

State Bar of Michigan Land Title Standards Committee

June 1, 2020

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Catharine LaMont

First American Title

300 East Long Lake Road, Suite 300

Bloomfield Hills, MI 48304-2378

Re: Michigan Land Standards Committee
Annual Report for 2019-2020

Dear Cathy:

As Chairperson of the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan ("the Committee"), I submit this report of the Committee's activities for 2019 – 2020.

During the 2019 – 2020 Committee year, the Committee held three (3) full meetings at the offices of the State Bar of Michigan in Lansing.

During the 2019 – 2020 Committee year, the Committee generated new work product in the form of new Title Standards and revisions to existing Title Standards to reflect developments in the law. The Committee published Supplement No. 6 of the 6th Edition (May 2019) and continues to develop new standards.

In addition to the Committee's regular ongoing process of reviewing, analyzing and discussing new published cases and legislation, the Committee is in the process of creating new chapters for inclusion in the Standards.

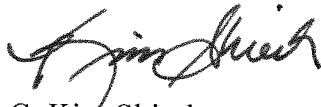
Enclosed for approval by the Real Property Law Section Council is the Committee's proposed membership list for 2020 - 2021. In addition, our Nominations Subcommittee regularly considers applications for membership from attorneys who have distinguished themselves in the Real Property field and who have expressed an interest in joining the Committee.

The Committee extends its thanks to Jim Brown (Style Subcommittee), Jeffrey C. Hicks (Vice Chair of the Committee), Kelly A. Myers (Secretary of the Committee) and Brian J. Page (Liaison to RPLS Council) for their efforts during 2019-2020. The Committee also extends its thanks to all chapter Subcommittee chairs and members for their work and contributions during 2019-2020. In addition, I want to extend my personal gratitude to Larry Dudek, the immediate past chair of the Committee, whose guidance and direction was invaluable.

Catharine LaMont
First American Title
June 1, 2020
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On behalf of the Committee, I am pleased to submit these materials for consideration by the Real Property Law Section.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Kim Shierk", written in a cursive style.

C. Kim Shierk
Chair

Enclosures

cc: Karen Schwartz
Jeffrey C. Hicks, MLTSC Vice Chair

Michigan Land Title Standards Committee

Minutes of Meeting of October 4, 2019

MEMBERS

Present: Barbe, Brown, Dudek, Hagerty, Hicks, LaMont, Marquardt, Myers, Prins, Reed, Shierk, Smith, Viviani

Present Via Teleconference: Boore, Dawson, Hosler, Martyn, Page, Savich, Scavone

Not Present: Aiello, Cameron, Lanzetta, Mollhagen, Nix, Schairbaum, Schey

MEMBERS EMERITI

Baker, Barrows, Binkow, Darbee, Kinzinger, Knorr, McNair, Rozof, Simpson

*Denotes member emeritus present

**Denotes member emeritus present via teleconference

The meeting was called to order by Chairperson Shierk at 10:01 a.m. in the Hudson Room of the State Bar Building, Lansing, MI, on October 4, 2019.

I. Approval of Minutes of Michigan Land Title Standards Committee of May 17, 2019

Chairperson Shierk presented the May 17, 2019 meeting minutes for approval.

A motion to approve the May 17, 2019 meeting minutes was made by Mr. Reed, seconded by Mr. Smith. **Motion passed unanimously.**

II. Report on Chapter XXI, Receiverships (Larry Dudek)

Mr. Dudek will provide a report on the status of a draft Standard on federal court receiverships at the next meeting.

III. Report on Marketable Record Title Act (Jim Marquardt)

- A. Mr. Marquardt referenced the Real Property Review article (Spring-Summer 2019) by John D. Bartley. Footnote 14 of the article discusses the Answer to Problem A of Standard 1.7. Mr. Bartley relies on *U.S. v Grossman*, 501 F.3d 846 (7th Cir. 2007), which came down before Acts 357 and 358 of 2008 modified the statute. Mr. Brown opined that Mr. Bartley's conclusion that the amendments to the Marketable Record Title Act do not apply to counties with only the grantor-grantee index is erroneous. The presence or absence of a tract index in a county register of deeds has no bearing on the application of the provisions of the Marketable Record Title Act.

- B. Mr. Page noted that he was involved in the *US v Grossman* case.
- C. *Schepke v Department of Natural Resources*, 186 Mich App 532 (1990), was a case in which Mr. Smith was involved on behalf of the State of Michigan. A title company insured the mineral rights, which were reserved through a recorded lease by the State of Michigan. The Court of Appeals found that the reservation in the lease constituted sufficient notice to lead the property owner to make further inquiries regarding the possible rights of the state in the subject property.
- D. Mr. Marquardt discussed 451A Affidavits that are found in the tract index, but not in the grantor-grantee index.
- E. Mr. Brown does not believe there is a need to respond to Mr. Bartley's conclusions about the Answer to Problem A of Standard 1.7. The law has been in existence since 1945.
- F. Ms. LaMont advised that First American is not insuring minerals nationwide. Some endorsements can be purchased, but they are expensive if the property is in a grantor-grantee indexed county. Mr. Hagerty pointed out that the statute only requires that a county maintain a grantor-grantee index. Mr. Brown advised that, in the 2008 amendments, recording does not equate to posting in the grantor-grantee index. Mr. Marquardt suggested that the Real Property Law Section look at a way to legislatively fix this quagmire. Chairperson Shierk questioned if the MLTSC should recommend a legislative change if it creates an economic burden on the state. Ms. LaMont advised that there is a marketable record title ad hoc committee that might look at this issue. Chairperson Shierk will call the Chair of the RPLS and inquire.
- G. Mr. Marquardt circled back to the original question of whether the Committee should respond to footnote 14 of the Real Property Review article. Mr. Smith questioned if there is a conflict between Standard 1.7 and Mr. Bartley's article. Mr. Brown advised that the 2008 amendments set forth when an instrument is recorded; namely, when an instrument has met all recording requirements, the instrument shall be indexed in the grantor-grantee index. An instrument is deemed "recorded" when it is assigned a liber and page or other number used by the county. An instrument could be recorded without meeting the statutory requirement of indexing the instrument in the grantor-grantee index.
- H. Mr. Brown reported that Chapter I needs to set a date for a conference call in October to review the effect of PA 572 on Chapter I Standards. Revisions to Standards 1.1 and 1.2 have been approved and will be included in the supplement.

IV. Report on Chapter XVI, Mortgages (Steve Dawson/Nick Scavone)

- A. Comment C to Standard 28.5 (Condominiums) was forwarded to the Mortgage subcommittee to review.

B. Mr. Scavone believes Comment C to Standard 28.5 it might fit into Standard 16.13 (foreclosure by advertisement). Mr. Dawson believes it should be included as a separate Standard but wants to hear from the other Subcommittee members before making a final decision. Mr. Scavone agrees with Mr. Dawson that putting the Comment into Standard 16.13 is an imperfect fit and a new standard should be drafted.

C. Chairperson Shierk is going to put a new standard on the next agenda.

V. Report on Chapter XVII, Construction Liens (Larry Dudek)

A. Mr. Dudek discussed the September 17, 2019, Michigan Court of Appeals decision, *TSP Services, Inc. v. National Standard, LLC*, Docket 342530, which involved a demolition contract. The deadline to file for leave to the Michigan Supreme Court is October 29, 2019. If the decision stands, Mr. Dudek believes there is an opportunity to create a standard for what amounts can be included in a lien. Discussion ensued, and the Committee agreed that a standard on what amounts can be included in a lien would be helpful.

B. Mr. Dudek reported that he needs members to join the Chapter XVII Subcommittee. Ms. Barbe agreed to join the Subcommittee. Mr. Dudek will report back after application for leave deadline.

VI. Report on Chapter XXX, Covenants and Restriction (Cathy LaMont)

A. Ms. LaMont reported on *Thiel, et al v. Goyings* (Michigan Supreme Court Docket No. 156708, issued July 24, 2019) and *Mazzola, et al v. Deeplands Development Company, LLC* (Mich Ct App Docket No. 343878, issued July 25, 2019), and their impact on Standard 30.1. *Mazzola* held that the court could not look beyond four corners of a restriction if its clear and unambiguous, and negative reciprocal easement theory does not apply if the restriction is clear and unambiguous.

B. The Subcommittee differs on whether *Webb v Smith (After Remand)*, 204 Mich App 564 (1994), should be referenced in Standard 30.1. *Webb* involved an ambiguous restriction; hence, the court implied the intent of the restriction by taking testimony. *Webb* also involves a finding of a negative reciprocal easement. Ms. LaMont does not believe *Webb* should be included in Standard 30.1. *Webb* before remand is currently cited in Standard 30.2.

C. Mr. Martyn agrees that *Webb (After Remand)* should not be cited in Standard 30.1.

VII. Report from Style Committee (Jim Brown)

Mr. Brown reported that the Style Committee is meeting telephonically on October 16 to review six Standards.

VIII. Other Business/Standing Reports

A. Status of 7th Edition (Kim Shierk)

1. Susan Oudsema Report: As of September 9, 2019, the supply of printed 6th Edition Land Title Standards was running low. Susan needs to know if/when a 7th Edition will be produced or if there will be another supplement.
2. Larry Dudek had suggested in the May meeting to draft a new preface.
3. Chairperson Shierk asked if the Committee should work on a 7th Edition, in light of the dwindling numbers of the 6th Edition. The Committee has six supplements to the 6th Edition, and Style is about to publish the 7th Edition.
4. Discussion ensued about integrating the supplements into the 6th Edition to create a 7th Edition. Ms. Shierk inquired if the 7th Edition could be finalized by March 2020. Mr. Hicks thought the 7th Edition could be done by the end of 2020. Mr. Brown represented that all prior editions were reviewed in total before publishing a new edition. Mr. Marquardt does not believe it is necessary to review all Standards before publishing the 7th Edition.
5. Mr. Smith would prefer to reprint the 6th Edition with the Supplements if the Committee is not willing to review all Standards before publishing the 7th Edition. Currently, all Supplements must be ordered separately. Mr. Martyn noted that the integrated MLTS is available electronically on the State Bar's website.

B. New Chapters

1. Commercial Broker's Liens
Chairperson Shierk mentioned that a standard on commercial broker's liens has been raised in the past. Ms. LaMont noted that the number of liens has decreased. Mr. Dudek does not believe there are any reported cases on commercial broker's liens. The Committee agreed not to pursue creating a chapter on commercial broker's liens.
2. Eminent Domain
Ms. LaMont noted the need to look into when title starts in a condemnation case. Ms. LaMont believes there are several reported cases. Chairperson Shierk will look for someone to lead an investigation into these cases to create a possible chapter.

3. Land Banks
The Committee elected to not pursue a chapter on land banks.
4. Aviation-Right of overflight in the airspace above property-drones
Mr. Marquardt and Ms. Schey are reviewing air rights. Mr. Marquardt requested that they be placed on the agenda for the next meeting.

C. **Request for Emeritus Status from Robert Mollhagen**

1. Discussion was held off the record regarding Mr. Mollhagen's request for Emeritus Status. The Committee unanimously voted to grant Mr. Mollhagen Emeritus Status of the MLTSC.
2. Request for Emeritus Status from John Cameron was tabled until the next meeting. Chairperson Shierk sent Mr. Cameron a request for an application. Mr. Dudek noted that Mr. Marquardt would like to be heard on the issue, and he had to leave the meeting early.

D. **Membership Report (Larry Dudek)**

1. Mr. Dudek suggested that the nominating committee present Brian Henry with an invitation to join the Committee.
2. Mr. Hicks raised whether the Committee should look at attendance of current members of the Committee. Ms. Myers prepared an attendance spreadsheet from the 2018/2019 year. Mr. Dudek will review and discuss with the nominating committee how to proceed with inactive members.
3. Chairperson Shierk suggested looking at an eminent domain attorney to join the Committee.

A Motion was made by Mr. Hicks to extend an invitation to Brian Henry to join the MLTSC, seconded by Ms. LaMont. **Motion was unanimously approved.**

E. **Council Activities (Catherine LaMont)**

1. Pro Bono day on October 10 at 9:30 am. Remove debris in Avalon Park.
2. Groundbreaker and Homeward Bound series will be reduced to annual events because of the reduction in number of attendees. Groundbreaker will be on October 17 at the DAC. Homeward Bound will be in January.
3. Homeward Bound used to be done in partnership with ICLE. ICLE has decided that it will offer all seminars through a webinar. The RPLS felt a webinar format compromised ability to present materials typical for a Homeward Bound series and eliminated networking opportunities. The

Homeward Bound in January will include a one-hour networking opportunity with alcohol and appetizers.

4. RPLS recorded presentations at the Summer Conference. The Section is looking at pricing for live video presentations.
5. Approximately 3,000 members in the RPLS. Overall, there has been a decline of 12% in State Bar membership.

Future Meetings:

- December 13, 2019 – Hudson Room
- February 7, 2020 – Hudson Room
- March 27, 2020 – Hudson Room
- May 1, 2020 – Hudson Room
- March 12, 2020 – March 14, 2020, 2020 Winter Conference
- July 15, 2020 – July 18, 2020, 2020 Summer Conference

Chairperson Shierk adjourned the meeting at 12:10 p.m.

Respectfully submitted,

Kelly Myers, Secretary

Michigan Land Title Standards Committee

Minutes of Meeting of December 13, 2019

MEMBERS

Present: Barbe, Boore, Hagerty, Hosler, LaMont, Martyn, Myers, Prins, Reed, Savich, Scavone, Schey, Shierk, Smith

Present Via Teleconference: Dawson, Page

Not Present: Aiello, Brown, Cameron, Dudek, Hicks, Lanzetta, Marquardt, Nix, Schairbaum, Viviani

MEMBERS EMERITI

Baker, Barrows, Binkow, Darbee, Kinzinger, Knorr, McNair, Mollhagen, Rozof, Simpson

*Denotes member emeritus present

**Denotes member emeritus present via teleconference

The meeting was called to order by Chairperson Shierk at 10:10 a.m. in the Hudson Room of the State Bar Building, Lansing, MI, on December 13, 2019.

1. Approval of Minutes of Michigan Land Title Standards Committee of October 4, 2019

Chairperson Shierk presented the October 4, 2019 meeting minutes for approval.

Mr. Smith made a motion to approve the October 4, 2019 meeting minutes, Ms. LaMont seconded. **The Motion passed unanimously.**

2. Report on Chapter I, The Marketable Record Title Act

Standard 1.3: Unbroken Chain of Record Title (Brian Page)

A. Mr. Page presented proposed revisions to Standard 1.3. Changes were made pursuant to PA 572 and for consistency with Standards 1.1 and 1.2.

1. The phrase “to an interest in land” in the statement of the Standard and other instances throughout the Standard was included for consistency with the Marketable Record Title Act.
2. References to “certain mineral interests” was changed to “mineral interests as defined in MCL 565.101a.”
3. Dates in the previously-published Problems were adjusted 10 years forward to provide for a more contemporary timeline.

4. Problems G and H were added to highlight certain provisions of 2018 PA 572 pertinent to the “Unbroken Chain of Title” subject of Standard 1.3.
5. A Comment referencing Problem G was added to indicate the Committee’s neutrality on the question of whether a reference to “recorded covenants and restrictions” in an instrument recorded before the effective date of the Act would be sufficient to divest an interest for purposes of the Act.
6. The Note was updated to include a cross-reference to the new form and content requirements for a notice of a claimed instrument or an instrument purporting to divest an interest.

B. Ms. LaMont inquired whether the Comment provides too much information. Mr. Savich believed it does. Ms. LaMont suggested that the Committee let the court speak before including the issue of retroactivity in the Standard. Mr. Page asserted that the Comment is helpful. Mr. Scavone stated that it is critical to determine if the statute is retroactive and the Comment should remain as part of the Standard. Discussion ensued and the Committee decided to leave the Comment in the Standard.

Mr. Reed made a motion to approve the revisions to Standard 1.3 and submit to the Style Committee; Ms. LaMont seconded. **The Motion passed unanimously.**

Standard 1.4: Matters of Record Purporting to Divest an Interest in Land

The Committee tabled discussions on Standard 1.4 to the February 7, 2020 meeting.

Standard 1.5: Land in Hostile Possession of Another (Stacey Barbe)

A. Ms. Barbe presented proposed revisions to Standard 1.5.

1. The object of the hostile possession was added to the Standard.
2. The statement of the Standard was revised so that it does not read in the negative.
3. Dates in the previously-published Problems were adjusted 10 years forward to provide for a more contemporary timeline.
4. The cross-reference to Standard 1.7 was removed from the Answer to Problem D and made into a Note.

B. Mr. Scavone pointed out that the statute provides for “a marketable record title”. Discussion ensued and it was decided not to include “a” before “marketable record title”.

C. Mr. Scavone recommended removing the commas from the Standard, and the Committee agreed.

Ms. Barbe made a motion to approve the revisions to Standard 1.5 and submit to the Style Committee; Ms. LaMont seconded. **The Motion passed unanimously.**

Standard 1.6: Effect on the Marketable Record Title Act on Prior Interests (Jim Reed)

A. Mr. Reed presented proposed revisions to Standard 1.6.

1. Revisions to the statement of the Standard were made to reflect the addition of MCL 565.102(2), which defines what instruments in the chain of title “purport to divest.” Under MCL 565.102(2), the prior interest is preserved only if the instrument in the 40-year chain “specifically refers by liber and page or other county-assigned unique identifying number to a previously recorded” instrument that created the prior interest.
2. Problem A was modified to identify a Grantor (Smith) and to state that Smith reserved the reverter (rather than the Grantee reserving the reverter). Further, dates were adjusted 10 years forward to provide for a more contemporary timeline.
3. Problem B was revised to state the prior interest (reverter) was specifically identified by the liber and page where the prior interest was recorded as MCL 565.102(2) requires. Further, dates were adjusted 10 years forward to provide for a more contemporary timeline.
4. The present Comment B was deleted because MCL 565.102(2) clarifies that a general reference to an interest in the 40-year chain will not preserve the prior interest.
5. The present Comment C was renumbered to Comment B and subparagraph (g) was added reflecting the addition of MCL 565.104(3) adding certain mineral interests to the list of interests the Act will not extinguish.
6. The present Comment D was renumbered as Comment C.

B. Mr. Martyn raised an issue in the Standard under the section, “But the Title is Subject to” – that states the reverse of item (A) in the Standard. Mr. Reed agreed. Mr. Savich suggested that the instrument creating the claim would not reference a liber and page because it creates the claim and there would not be a prior instrument to which to refer. Mr. Scavone does not believe the “But the Title is Subject to” section is necessary. Mr. Reed noted that the section is in the current Standard and is helpful. Extensive discussion ensued about this section of the Standard. Mr. Savich suggested that the Committee split the section into two so that it is not redundant. Discussion ensued about revising the language to split into two sections.

C. Mr. Scavone raised concerns that Comment A is poorly written. Chairperson Shierk advised that Problem A pertains to the right of entry. Mr. Scavone inquired if Problem A is legally accurate under MCL 554.61. Ms. LaMont suggested that Comment A be modified as a Caveat. Discussion ensued and it was decided to keep Comment A as drafted.

Ms. LaMont made a motion to approve the revisions to Standard 1.6 and submit to the Style Committee. Before the Motion was voted on, a discussion ensued regarding adding a Comment reflecting the Committee’s position that it expresses no opinion as to whether MCL 565.102(2) applies retroactively.

Ms. LaMont amended her motion to instead send Standard 1.6, and also Standard 1.3, back to the Subcommittee to consider adding a Comment regarding the application of retroactivity; Mr. Prins seconded. **The Motion passed unanimously.**

Standard 1.7: Conflicting Marketable Record Titles to an Interest in Land

The Committee tabled discussions on Standard 1.7 to the February 7, 2020 meeting.

3. Report on Chapter XVI, Mortgages (Nick Scavone)

Standard 16. __: Notice to Condominium Association of Mortgage Foreclosure

A. Mr. Scavone presented the proposed new Standard.

B. Mr. Scavone presented the Problem, which is based on *W. Maple Condo. Ass'n v Countrywide Home Loans*, 282 Mich App 452 (2009). Failure to give the required notice of foreclosure to a condominium association does not invalidate the foreclosure but instead provides the association with “legal recourse” for the violation.

Mr. Dawson made a motion to approve Standard 16. __ and submit to the Style Committee; Mr. Scavone seconded. **The motion passed unanimously.**

4. Report on Chapter XVII, Construction Liens (Larry Dudek)

New comment for *TSP Services, Inc. v National Standard, LLC*.

Mr. Dudek was not present at the meeting. The Committee tabled discussions to the February 7, 2020 meeting.

5. Report on Chapter XIV, Easements (Jeff Hicks)

New Comment/Standard for *Maniaci v Diroff*.

Mr. Hicks was not present at the meeting. The Committee tabled discussions to the February 7, 2020 meeting.

6. Report on Chapter XXX, Covenants and Restrictions (Cathy LaMont)

New comment for *Thiel v Goyings* and *Mazzola, et al. v Deeplands Development Company, LLC*. – Standard 30.1

Ms. LaMont will present her report at the February 7, 2020 meeting.

7. Report from Style Committee

No report was provided.

8. Other Business/Standing Reports

A. Marketable Records Title Act Council Update

No report was provided.

B. New Chapters

1. Eminent Domain
2. Aviation-Right of overflight in the airspace above property-drones

No report was provided.

C. Membership Report

No report was provided.

D. Council Activities (Cathy LaMont)

1. Ms. LaMont reported a successful Groundbreakers program at the DAC, which is now an annual event.
2. The Council is working hard on Winter Conference in San Diego and on Summer Conference at Mission Point.

Future Meetings:

- February 7, 2020 – Hudson Room
- March 27, 2020 – Hudson Room
- May 1, 2020 – Hudson Room
- March 12, 2020 – March 14, 2020, 2020 Winter Conference
- July 15, 2020 – July 18, 2020, 2020 Summer Conference

Chairperson Shierk adjourned the meeting at 12:13 p.m.

Respectfully submitted,

Kelly Myers, Secretary

Michigan Land Title Standards Committee

Minutes of Meeting of February 7, 2020

MEMBERS

Present: Barbe, Henry, Hicks, Prins, Reed, Shierk, Smith

Present Via Teleconference: Brown, Dawson, Hosler, LaMont, Martyn, Page, Schey, Viviani

Not Present: Aiello, Boore, Dudek, Hagerty, Lanzetta, Marquardt, Myers, Nix, Savich, Scavone, Schairbaum,

MEMBERS EMERITI

Not Present: Baker, Barrows, Binkow, Darbee, Kinzinger, Knorr, McNair, Mollhagen, Rozof, Simpson

The meeting was called to order by Chairperson Shierk at 10:10 a.m. in the Hudson Room of the State Bar Building, Lansing, MI, on February 7, 2020.

1. Approval of Minutes of Michigan Land Title Standards Committee of December 13, 2019

Chairperson Shierk presented the December 13, 2019 meeting minutes for approval.

Mr. Reed made a motion to approve the December 13, 2019 meeting minutes, Mr. Hicks seconded. **The Motion passed unanimously.**

2. Report on Chapter I, The Marketable Record Title Act (Jim Reed)

Standard 1.6: Effect of the Marketable Record Title Act on Prior Interests.

Mr. Reed presented the proposed revisions to Standard 1.6. Changes made in response to the discussion at the December meeting are as follows.

1. Removed from the Standard was the following:

BUT THE TITLE IS SUBJECT TO:

ANY INTEREST, CLAIM OR CHARGE WHICH ARISES FROM, OR IS REFERRED TO IN ANY INSTRUMENT WITHIN THE MINIMUM 40-YEAR CHAIN OF RECORD TITLE (MINIMUM 20-YEAR CHAIN FOR MINERAL INTERESTS AS DEFINED IN MCL 565.101a), WHICH INSTRUMENT SPECIFICALLY STATES THE LIBER AND PAGE OR OTHER COUNTY-ASSIGNED UNIQUE IDENTIFYING

NUMBER OF THE INSTRUMENT CREATING THE INTEREST,
CLAIM, OR CHARGE.

2. Added was a new comment D as follows:

Comment D: This Standard does not address the effect of MCL 565.102(2) in relation to instruments recorded before March 29, 2019 (the effective date of Act 572 of 2018, which added MCL 565.102(2)) containing a general reference to prior interests, such as “restrictions of record” or “restrictions and easements of record, if any.”

Mr. Reed made a motion to approve the revised Standard 1.6 as presented. Mr. Smith seconded the motion. **The motion passed unanimously.**

Standard 1.3: Unbroken Chain of Record Title.

A brief discussion took place about adding the same Comment D inserted in Standard 1.6 to Standard 1.3 so that both Standards are consistent.

Mr. Reed made the motion to add to Standard 1.3 the Same Comment D that was inserted in Standard 1.6. Mr. Hicks seconded the motion. **The motion passed unanimously.**

Standard 1.7: Conflicting Marketable Titles to an Interest in Land.

Ms. Schey presented the proposed revised Standard 1.7. The proposed changes are summarized as follows:

1. Inserted the phrase “to an interest in land” in the title and in other instances throughout the Standard for consistency with the language of the Marketable Record Title Act (“Act”) and revisions made to other Standards applicable to the Act.
2. In several instances, replaced “an examination of the records covering the applicable period” and similar phrases with “disclosed in the official public records” (a) for consistency with the language of the Act, and (b) to focus the Standard on what is actually disclosed in the official public records rather than the act of examining the records.
3. Adjusted all dates 10 years forward.
4. Deleted the clauses in Problem A and the Answer to Problem A which incorporated the concept of hostile possession. While hostile possession can impact marketable title, the Sub-Committee elected to remove the concept because (a) it is not the focus of Section 3 of the

Act, and (b) its impact is not raised in other Standards applicable to Sections of the Act that do specifically focus on hostile possession.

5. Deleted Comment B, which noted that marketable record title could be extinguished by adverse possession. The Sub-Committee determined that this Comment seemed out of place and irrelevant to the discussion of Section 3 of the Act.
6. The Sub-Committee considered adding a new Comment in order to address questions raised with regard to the meaning of “disclosed in the official public records” and the appropriate index for review when ascertaining marketable record title (tract index vs. grantor/grantee index). Below are some of the suggested comments that the Sub-Committee discussed. While these do not provide an answer to the underlying questions, they demonstrate that the Sub-Committee recognizes the issue.
 - a. The Act does not define “official public records”.
 - b. The Sub-Committee expresses no opinion as to what constitutes the “official public records” for purposes of examining the chain of title for purposes of the Act.

Ms. Schey noted a correction was needed to the second paragraph of the Answer for Problem A - the following words need to be deleted: and there is no one in hostile possession.

Mr. Henry suggested the word “may” in the fifth line of the Answer to Problem A be removed. After discussion, the consensus was not to make this change because there could be an intervening instrument.

Ms. Schey also pointed out that there is no definition in the Marketable Record Title Act to “official public records.” Several present speculated why this is the case; the conclusion is that the reason is not known. The consensus was not to add a comment that the Committee expresses no opinion as to what constitutes “official public records.”

Standard 1.4: Matters of Record Purporting to Divest an Interest in Land.

Mr. Reed filled in for Ms. Myers and presented the proposed changes for Standard 1.4 which are summarized as follows:

1. Standard 1.4 was modified to reflect the new requirements of MCL 565.102(2) relative to the divestment of an interest in land:

Except as to mineral interests as defined in MCL 565.101a, a conveyance or other title transaction in the chain of title purports to

divest an interest in the property only if (i) it creates the divestment or (ii) it refers by liber and page (or instrument number, etc., based on the county's system) to a previously recorded conveyance or other title transaction that created the divestment.

2. The first sentence of each Problem was modified to avoid confusion as to who held title to Blackacre at the time the fact pattern of each Problem commences.
3. Problem A was updated with more current years, consistent with other Chapter I Standards.
4. Problems B and C were deleted because they stand for the same proposition as Problem A.
5. Problem D (new Problem B) was modified to include a deed recorded in April 2019, after PA 572's effective date of March 29, 2019, because the Sub-Committee was unable to discern with certainty if the Act applies retroactively. Problem D was also revised to include a reference to the liber and page of an instrument that created the divestment, as required by the statute.
6. Problem E (new Problem C) was modified to update the years. Problem E was also changed to provide that a power of attorney appointing John Smith as Thomas's attorney-in-fact was of record when the deed was recorded to avoid any confusion as to whether the deed created the divestment.
7. Problem F (new Problem D) was modified to update the years. Problem F was also changed to create a scenario where the deed, recorded after the effective date of the Act, does not create the divestment, nor does it reference a liber and page or other instrument number of the instrument which created the divestment.
8. Problem G (new Problem E) was modified to provide a fact pattern involving a mineral interest within the definition of MCL 565.101a, to which the new divestment of interest requirements in the Act are inapplicable.
9. The Public Act and the MCL citation of the Act, along with the effective date, were added as an Authority.
10. A Comment was added to reference MCL 565.101a, which excludes certain minerals from the definition of "mineral interest" under the Act.

A discussion ensued regarding the new Problems B and C. Also considered was adding the same Comment D that was inserted in Standard 1.6.

Mr. Reed made a motion that the Sub-Committee further review the changes to Standard 1.4. Mr. Smith seconded the motion. **The motion passed unanimously.**

3. Report from Style Sub-Committee

Chairperson Shierk distributed to the Committee members present the most current update to the Standards. The update for Committee members not present will be mailed to them. Mr. Brown confirmed there is no pending business for the Style Sub-Committee

4. Other Business/Standing Reports

A. Marketable Record Title Act Council Update

Chairperson Shierk reported that Ms. LaMont has formed an ad hoc committee Chaired by Mr. Scavone and comprised of several members of the Michigan Land Title Standards Committee, the Council for the Real Property Law Section, Jason Seaver and others for the purpose of drafting revisions to the Marketable Record Title Act. An amendment to the Marketable Record Title Act is currently pending that will except condominiums from 2018 PA 572. The ad hoc committee will propose other revisions.

B. New Chapter

Eminent Domain: Chairperson Shierk asked if the Committee supports the creation of a new chapter for Eminent Domain. Ms. LaMont expressed that a Standard regarding when title transfers would be helpful. Motion was made by Mr. Reed and seconded by Mr. Smith to create a new chapter on Eminent Domain. **The motion passed unanimously.**

C. Membership Report

Chairperson Shierk reported that the membership Sub-Committee recommended that Jerome Pesick be asked to join the Committee to write the Chapter on Eminent Domain. Mr. Pesick is former Chair of the Real Property Law Section of the State Bar and focuses his practice on Eminent Domain law. Motion was made by Mr. Reed and seconded by Mr. Smith that Mr. Pesick be invited to be a member on the Committee. **The motion passed unanimously.**

D. Council Activities

Mr. Page and Ms. LaMont reported on the upcoming Winter Conference and the many CLE activities and efforts to increase attendance. Ms. LaMont also reported that the Section is actively drafting and filing several amicus briefs that can be found on the State Bar's website. Mr. Henry informed us of a couple pro-bono opportunities he has organized and he encouraged all to attend either the one scheduled for the last week of March which will involve a presentation to

non-profits in the City of Detroit or an event that will take place in the Fall that will involve assisting with the construction of low income housing.

Chairperson Shierk adjourned the meeting at 11:45 a.m.

Future Meetings:

- March 27, 2020 – Hudson Room
- May 1, 2020 – Hudson Room
- March 12, 2020 – March 14, 2020, 2020 Winter Conference
- July 15, 2020 – July 18, 2020, 2020 Summer Conference

Respectfully submitted,

C. Kim Shierk, Acting Secretary

**State Bar of Michigan
LAND TITLE STANDARDS COMMITTEE**

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2019 - 2020 (Rev. 02/18/20)

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