRIED WOMAN TO HER HUSBAND OR TO SOME OTHER PERSON NEED NOT SPECIFICALLY MENTION DOWER TO AUTHORIZE THE ATTORNEY-IN-FACT TO RELEASE OR SUBORDINATE HER DOWER.

**Problem A:** John Doe, the owner of Blackacre, was the attorney-in-fact of Mary Doe, his wife, under a power of attorney authorizing him to execute and deliver on her behalf deeds and mortgages of any and all interests in real property she then owned or thereafter acquired. John and Mary Doe, by John Doe, as Mary Doe's attorney-in-fact, deeded Blackacre. Did the grantee acquire Blackacre free of Mary Doe's dower?

**Answer:** Yes.

**Problem B:** John Doe, the owner of Blackacre, was the attorney-in-fact of Mary Doe, his wife, under a power of attorney authorizing him to execute and deliver on her behalf deeds and mortgages of any and all interest in real property she then owned or thereafter acquired. John Doe, designating himself as a married man, deeded Blackacre to Richard Roe but did not execute the deed on behalf of Mary. Later, as attorney-in-fact for Mary, John Doe deeded Blackacre to Roe, who still owned Blackacre. The later deed recited that it was given to bar Mary's dower in Blackacre. Was Mary's dower in Blackacre barred?

**Answer:** Yes.

**Authorities:** MCL 558.13. *Continental Nat'l Bank v Gustin*, 297 Mich 134, 297 NW 214 (1941).

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 4.11

### BARRING DOWER BY LAPSE OF TIME

**STANDARD:** TWENTY-FIVE YEARS AFTER REAL PROPERTY HAS BEEN CONVEYED BY A MARRIED MAN WHO DIED BEFORE APRIL 6, 2017, HIS WIFE'S DOWER IS FOREVER BARRED UNLESS A CLAIM OF DOWER WHICH DESCRIBES THE REAL PROPERTY IN WHICH DOWER IS CLAIMED HAS BEEN RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

**Problem:** More than 25 years ago John Doe, a married man and the sole owner of Blackacre, deeded Blackacre. His wife, Mary, did not sign the deed. No claim of dower has been recorded. Is the title to Blackacre free of Mary's dower?

**Answer:** Yes.

**Authorities:** MCL 558.91 and 558.92, as to real property conveyed or otherwise disposed of on or after August 10, 1892. MCL 558.81 and 558.82, as to real property conveyed or otherwise disposed of before August 10, 1892.

**Comment:** The 25-year period runs from the effective date of the conveyance, not from the date of its recording.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 5.2

### DEED OR ASSIGNMENT OF HOMESTEAD LAND ON OR AFTER JANUARY 1, 1964

**STANDARD:** A DEED OR ASSIGNMENT OF ANY INTEREST IN HOMESTEAD LAND (EXCEPT ENTIRETIES PROPER- TY), EXECUTED BY A MARRIED MAN ON OR AFTER JANUARY 1, 1964 (THE EFFECTIVE DATE OF THE MICHIGAN CONSTITUTION OF 1963), IS NOT REN- DERED INVALID BY THE ABSENCE OF THE SIGNA- TURE OF HIS WIFE. THE TITLE OF THE GRANTEE OR ASSIGNEE MAY, HOWEVER, BE SUBJECT TO THE DOWER OF THE WIFE OF A HUSBAND WHO DIED BEFORE APRIL 6, 2017.

**Problem A:** Richard Roe purchased Blackacre on land contract, and occupied it with his wife as a homestead. In 2013 Roe, as a married man, assigned his vendee's interest to Simon Grant. Roe's wife did not sign the instrument of assignment. Did Grant acquire Roe's interest in Blackacre?

**Answer:** Yes.

**Problem B:** Richard Roe owned Blackacre and occupied it with his wife as a homestead. In 2013 Roe, as a married man, conveyed Blackacre to Simon Grant by deed. Roe's wife did not sign the deed. Roe died on March 24, 2017. Did Grant acquire marketable title to Blackacre?

**Answer:** No. Although the deed was valid to convey Roe's interest to Grant, Grant's interest was subject to the dower of Roe's wife.

**Problem C:** Same facts as in Problem B except that Roe died on April 15, 2017. Did Grant acquire marketable title to Blackacre?

**Answer:** Yes.

**Authority:** Since January 1, 1964, the effective date of the Michigan Constitution of 1963, there is no requirement that the wife sign an alienation of land constituting a homestead, title to which is vested in the husband.

**Comment:** Although after 1963 a married man holding title to homestead land in his name alone may validly convey his interest in the land without the signature of his wife, the conveyance does not extinguish the dower of the wife. See, Standard 4.1.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

## STANDARD 6.7

### DEED TO HUSBAND AND WIFE, TOGETHER WITH OTHER GRANTEES

**STANDARD:** IF THERE ARE SEVERAL GRANTEES IN A DEED, TWO OF WHOM ARE HUSBAND AND WIFE, IN THE ABSENCE OF A CONTRARY INTENT EXPRESSED IN THE DEED, THE HUSBAND AND WIFE ARE TREATED AS ONE PERSON AND TAKE ONE SHARE AS TENANTS BY THE ENTIRETIES, AS BETWEEN THEMSELVES, AND AS TENANTS IN COMMON WITH THE OTHER GRANTEES, EACH OF WHOM TAKES ONE SHARE.

**Problem A:** Blackacre was deeded to James E. Deer and Mary Deer, husband and wife, and Catherine Lemon. Lemon deeded a one-third interest in Blackacre to J. Ray Brown. Later, James E. Deer and Mary Deer, husband and wife, deeded their interest to Brown. Did Brown acquire marketable title to Blackacre?

**Answer:** No. The deed to James E. Deer and Mary Deer, husband and wife, and Catherine Lemon created a tenancy in common, with the Deers, as tenants by the entireties, and Lemon each owning an undivided one-half interest. Because Lemon deeded only a one-third interest to Brown, she still held title to an undivided one-sixth interest.

**Problem B:** Blackacre was deeded to Cyrus Greenley and Mary Greenley, husband and wife, Edgar A. Poe and Nancy Poe, husband and wife, and Ruth Whitman. Whitman deeded an undivided one-fifth interest in Blackacre to Simon L. Grant. Later, the Greenleys and the Poes joined in a deed of Blackacre to Grant. Did Grant acquire marketable title to Blackacre?

**Answer:** No. The deed to Cyrus Greenley and Mary Greenley, husband and wife, Edgar A. Poe and Nancy Poe, husband and wife, and Ruth Whitman created a tenancy in common, with the Greenleys and the Poes, both as tenants by entireties, and Whitman each owning an undivided one-third interest. Because Whitman deeded only an undivided one-fifth interest to Grant, she still held title to an undivided two-fifteenths interest.

**Authorities:** MCL 554.44 and 554.45. *Fullagar v Stockdale*, 138 Mich 363, 101 NW 576 (1904).

## STANDARD 6.8

### DEED BY ONE SPOUSE TO OTHER SPOUSE

**STANDARD: IF TITLE TO REAL PROPERTY IS HELD IN TENANCY BY THE ENTIRETIES, A DEED FROM ONE SPOUSE TO THE OTHER IS EFFECTIVE TO TERMINATE THE TENANCY.**

**Problem:** Blackacre was owned by J. Ray Brown and Mary Brown, husband and wife, as tenants by the entireties. Later J. Ray Brown, a married man, deeded Blackacre to Mary Brown, his wife, who, in turn, deeded it to James E. Deer. Did Deer acquire marketable title to Blackacre?

**Answer:** Yes.

**Authorities:** MCL 557.101 and 558.1. *Wilkinson v Kneeland*, 125 Mich 261, 84 NW 142 (1900); *Elson v Elson*, 245 Mich 205, 222 NW 176 (1928); *Ash v Ash*, 280 Mich 198, 273 NW 446 (1937); *Hearns v Hearns*, 333 Mich 423, 53 NW2d 315 (1952); *Tamplin v Tamplin*, 163 Mich App 1, 413 NW2d 713 (1987).

**Note 1:** See Standard 4.9 with respect to barring dower by written contract, agreement or waiver.

**Note 2:** See Standard 4.11 with regard to barring dower by lapse of time and MCL 700.2202 with regard to the time period within which a surviving wife may claim dower.

**Note 3:** See Chapter V with regard to possible homestead rights.

**Caveat:** MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807, which became effective April 6, 2017, abolished common law and statutory dower in Michigan. MCL 558.30 and amendments to MCL 700.1303, 700.2202, 700.2205 and 700.3807 do provide an exception in certain circumstances to preserve dower (a) by a woman whose husband died before April 6, 2017 or (b) by a woman whose husband died before April 6, 2017 and who still had time under MCL 700.2202 to elect dower.

The foregoing statutory provisions concerning dower would be implicated if:

- (a) A woman conveyed to her husband her interest in real property held by her and her husband as tenants by the entirety without expressing in the deed her intent to bar or waive her dower, or without doing so by separate contract, agreement or waiver; and
- (b) Her husband subsequently conveyed the real property to a third party by deed in which his wife did not join for purposes of waiving or barring her dower; and
- (c) The husband died before April 6, 2017.

In such circumstances, the widow may timely elect dower.

## STANDARD 6.14

### EFFECT OF FAILURE OF DIVORCE JUDGMENT TO DISPOSE OF REAL PROPERTY

**STANDARD:** TITLE TO REAL PROPERTY HELD BY HUSBAND AND WIFE AS TENANTS BY THE ENTIRETIES OR AS JOINT TENANTS VESTS IN THEM AS TENANTS IN COMMON IF THEIR JUDGMENT OF DIVORCE FAILS TO DISPOSE OF THE REAL PROPERTY, EVEN IF THE JUDGMENT IS ENTERED IN ANOTHER JURISDICTION.

**Problem A:** Blackacre was owned by John Doe and Mary Doe, husband and wife, as tenants by the entireties (or as joint tenants). Later, they were divorced in Michigan. The judgment made no disposition of Blackacre. Mary Doe died. Later, John Doe, a single man, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

**Answer:** No. Grant acquired an undivided one-half interest as a tenant in common with Mary Doe's heirs or devisees. The divorce destroyed the right of survivorship.

**Problem B:** Blackacre was owned by John Doe and Mary Doe, husband and wife, as tenants by the entireties (or as joint tenants). Later, they were divorced in Iowa. The judgment made no disposition of Blackacre. Mary Doe died. Later, John Doe, a single man, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

**Answer:** No.

**Authorities:** Problem A: MCL 552.101 and 552.102. *Montgomery v Montgomery*, 221 Mich 31, 190 NW 687 (1922); *Angeloff v Smith*, 254 Mich 99, 235 NW 823 (1931); *Sullivan v Sullivan*, 300 Mich 640, 2 NW2d 799 (1942); *Flynn v Flynn*, 367 Mich 625, 116 NW2d 907 (1962).

Problem B: MCL 552.102. *Brown v Prisel*, 97 Mich App 188, 292 NW2d 799 (1980).

**Comment:** MCL 552.102 provides that unless the divorce judgment provides otherwise, a husband and wife owning real property “as joint tenants or tenants by the entireties,” become tenants in common upon being divorced. This statute does not expressly address the status, upon divorce, of title to real property held by a husband and wife as joint tenants with right of survivorship.

## CHAPTER VII

### CONVEYANCES BY ESTATE FIDUCIARIES AND TITLES DERIVED FROM ESTATES OF DECEDENTS



#### STANDARD 7.1

##### TITLE DERIVED THROUGH INTESTATE DECEDENT

**STANDARD:** THE TITLE TO REAL PROPERTY OF AN INTESTATE DECEDENT IS VESTED AS OF THE TIME OF DEATH IN THE HEIRS AT LAW, SUBJECT TO:

- (A) THE RIGHTS TO HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCES;
- (B) THE WIDOW'S RIGHT TO ELECT DOWER IF HER HUSBAND DIED BEFORE APRIL 6, 2017;
- (C) THE RIGHT AND DUTY OF THE PERSONAL REPRESENTATIVE TO POSSESS THE REAL PROPERTY AND TO RECEIVE THE INCOME FROM THE REAL PROPERTY;
- (D) THE POSSIBILITY OF SALE FOR ANY PURPOSE PERMITTED BY THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC);
- (E) THE LIEN OF ANY FEDERAL OR MICHIGAN ESTATE TAX; AND
- (F) ANY FEDERAL OR STATE TAX THAT IS REQUIRED TO BE PAID BEFORE THE ESTATE CAN BE CLOSED.

**Problems:** See, Standard 7.3.

**Authorities:** (a) As to the vesting of title in the heirs-at-law: *Diel v Diel*, 298 Mich 127, 298 NW 478 (1941); *Fowler v Cornwell*, 328 Mich 89, 43 NW2d 73 (1950); *Pardeike v Fargo*, 344 Mich 518, 73 NW2d 924 (1955).

(b) As to the surviving spouse's and a minor child's rights to

homestead, exempt property and family allowances: MCL 700.2401 through 700.2405.

(c) As to the widow's right to elect dower if her husband died before April 6, 2017: MCL 700.2202.

(d) As to the duty of a personal representative to take possession: MCL 700.3709. *Casper v Ralph*, 323 Mich 173, 35 NW2d 151 (1948).

(e) As to the possibility of sale during administration: MCL 700.3617.

(f) As to the lien of federal estate tax and the statute of limitations applying to the tax: 26 USC 6324(a). See, Standards 20.9 through 20.14. See also, the Uniform Federal Lien Registration Act, MCL 211.661 *et seq.*

(g) As to the lien of Michigan inheritance tax and the statute of limitations applying to the tax: MCL 205.203 and 205.203a. This tax applies to the estates of decedents dying before October 1, 1993. MCL 205.223. As to the lien of Michigan estate tax: MCL 205.243. This tax applies to estates of decedents dying after September 30, 1993. MCL 205.223. As to the lien for other state taxes administered by the Michigan Department of Treasury under the Revenue Act: MCL 205.29. See, Standards 21.1 and 21.2. See also, the State Tax Lien Registration Act, MCL 211.681 *et seq.*

(h) As to the payment of Michigan individual income tax by the estate: MCL 206.451.

**Comment A:** The former Revised Probate Code (RPC) established a surviving spouse's right to remain in the dwelling house for a period not to exceed one year. MCL 700.282a. Under EPIC, MCL 700.1101 *et seq.*, effective April 1, 2000, which repealed the RPC, there is no parallel provision. But see MCL 700.2403 which may permit the value of continued possession of the home for a definite period to be established and granted to the surviving spouse as part of the family allowance.

**Comment B:** Article VIII of EPIC, MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or proceedings commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

**Note:** As to dower, see the Caveat in Standard 4.1.

## STANDARD 7.2

### TITLE DERIVED THROUGH TESTATE DECEDENT

**STANDARD:** THE WILL OF A TESTATE DECEDENT, WHEN PROBATED, CONVEYS THE DECEDENT'S TITLE TO REAL PROPERTY AS OF THE TIME OF DEATH SUBJECT TO:

- (A) THE RIGHT OF THE SURVIVING SPOUSE TO ELECT A STATUTORY SHARE;
- (B) THE RIGHT TO HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE;
- (C) THE WIDOW'S RIGHT TO ELECT DOWER IF HER HUSBAND DIED BEFORE APRIL 6, 2017;
- (D) THE RIGHT AND DUTY OF THE PERSONAL REPRESENTATIVE TO POSSESS THE REAL PROPERTY AND TO RECEIVE THE INCOME FROM IT;
- (E) THE POSSIBILITY OF SALE FOR ANY PURPOSE PERMITTED BY THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC);
- (F) THE LIEN OF ANY FEDERAL OR MICHIGAN ESTATE TAX; AND
- (G) ANY FEDERAL OR STATE TAX THAT IS REQUIRED TO BE PAID BEFORE THE ESTATE CAN BE CLOSED.

**Problems:** See, Standard 7.3.

**Authorities:** (a) As to the conveyance of title by will: *In re Allen's Estate*, 240 Mich 661, 216 NW 446 (1927); *Stewart v Hunt*, 303 Mich 161, 5 NW2d 737 (1942).

(b) As to the surviving spouse's right to elect a statutory share: MCL 700.2202.

(c) As to the surviving spouse's and a minor child's right to homestead, exempt property and family allowances: MCL 700.2401 through 700.2405.

(d) As to the widow's right to elect dower if her husband died before April 6, 2017: MCL 700.2202.

(e) As to the duty of a personal representative to take possession: MCL 700.3709.

(f) As to the possibility of sale during administration: MCL 700.3902.

(g) As to the lien of federal estate tax and the statute of limitations applying to the tax: 26 USC 6324(a). See, Standards 20.9 through 20.14. See also, the Uniform Federal Lien Registration Act, MCL 211.661 *et seq.*

(h) As to the lien of Michigan inheritance tax and the statute of limitations applying to the tax: MCL 205.203 and 205.203a. This tax applies to the estates of decedents dying before October 1, 1993. MCL 205.223. As to the lien of Michigan estate tax: MCL 205.243. This tax applies to the estates of decedents dying after September 30, 1993. MCL 205.223. As to the lien for other state taxes administered by the Michigan Department of Treasury under the Revenue Act: MCL 205.29. See, Standards 21.1 and 21.2. See also, the State Tax Lien Registration Act, MCL 211.681, *et seq.*

(i) As to the payment of Michigan individual income tax by the estate: MCL 206.451.

**Comment A:** The former Revised Probate Code (RPC) established a surviving spouse's right to remain in the dwelling house for a period not to exceed one year. MCL 700.282a. Under EPIC, MCL 700.1101 *et seq.*, effective April 1, 2000, which repealed the RPC, there is no parallel provision. But see MCL 700.2403 which may permit the value of continued possession of the home for a definite period to be established and granted to the surviving spouse as part of the family allowance.

**Comment B:** Article VIII of EPIC, MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or proceedings commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

**Note:** As to dower, see the Caveat in Standard 4.1.

## STANDARD 7.9

### OWER AS AFFECTING PROBATE SALES

**STANDARD:** THE TITLE TO REAL PROPERTY OF A MARRIED MALE DECEDENT DOMICILED IN MICHIGAN AT THE TIME OF HIS DEATH IS SUBJECT TO THE DOWER INTEREST OF HIS WIDOW, UNLESS:

- (A) DOWER WAS BARRED;
- (B) THE WIDOW ELECTED NOT TO TAKE DOWER;
- (C) THE WIDOW FAILED TO MAKE A TIMELY ELECTION AFTER PROPER NOTICE; OR
- (D) THE DECEDENT DIED AFTER APRIL 5, 2017.

**Problem A:** John Doe, domiciled in Michigan and owner of Blackacre, died intestate on March 31, 2017 leaving Mary Doe, his widow, as one of his heirs. Richard Roe was appointed and qualified as personal representative. Roe negotiated a sale of Blackacre for the purpose of paying debts and expenses of administration except that no notice of right of election was given to the widow. Roe filed a report of sale to Simon Grant, gave notice of hearing on the report of sale and filed and had approved the bond on sale as required by the court. The sale was confirmed and Roe conveyed Blackacre to Grant by personal representative's deed. Did Grant acquire marketable title to Blackacre?

**Answer:** No. Under the facts stated, Mary Doe has not barred dower and the statutory notice has not been served upon her; therefore her right to elect to take dower still exists. The result would have been the same if Doe had died testate without specifically devising Blackacre.

**Problem B:** Same facts as in Problem A, except that Doe, while married to Mary Doe, sold Blackacre on land contract to Simon Grant. Mary Doe did not sign the land contract. Doe died on March 31, 2017. Richard Roe, as personal representative, upon receiving the balance due under the land contract, conveyed Blackacre to Grant by deed pursuant to the land contract as provided by MCL 700.3715. Did Grant acquire marketable title to Blackacre?

**Answer:** No.

**Problem C:** Same facts as in Problem A, except that (1) Blackacre was occupied by the widow, (2) the personal representative timely served on the widow statutory notice of right of election, (3) proof of service was filed, and (4) the widow failed to make an election within the statutory period. Did Grant acquire marketable title to Blackacre?

**Answer:** Yes.

**Problem D:** Same facts as in Problem A, except that after execution of the personal representative's deed to Simon Grant, the widow gave a quit claim deed of Blackacre to Grant. The deed recited her intent to bar her dower. Did Grant acquire marketable title to Blackacre?

**Answer:** Yes.

**Authorities:** Generally: MCL 558.30, 558.91, 558.92, 700.2202.

Problems A and B: *Rosen v Tackett*, 222 Mich 673, 193 NW 192 (1923).

Problem C: MCL 700.2203.

Problem D: MCL 558.13 (as to barring of dower).

**Comment:** Under certain circumstances, laches or estoppel may bar a widow's claim of consummate dower as against the validity of deeds such as are discussed in this Standard. See, *Rosen v Tackett*, *supra*.

**Note 1:** As to the barring of dower, see Standards 4.8, 4.9, 4.10 and 4.11.

**Note 2:** As to the abolition of dower, see the Caveat in Standard 4.1.

**Caveat:** If a decedent was not domiciled in Michigan, the surviving spouse is entitled to elect against the will only as may be provided by the law of the decedent's domiciliary state at the date of death. See, MCL 700.2202(6).

## **STANDARD 11.2**

### **NO DOWER IN PARTNERSHIP REAL PROPERTY**

**Standard 11.2 has been withdrawn; common law dower and statutory dower were abolished as of April 6, 2017. MCL 558.30. See, Comment B and the Caveat in Standard 4.1.**

# MICHIGAN LAND TITLE STANDARDS

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