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MICHIGAN LAND TITLE STANDARDS – Supplement No. 7 to 6th Edition (May 2020)

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(through Supplement No. 7)
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MICHIGAN LAND TITLE STANDARDS

SIXTH EDITION

Standard	1.1
Standard	1.3
Standard	1.4
Standard	1.5
Standard	1.6
Standard	1.7
Standard	16.20
Standard	16.47

SUPPLEMENT No. 7

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. 7)

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 7 (2021).

The Sixth Edition of Michigan Land Title Standards (including Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, Supplement No. 5, Supplement No. 6 and Supplement No. 7) 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."

* * * *

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).

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.

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) and C. Kim Shierk (2019-2021).

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, 2020

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2020 - 2021
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STANDARD 1.1

EFFECT OF THE MARKETABLE RECORD TITLE ACT

STANDARD: THE MARKETABLE RECORD TITLE ACT REMEDIES TITLE DEFECTS WITHIN ITS SCOPE.

Authorities: MCL 565.101 through 565.109. *Rush v Sterner*, 143 Mich App 672, 373 NW2d 183 (1985); *Strong v Detroit & Mackinac Ry Co*, 167 Mich App 562, 423 NW2d 266 (1988).

Comment A: The stated legislative purpose of the Marketable Record Title Act, MCL 565.101, *et seq.* (the “Act”), is to simplify and facilitate land title transactions by providing a statutory basis for establishing marketable record title to an interest in land with reference to a period of at least 40 years (at least 20 years for mineral interests as defined in MCL 565.101a). The effect of the Act is to extinguish by operation of law an interest in land whose existence depends upon any act, transaction, event or omission preceding the 40-year period (or the 20-year period for mineral interests as defined in MCL 565.101a), subject to specified exceptions and limitations. MCL 565.101a defines a mineral interest as an interest in minerals (other than an interest in oil, gas, sand, gravel, limestone, clay, or marl) owned by a person other than the surface owner.

However:

(i) before March 29, 2019 (the effective date of 2018 PA 572), an interest in land could be preserved under the Act by the recording during the 40-year period (or during the 20-year period for mineral interests as defined in MCL 565.101a) of a notice, verified by oath, setting forth the nature of the interest claimed and containing an accurate and full description of all the land affected by the notice;

(ii) a mineral interest as defined in MCL 565.101a could be preserved by the recording within three years after December 22, 1997, of a notice, verified by oath, setting forth the nature of the interest claimed and containing an accurate and full description of all the land affected by the notice; and

(iii) on and after March 29, 2019, an interest in land may be preserved under the Act by the recording during the 40-year period (or during the 20-year period for mineral interests as defined in MCL 565.101a) of a notice, verified by oath, setting forth the nature of the interest claimed and containing an accurate and full description of all the land affected by the notice and conforming to the requirements in Section 5 of the Act, as amended by 2018 PA 572, specifying the form and content of the notice, including stating the liber and page or other county-assigned unique identifying number of the recorded instrument the claim is founded on (except that a notice of a mineral interest as defined in MCL 565.101a is not required to state the liber and page or other county-assigned unique identifying number of the recorded instrument the claim is founded on).

Comment B: As discussed in Standards 1.2 and 1.3, marketable record title to an interest in land requires that there is nothing of record within the applicable period purporting to divest that interest. 2018 PA 572 amended Section 2 of the Act to limit the conveyances or other title transactions in the chain of record title (including, with certain exceptions, a notice to preserve an interest) that can effectively purport to divest an interest in land (other than a mineral interest as defined in MCL 565.101a) to those that either (i) create the divestment, or (ii) specifically refer by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment. MCL 565.102(2).

Comment C: Because the change in Section 2 of the Act may adversely affect previously recorded interests, 2018 PA 572 also amended the Act to provide that an interest in land may be preserved by the recording within two years after March 29, 2019 (which two-year period was extended to five years by 2020 PA 294), of a notice, verified by oath, setting forth the nature of the interest claimed, containing an accurate and full description of all the land affected by the notice, and conforming to the requirements for the form and content of the notice, including (except in the case of a mineral interest as defined in MCL 565.101a) the liber and page or other county-assigned unique identifying number of the recorded instrument the claim is founded on. MCL 565.103(1) and 565.105(1).

Comment D: The title resulting from application of the Act's remedial provisions is marketable record title. MCL 565.103. Marketable record title under the Act may not be equivalent, however, to a marketable title at common law or to a commercially marketable or merchantable title, as those terms are generally used. One may have a marketable record title under the Act, which is still properly subject to objection.

Note: See Standard 15.4 with respect to certain severed oil and gas interests.

Caveat: With reference to the 1997 amendments to the Act that granted a grace period for preserving mineral interests as defined in MCL 565.101a, the Michigan Attorney General opined that the grace period applied only to the recording of notices to preserve an interest that had not been previously barred or extinguished under the terms of the Act. OAG 2004, No. 7148 (January 26, 2004).

STANDARD 1.3

UNBROKEN CHAIN OF RECORD TITLE

STANDARD: A PERSON HAS AN UNBROKEN CHAIN OF RECORD TITLE TO AN INTEREST IN LAND IF:

(A) THERE IS EITHER:

(1) A CONVEYANCE OR OTHER TITLE TRANSACTION WHICH PURPORTS TO CREATE THE INTEREST AND HAS BEEN A MATTER OF RECORD FOR AT LEAST 40 YEARS (AT LEAST 20 YEARS FOR MINERAL INTERESTS AS DEFINED IN MCL 565.101a); OR

(2) A SERIES OF CONVEYANCES OR OTHER TITLE TRANSACTIONS OF RECORD IN WHICH THE FIRST CONVEYANCE OR TITLE TRANSACTION WHICH PURPORTS TO CREATE THE INTEREST HAS BEEN A MATTER OF RECORD FOR AT LEAST 40 YEARS (AT LEAST 20 YEARS FOR MINERAL INTERESTS AS DEFINED IN MCL 565.101a); AND

(B) THERE IS NOTHING OF RECORD PURPORTING TO DIVEST THE PERSON OF THE INTEREST.

Problem A: Fred Smith conveyed Blackacre to Frank Thomas by deed recorded in 1970. No instrument affecting Blackacre has been recorded since 1970. In 2013, does Thomas have an unbroken chain of record title?

Answer: Yes.

Problem B: A final court order entered in 1971 determined that Arthur Gates was the owner of Blackacre. A certified copy of the order was recorded in 1972. No other instrument affecting Blackacre has been recorded since 1972. In 2013, does Gates have an unbroken chain of record title?

Answer: Yes.

Problem C: Fred Smith conveyed Blackacre to Frank Thomas by deed recorded in 1970. Thomas conveyed Blackacre to Janet Tillson by deed recorded in 1975. Tillson conveyed Blackacre to Richard Cook by deed recorded in 1995. No other instrument affecting Blackacre has been recorded since 1975. In 2016, does Cook have an unbroken chain of record title?

Answer: Yes.

Problem D: In 1971, the estate of Arthur Gates, deceased, was probated. Blackacre was included in the inventory of the estate, although Gates did not appear in the chain of record title. A certified copy of the order assigning the residue in Gates's estate (specifically describing Blackacre) to his two daughters as sole heirs at law was recorded in 1972. The heirs at law conveyed Blackacre to Ralph Allan by deed recorded in 2003. No other instrument affecting Blackacre has been recorded since 1972. In 2013, does Allan have an unbroken chain of record title?

Answer: Yes.

Problem E: A stranger to the title executed a deed of Blackacre to Frank Thomas in 1970. The deed was recorded in 2011. No other instrument affecting Blackacre has been recorded since 2011. In 2013, does Thomas have an unbroken chain of record title?

Answer: No. Thomas's chain of record title begins with the recording of his deed in 2011.

Problem F: Frank Thomas conveyed Blackacre to Janet Tillson, but reserved an undivided one-half interest in iron ore and coal. The deed was recorded in 1970. Tillson conveyed Blackacre to Richard Cook by deed recorded in 1990, but the deed did not include any reference to Thomas's reserved iron ore and coal interest. There was no production of iron ore or coal from Blackacre. No other instrument

affecting Blackacre has been recorded since 1970. In 2011, does Cook have an unbroken chain of record title to all interest in Blackacre?

Answer: Yes.

Problem G: Frank Thomas conveyed Blackacre to Janet Tillson subject to newly imposed covenants and restrictions affecting Blackacre stated in the deed for the express benefit of an adjacent parcel of land owned by Thomas. The deed was recorded in July, 1979. Tillson conveyed Blackacre to Richard Cook by deed recorded in 1980, but the deed did not include any reference to covenants and restrictions. No instrument affecting Blackacre has been recorded since the 1980 deed. In April, 2021, does Cook have an unbroken chain of record title to Blackacre free of the covenants and restrictions imposed by the 1979 deed?

Answer: Yes.

Problem H: Same facts as in Problem G, except that on March 20, 2021, Thomas recorded his notice of claim pursuant to MCL 565.103(1), which satisfied the requirements of MCL 565.105, as to the covenants and restrictions imposed by the July, 1979 deed. In April, 2021, does Cook have an unbroken chain of record title to Blackacre free of the covenants and restrictions imposed by the July, 1979 deed?

Answer: No.

Authorities: Problems A and B: MCL 565.102(a).
Problems C and D: MCL 565.102(b).
Problem E: MCL 565.101.
Problem F: MCL 565.101(a).
Problem G: MCL 565.102(2) and 565.103(1).
Problem H: MCL 565.102(2), 565.103 and 565.105.

Comment: 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.”

Note: See Standard 1.1 with respect to preserving an interest by recording a notice of the interest claimed, and with respect to the form and content requirements for a notice of a claimed interest or for an instrument purporting to divest an interest.

STANDARD 1.4

MATTERS OF RECORD PURPORTING TO DIVEST AN INTEREST IN LAND

STANDARD: 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 LAND WITHIN THE MEANING OF THE MARKETABLE RECORD TITLE ACT ONLY IF IT CREATES THE DIVESTMENT OR IF IT SPECIFICALLY REFERS BY LIBER AND PAGE OR OTHER COUNTY-ASSIGNED UNIQUE IDENTIFYING NUMBER TO A PREVIOUSLY RECORDED CONVEYANCE OR OTHER TITLE TRANSACTION THAT CREATED THE DIVESTMENT.

Problem A: Blackacre was conveyed to Frank Thomas by deed recorded in 1990. In 2018 a warranty deed describing Blackacre and executed by a stranger to the title was recorded. Is this deed an instrument purporting to divest Thomas of his interest in Blackacre within the meaning of the Marketable Record Title Act?

Answer: No. The deed did not purport to divest Thomas of his interest because there is nothing in the deed indicating that the grantor had acquired the interest of Thomas.

Problem B: Blackacre was conveyed to Frank Thomas by deed recorded in 1990. A deed of Blackacre executed by Janet Tillson, referring to the land as “being the same land heretofore conveyed to me by Frank Thomas,” was recorded in April 2019. Does the deed executed by Janet Tillson purport to divest Thomas of his interest in Blackacre within the meaning of the Marketable Record Title Act?

Answer: No. The deed executed by Janet Tillson must specifically refer by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment.

Problem C: Blackacre was conveyed to Frank Thomas by deed recorded in 1990. A deed of Blackacre’s mineral rights executed by Janet Tillson was recorded in 2020. The deed described the mineral

rights as “those rights in copper conveyed by deed executed by Thomas and recorded in 1990.” Does the deed executed by Janet Tillson purport to divest Thomas of his mineral interest in Blackacre within the meaning of the Marketable Record Title Act?

Answer: Yes. A conveyance or other title transaction in the chain of title may divest an interest in mineral rights even if it does not create the divestment or does not specifically refer by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment.

Authorities: 2018 PA 572, MCL 565.102(2), which became effective March 29, 2019.

Comment A: MCL 565.101a defines a mineral interest as an interest in minerals (other than an interest in oil, gas, sand, gravel, limestone, clay or marl) owned by a person other than the surface owner.

Comment B: 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.”

STANDARD 1.5

LAND IN HOSTILE POSSESSION OF ANOTHER

STANDARD: A PERSON DOES NOT HAVE A MARKETABLE RECORD TITLE TO AN INTEREST IN LAND, WITHIN THE MEANING OF THE MARKETABLE RECORD TITLE ACT, IF THE LAND IS IN THE HOSTILE POSSESSION OF ANOTHER PERSON.

Problem A: Fred Smith conveyed Blackacre to Frank Thomas by deed recorded in 1970. In 2008, Ralph Allan entered into and remained in hostile possession of Blackacre. There is nothing else of record. In 2013, does Thomas have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: No.

Problem B: Fred Smith conveyed Blackacre to Frank Thomas by deed recorded in 1970. In 1971, a stranger to the title executed and recorded a deed describing Blackacre, to Ralph Allan. There is nothing else of record. In 2013, Allan was in actual possession of Blackacre, hostile to Thomas. In 2013, does either Thomas or Allan have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: Allan has a marketable record title. Thomas does not have a marketable record title because Allan has hostile possession.

Problem C: Same facts as in Problem B, except that Thomas was in actual possession of Blackacre, hostile to Allan. In 2013, does either Thomas or Allan have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: Thomas has a marketable record title. He has an unbroken chain of title extending back at least 40 years. The deed from the stranger to Allan is not an instrument purporting to divest Thomas of the interest created in him by the deed recorded in 1970. Allan does not have a marketable record title because Thomas has hostile possession.

Problem D: Same facts as in Problem B, except that in 2013 Blackacre is unoccupied. In 2013, does either Thomas or Allan have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: Yes. Thomas and Allan each has a marketable record title. Thomas and Allan each has an unbroken chain of title extending back at least 40 years, there is nothing of record purporting to divest either of them, and there is no one in hostile possession.

Problem E: Same facts as in Problem B, except that in 2013 Adam Johnson is in hostile possession of Blackacre. In 2013, does either Thomas or Allan have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: No.

Problem F: Same facts as in Problem B, except that in 2013 Adam Johnson is in possession of Blackacre, hostile to Allan. There is a recorded lease from Thomas to Johnson, dated and recorded in 2005, purporting to lease Blackacre to Johnson for 12 years. In 2013, does either Thomas or Allan have a marketable record title within the meaning of the Marketable Record Title Act?

Answer: Thomas has a marketable record title (subject to the lease), because the possession of Johnson is subordinate to the title of Thomas and therefore is not hostile to him. Because Johnson's possession is hostile to Allan, Allan does not have a marketable record title.

Authorities: MCL 565.101 and 565.102. *Cook v Grand River Hydroelectric Power Co*, 131 Mich App 821, 346 NW2d 881 (1984); *Rush v Sterner*, 143 Mich App 672, 373 NW2d 183 (1985).

Comment: The Committee expresses no opinion as to what specific acts may constitute hostile possession.

Note: See Standard 1.7 regarding conflicting marketable record titles.

STANDARD 1.6

EFFECT OF MARKETABLE RECORD TITLE ACT ON PRIOR INTERESTS

STANDARD: A PERSON WHO HAS A MARKETABLE RECORD TITLE TO AN INTEREST IN LAND HOLDS TITLE TO THAT INTEREST FREE OF:

ANY INTEREST, CLAIM OR CHARGE, THE EXISTENCE OF WHICH DEPENDS IN WHOLE OR IN PART UPON ANY ACT, TRANSACTION, EVENT OR OMISSION WHICH PRECEDES AT LEAST A 40-YEAR CHAIN OF RECORD TITLE (AT LEAST A 20-YEAR CHAIN OF RECORD TITLE FOR MINERAL INTERESTS AS DEFINED IN MCL 565.101a); IF:

- (A) THE MINIMUM 40-YEAR CHAIN (MINIMUM 20-YEAR CHAIN FOR MINERAL INTERESTS AS DEFINED IN MCL 565.101a) INCLUDES NO REFERENCE TO THE INTEREST, CLAIM OR CHARGE SPECIFICALLY STATING THE LIBER AND PAGE OR OTHER COUNTY-ASSIGNED UNIQUE IDENTIFYING NUMBER OF THE INSTRUMENT CREATING THE INTEREST, CLAIM, OR CHARGE, AND NO NOTICE OF CLAIM BASED THEREON HAS BEEN RECORDED PURSUANT TO SECTIONS 3 AND 5 OF THE ACT; AND**
- (B) THE INTEREST IS NOT EXCEPTED FROM THE APPLICATION OF THE ACT BY SECTION 4.**

Problem A: Fred Smith conveyed Blackacre to John Pond by deed recorded in 1965. The deed stated that Smith and his heirs reserved the right to re-enter Blackacre in the event of a breach of certain conditions stated in the deed. Pond conveyed Blackacre to Frank Thomas by deed recorded in 1970, but the deed did not state or refer to the right of entry. None of the instruments in the chain of title since 1970 contains a reference to the right of entry. No notice of claim has been recorded. Thomas is in possession of Blackacre. In 2013,

does Thomas hold title to Blackacre free of the right of entry?

Answer: Yes. Thomas holds the title free of the right of entry because it does not appear in any instrument in his 40-year chain of record title.

Problem B: Fred Smith conveyed Blackacre to John Pond by deed recorded in 1965. The deed stated that Blackacre was conveyed so long as it was used for a specified purpose, but if it ceased to be so used, Blackacre would revert to Smith or his heirs. Pond conveyed Blackacre to Paula Bell by deed recorded in 1970. The deed specifically referred to the possibility of reverter and specifically stated the liber and page of the 1965 deed to Pond. Paula Bell conveyed Blackacre to Frank Thomas by deed recorded in 1990. The deed did not refer to the possibility of reverter. No other instrument affecting Blackacre has been recorded since 1990. Thomas is in possession of Blackacre. In 2013, does Thomas hold title to Blackacre free of the possibility of reverter?

Answer: No. Although Thomas holds a marketable record title to Blackacre, he does not hold the title free of the possibility of reverter because it is referred to in the 1970 deed, which is the deed commencing Thomas's 40-year chain of record title.

Authorities: MCL 565.101 through 565.105.

Comment A: The effect, if any, of MCL 554.61 *et seq.*, relating to the duration of rights of entry and possibilities of reverter, has not been considered in the preparation of this Standard. See, Standards 9.10 and 9.13.

Comment B: The Marketable Record Title Act is not effective to bar the following interests:

- (a) The right of a lessor, or the lessor's successor in interest, to possession upon the expiration of a lease;
- (b) The right of a lessee, or the lessee's successor in interest, in and to a lease;
- (c) The interest of a mortgagor or mortgagee until the instrument establishing the interest has become due and payable, "except where such instrument has no due date expressed, where such instrument has been executed by a railroad, railroad bridge, tunnel or union depot company, or any public utility or public

- service company”;
- (d) Any easement, or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of use;
 - (e) Any easement, or interest in the nature of an easement, or rights appurtenant to the easement granted, excepted or reserved by the recorded instrument creating it, including any rights for future use, if the existence of the easement, or interest in the nature of an easement, is evidenced “by the location beneath, upon or above any part of the land described in such instrument of any pipe, valves, road, wire, cable, conduit, dock, sewer, tract, pole, tower or other physical facility,” whether or not the existence of the facility is observable; and
 - (f) Any interest owned by the United States, or by the state of Michigan or any department, commission or political subdivision thereof.
 - (g) Any oil and gas lease or other interest in oil or gas owned by a person other than the owner of the surface or any storage agreement or other interest in subsurface storage formations owned by a person other than the owner of the surface.

MCL 565.104.

Comment C: The required period of an unbroken chain of record title is 20 years with respect to a mineral interest (other than an interest in oil, gas, sand, gravel, limestone, clay or marl) owned by a person other than the surface owner. MCL 565.101 and MCL 565.101a.

STANDARD 1.7

CONFLICTING MARKETABLE RECORD TITLES TO INTEREST IN LAND

STANDARD: IF TWO OR MORE MARKETABLE RECORD TITLES TO AN INTEREST IN LAND EXIST UNDER THE MARKETABLE RECORD TITLE ACT, CONFLICT BETWEEN THEM MAY BE RESOLVED BY THE OPERATION OF SECTION 3 OF THE ACT. UNDER SECTION 3, THE HOLDER OF A MARKETABLE RECORD TITLE TO AN INTEREST IN LAND HOLDS FREE OF CLAIMS THE EXISTENCE OF WHICH IS NOT DISCLOSED IN THE OFFICIAL PUBLIC RECORDS APPLICABLE TO THE PERIOD RELIED UPON TO MAKE UP THE UNBROKEN CHAIN OF TITLE TO THE INTEREST IN LAND.

Problem A: Fred Smith conveyed Blackacre to Frank Thomas by deed recorded in 1955. In 1965, a stranger to the title executed and recorded a deed describing Blackacre, to Ralph Allan. Allan conveyed Blackacre to Iva Grant by deed recorded in 1985. Iva Grant conveyed Blackacre to Theodore Worth by deed recorded in 1986. There is nothing else of record since 1955. In 2013, does Worth have a marketable record title to Blackacre free of the claim of Thomas?

Answer: Yes. Worth has an unbroken chain of record title to Blackacre. There is nothing disclosed of record purporting to divest him of the interest. Although the deed from the stranger to Allan does not purport to divest the interest of Thomas, it is nevertheless an instrument which purports to create an interest in Allan and may therefore constitute the basis for the creation of a new marketable record title to Blackacre upon the expiration of 40 years after the date of its recording.

Thomas's deed is an instrument recorded more than 40 years in the past which purports to create an interest in him; the deed to Allan from a stranger to the title does not purport to divest Thomas.

Under Section 3 of the Act, these titles are held “free and clear of any interests...the existence of which depends...on any...transaction...that occurred *before...the 40 year period...*” Thomas must include the 1955 deed in order to make up his unbroken chain of title of record, because that is the recorded instrument commencing his chain of record title to Blackacre under the Act. The Act benefits Thomas’s title to Blackacre by causing it to be free and clear of any claim based on a transaction that occurred before the commencement of his chain of record title. However, Thomas’s title cannot be held free of claims arising from instruments recorded after the instrument commencing his chain of title. Because the instruments comprising Worth’s title are disclosed in the official public records applicable to the period of time upon which Thomas must rely, Thomas’s title to Blackacre is not held free of Worth’s interest. On the other hand, because Worth’s 40-year chain of record title commenced in 1965, he and his successors in interest are entitled to hold the title free and clear of the claim of Thomas, because Thomas’s title depends upon the 1955 deed, which evidences a transaction that occurred before Worth’s 40-year chain of record title. The official public records applicable to the period upon which Worth and his successors must rely to make up an unbroken chain of title of record, do not disclose Thomas’s claim to Blackacre, because the deed in favor of Thomas was recorded before the commencement of Worth’s 40-year chain of record title.

Problem B: Same facts as in Problem A, except that a deed from Frank Thomas conveying Blackacre to Burt Tillson was recorded in 1980. In 2013, does either Worth or Tillson have a marketable record title to Blackacre?

Answer: No. Neither party is entitled to the benefit of Section 3 of the Act as against the other. Worth is not entitled to the benefit of Section 3 as against Tillson even though Tillson’s title depends in part upon the deed to Thomas in 1955, because the deed from Thomas to Tillson was recorded during the 40-year period relied upon by Worth. The Act bars those claims the existence of which is not disclosed in the official public records applicable to the 40-year period being relied upon. Although Tillson has a marketable record title within the meaning of the Act, he is not entitled to the benefit of Section 3 of the Act as against Worth’s interest, because the deeds in Worth’s chain of title were recorded within the 40-

year period relied upon by Tillson. The competing claims must be resolved in accordance with other principles.

Problem C: Same facts as in Problem A, except that a deed from Frank Thomas conveying Blackacre to Burt Tillson was recorded in 2004. In 2013, does either Worth or Tillson have marketable record title to Blackacre?

Answer: No. Neither party is entitled to the benefit of Section 3 of the Act as against the other. Although the deed to Tillson was recorded more than 40 years after the deed to Thomas, the deed was recorded within Worth's 40-year chain of record title.

Authorities: MCL 565.102 and 565.103.

Comment: Under MCL 565.101, the required period of an unbroken chain of title of record is 20 years with respect to a mineral interest if the mineral interest is owned by a person other than the owner of the surface of the land. As used in the Act, "mineral interest" does not include interests in oil, gas, sand, gravel, limestone, clay or marl.

Note: See Standard 1.1 with respect to preserving an interest by recording a notice of the interest claimed, and with respect to the form and content requirements for a notice of a claimed interest or for an instrument purporting to divest an interest.

STANDARD 16.20

INCLUSION OF LENGTH OF REDEMPTION PERIOD IN PUBLISHED NOTICE OF SALE IN FORECLOSURE BY ADVERTISEMENT

STANDARD: IN FORECLOSURE BY ADVERTISEMENT OF A MORTGAGE EXECUTED ON OR AFTER JANUARY 1, 1965, THE LENGTH OF THE REDEMPTION PERIOD MUST BE INCLUDED IN THE PUBLISHED NOTICE OF SALE.

Problem A A mortgage executed in 1958 was foreclosed by advertisement in 1962. The published notice of sale did not include the length of the redemption period. Is the notice sufficient?

Answer: Yes.

Problem B A mortgage executed in 1989 was foreclosed by advertisement in 1992. The published notice of sale did not state the redemption period. Is the notice sufficient?

Answer: No.

Authorities: MCL 600.3212.

Comment: MCL 600.3232 provides that the officer making the foreclosure sale shall endorse on the deed the time when it will become operative unless redeemed. MCL 600.3248 provides that in making the endorsement the officer may rely conclusively on the redemption period included in the notice of sale. In cases where abandonment is claimed, the length of the redemption period is sometimes stated in the notice of sale in the alternative. See, MCL 600.3240(9), (10) and (11), 600.3241 and 600.3241a. The Committee expresses no opinion as to whether the inclusion of the length of the redemption period in the alternative complies with MCL 600.3212.

STANDARD 16.47

NOTICE TO CONDOMINIUM ASSOCIATION OF MORTGAGE FORECLOSURE

STANDARD: THE MORTGAGEE OF A FIRST MORTGAGE ON A CONDOMINIUM UNIT IS REQUIRED TO GIVE NOTICE TO THE CONDOMINIUM ASSOCIATION OF (A) FORECLOSURE BY ADVERTISEMENT WITHIN 10 DAYS AFTER THE FIRST PUBLICATION OF THE FORECLOSURE NOTICE, AND (B) JUDICIAL FORECLOSURE NOT LESS THAN 10 DAYS BEFORE COMMENCEMENT OF THE JUDICIAL ACTION, BUT FAILURE TO GIVE SUCH NOTICE DOES NOT INVALIDATE THE FORECLOSURE.

Problem Pilgrim Bank foreclosed its first mortgage on a condominium unit by advertisement. It did not notify the condominium association of the sale until the date of the foreclosure sale. The association had a junior assessment lien on the unit. Pilgrim Bank was the highest bidder at the sale. After the sale, Pilgrim Bank offered to sell its rights under the sheriff's deed to the association but the association refused. The redemption period expired without redemption. Does Pilgrim Bank hold title free of the association lien?

Answer: Yes.

Authorities: MCL 559.208(9). *4041-49 W. Maple Condominium Ass'n v Countrywide Home Loans, Inc.*, 282 Mich App 452; 768 NW2d 88 (2009).

Comment A: Under MCL 559.208(9), failure to give the requisite notice of foreclosure to the association does not invalidate the foreclosure but does provide the association with "legal recourse" for the violation. "'Legal recourse' can include the filing of a civil action that seeks an award of monetary damages. To recover such damages, the plaintiff must prove its actual damage with reasonable certainty. Remote, contingent, or speculative damages cannot be recovered. If actual damage is not sufficiently proved, an award of nominal damages in [the association's] favor is

proper." *4041-49 W. Maple Condominium Ass'n v Countrywide Home Loans, Inc*, 282 Mich App 452, 462; 768 NW2d 88, 93 (2009).

Comment B: MCL 559.208(9) sets forth in detail the requirements for the foreclosure notice which must be given to the condominium association.

MICHIGAN LAND TITLE STANDARDS

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