

## MICHIGAN LAND TITLE STANDARDS – Supplement No. 3 to 6<sup>th</sup> Edition (March 2015)

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1 “Preface to...” to end of Table of Contents (12-14)

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3 CHAPTER XI PARTNERSHIP  
CONVEYANCES STANDARD 11.1  
(05-07)

4 STANDARD 16.4 (05-07)

5 STANDARD 16.42 (12-13)

6 STANDARD 24.5 (12-13)

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Standard 3.18)

CHAPTER XI PARTNERSHIP  
CONVEYANCES STANDARD 11.1  
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STANDARD 16.42 (03-15)

STANDARD 24.5 (03-15)

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**MICHIGAN LAND TITLE STANDARDS**

**SIXTH EDITION**

Standard	3.19
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**SUPPLEMENT No. 3**

**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. 3)**

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) and Catharine B. LaMont (2015 -17).

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, 2017

**2015 - 2016**  
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## **STANDARD 3.19**

### **RECORDING OF COPY OF LOST OR DESTROYED UNRECORDED MORTGAGE WITH ATTACHED AFFIDAVIT COMPLYING WITH MCL 565.451a(g)**

**STANDARD:** A LOST OR DESTROYED EXECUTED BUT UNRECORDED MORTGAGE, IN RECORDABLE FORM, IS DULY RECORDED AS OF THE DATE OF RECORDING OF A LEGIBLE COPY OF THE MORTGAGE WITH AN ATTACHED AFFIDAVIT COMPLYING WITH MCL 565.451a(g), AND THE LIEN OF THE MORTGAGE IS PERFECTED AS OF THE DATE OF SUCH RECORDING.

**Problem A:** Jane Doe, the owner of Blackacre, gave a mortgage of Blackacre to Edward Lane. The mortgage complied with the recording requirements of MCL 565.201. Lane lost the mortgage before attempting to record it. Later, he found a legible copy of the unrecorded mortgage signed by the mortgagor. The mortgage was in recordable form. Lane signed and recorded an affidavit, with the copy of the mortgage attached, attesting that the mortgage was a copy of the mortgage Doe gave to him; the affidavit otherwise complied with MCL 565.451a(g). Is the mortgage recorded and is the lien of the mortgage perfected?

**Answer:** Yes.

**Authorities:** MCL 565.201 and 565.451a(g).

**Comment A:** The affidavit to which the legible copy of the lost or destroyed mortgage is attached must include the statements and information required for such an affidavit by MCL 565.451a(g), including (1) the names of the mortgagor and the mortgagee; (2) the legal description of the real property, the property tax identification number and, if applicable, the address of the real property; (3) a statement that the original mortgage was lost or destroyed, that it was signed by the parties to the unrecorded, attached mortgage and that, to the best of the affiant's knowledge, the original mortgage was delivered from the mortgagor to the mortgagee; (4) that the affiant either mailed a copy of the affidavit and the unrecorded mortgage by first class certified or registered mail, return receipt requested, to the mortgagor at the mortgagor's address last known to the affiant, or personally served a copy of the affidavit and the unrecorded mortgage on the mortgagor.

**Comment B:** The affidavit of the lost or destroyed mortgage may include only one attached mortgage.

**Comment C:** MCL 565.201(6) provides that the copy of an unrecorded mortgage attached to an affidavit that is recordable under MCL 565.451a shall “meet all requirements for recording;” accordingly, the copy of the unrecorded mortgage must include the signature of the mortgagor and comply with all other requirements for recording under MCL 565.201.

# CHAPTER XI

## PARTNERSHIP CONVEYANCES



### STANDARD 11.1

#### CONVEYANCE OF REAL PROPERTY HELD IN PARTNERSHIP NAME

**STANDARD:** REAL PROPERTY ACQUIRED IN THE NAME OF A PARTNERSHIP MAY BE CONVEYED ONLY IN THE PARTNERSHIP NAME.

**Problem A:** Blackacre was deeded to Eagle Company, a Michigan co-partnership. Later, a deed of Blackacre was given by Eagle Company, a co-partnership, by Sam Phillips and James Peters, the sole co-partners, to George Williams. Did Williams acquire marketable title to Blackacre?

**Answer:** Yes.

**Problem B:** Blackacre was deeded to Eagle Company, a Michigan co-partnership consisting of Sam Phillips and James Peters. Later, a deed of Blackacre was given by Phillips and Peters to George Williams. Did Williams acquire marketable title to Blackacre?

**Answer:** No.

**Authorities:** MCL 449.8, 449.10. *Scheurman v Farbman*, 245 Mich 688, 224 NW 604 (1929).

**Comment A:** This Standard applies also to a conveyance of real property held in the name of a limited partnership.

**Comment B:** Michigan courts recognize the judicially created legal concept of a joint venture (or joint adventure), under which persons agree to undertake a single project for profit, share in the profits and losses, contribute skills or property, and together

exercise control over the enterprise. See, e.g., *Berger v Mead*, 127 Mich App 209, 338 NW2d 919 (1983), and *Kay Investment Co, LLC v Brody Realty No. 1, LLC*, 273 Mich App 432, 731 NW2d 777 (2006). A joint venture creates a different legal relationship from that of a partnership, the principal difference being that a joint venture is for a single project and not a general business enterprise. *Kay Investment, supra*, at 437. A joint venture and a partnership also have different legal consequences, the most significant being that joint venturers hold real property as tenants in common, in contrast to a partnership which holds title to real property in the partnership name. *Kay Investment, supra*, at 440-441, citing *Swan v Ispas*, 325 Mich 39, 37 NW2d 704 (1949).

## STANDARD 16.4

### EFFECT OF SUBSEQUENT CONVEYANCE BY MORTGAGE HOLDER WHO ACQUIRES FEE TITLE

**STANDARD:** A DEED FROM A TITLE HOLDER, WHO IS ALSO THE HOLDER OF A MORTGAGE COVERING THE SAME REAL PROPERTY, CONVEYS TITLE FREE OF THE MORTGAGE, IF THE CONVEYANCE IS TO A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE OF A CONTRARY INTENT.

**Problem A:** Edward Lane, a single man, held a mortgage covering Blackacre. Later, Lane acquired fee title to Blackacre and conveyed Blackacre to Samuel Peck by a warranty deed containing no reference to the mortgage. The mortgage was then still of record. Peck was a bona fide purchaser for value without notice of any intent not to merge the fee title and mortgage. Did Peck take free of the mortgage?

**Answer:** Yes.

**Problem B:** Same facts as in Problem A, except that the deed from Lane to Peck contained the following exception: "Subject to a mortgage of record held by grantor, which mortgage grantee hereby assumes and agrees to pay." Did Peck take free of the mortgage?

**Answer:** No.

**Authorities:** *Anderson v Thompson*, 225 Mich 155, 195 NW 689 (1923); *First Nat'l Bank of Utica v Ramm*, 256 Mich 573, 240 NW 32 (1932); *Vollmer v Coenis*, 309 Mich 319, 15 NW2d 654 (1944); *Union Bank v Farmwald*, 181 Mich App 538, 450 NW2d 274 (1989); *Byerlein v Shipp*, 182 Mich App 39, 451 NW2d 565 (1990).

**Comment A:** The general rule that the mortgage interest is merged into the fee when the holder of a real property mortgage becomes the owner of the fee is subject to the exception that, when it is in the interest of the mortgagee and it is the mortgagee's intention to preserve the mortgage, there is no merger, unless the rights of the mortgagor or third persons are adversely affected thereby. A creditor of the owner of the fee whose lien is junior to the mortgage is not adversely affected because its position is not

made worse. *Union Bank, supra*. However, notwithstanding expressions of intention not to merge, merger may occur if a holding of non-merger would adversely affect a mortgagee's creditor whose lien attaches after the mortgagee acquires the fee. See, *The Reserve at Heritage Village Ass'n v Warren Financial Acquisition, LLC, et al.*, 305 Mich App 92, 850 NW2d 649 (2014); *lv den* 497 Mich 1010 (2015), *recon den* 497 Mich 1043 (2015).

**Comment B:** Recorded evidence of intent with respect to merger may appear from instruments other than deeds, such as land contracts, assignments of mortgage, partial releases of mortgage or subordination agreements.

**Comment C:** Although the intent not to merge is determined at the time the fee is acquired by the mortgagee, the effect on lienholders is determined at the time of the foreclosure. *The Reserve, supra*.

## STANDARD 16.42

### PURCHASE BY MORTGAGEE AT SALE ON FORECLOSURE BY ADVERTISEMENT

**STANDARD: A MORTGAGEE MAY PURCHASE THE MORTGAGED PROPERTY AT THE SALE ON FORECLOSURE BY ADVERTISEMENT.**

**Problem:** John Smith mortgaged Blackacre to Robert Jones. The mortgage was foreclosed by advertisement. Jones was the successful bidder at the foreclosure sale. Was the sale valid?

**Answer:** Yes.

**Authority:** MCL 600.3228.

**Comment A:** A mortgagee may credit the amount of the mortgage debt to the amount of its bid, and if the amount of the mortgagee's bid equals or is less than the amount of the debt, it need not tender cash at the sale. *Feldman v Equitable Trust Co*, 278 Mich 619, 270 NW 809 (1937).

**Comment B:** If the mortgagee bids the full amount of the mortgage debt at the foreclosure sale and is the successful bidder, the debt is satisfied and the lien of the mortgage is extinguished. *Smith v General Mortgage Corp*, 402 Mich 125, 261 NW2d 710 (1978); *Bank of Three Oaks v Lakefront Properties*, 178 Mich App 551, 444 NW2d 217 (1989); *Pulleyblank v Cape*, 179 Mich App 690, 446 NW2d 345 (1989); *Emmons v Lake States Ins Co*, 193 Mich App 460, 284 NW2d 712 (1992); *Bank of America, N. A. v First American Title Ins Co*, 499 Mich 74, 878 NW2d 816 (2016).



## STANDARD 24.5

### OWNERSHIP OF RIPARIAN RIGHTS

**STANDARD: RIPARIAN RIGHTS ATTACH ONLY TO LAND WHICH ADJOINS A NATURAL WATERCOURSE AND MAY NOT BE SEVERED FROM THAT LAND.**

**Problem:** Wilma White was the owner of Blackacre, which adjoined Gun Lake. Brenda Brown was the owner of Greenacre, which was adjacent to Blackacre but had no frontage on the lake. White constructed a channel across Blackacre connecting Gun Lake to Greenacre. Does Brown have riparian rights because of her ownership of Greenacre?

**Answer:** No. Because Greenacre does not adjoin Gun Lake, its owner has no riparian rights. Greenacre does not acquire riparian rights by virtue of the channel constructed across Blackacre because the channel is not a natural watercourse.

**Authorities:** *Ruggles v Dandison*, 284 Mich 338, 279 NW 851 (1938); *Thompson v Enz*, 379 Mich 667, 154 NW2d 473 (1967).

**Comment A:** A riparian owner may grant to one or more non-riparians the right to exercise that owner's riparian rights. The exercise of such granted rights is subject to: (a) any limitations the riparian owner imposes on the non-riparian; and (b) any existing limitations on the rights of the riparian owner, including the restriction that the cumulative exercise of rights relating to the riparian parcel not be unreasonable. Thus, in the Problem, if White permits Brown to use the channel to cross Blackacre to gain access to Gun Lake, Brown may exercise White's riparian rights in the lake, to the extent granted by White. However, Greenacre remains non-riparian land, and the rights Brown may exercise are limited by the reasonableness standard applicable to Blackacre (See, Standard 24.4, Problem B).

**Comment B:** A parcel of land separated from a natural watercourse by a highway or walkway, where the highway or walkway is contiguous to the watercourse, is riparian, unless a contrary

intention appears in the chain of title. *Croucher v Wooster*, 271 Mich 337, 260 NW 739 (1935); *Meridian Twp v Palmer*, 279 Mich 586, 273 NW 277 (1937); *Thies v Howland*, 424 Mich 282, 380 NW2d 463 (1985); 2000 *Baum Family Trust v Babel*, 488 Mich 136, 793 NW2d 633 (2010). If a dedicated highway or walkway parallels and is contiguous to a natural watercourse, the rights (if any) of the public for access to and use of the watercourse from the highway or walkway are determined by the scope of the dedication. *Thies v Howland*, *supra*; *Meridian Twp v Palmer*, *supra*; *McCardle v Smolen*, 404 Mich 89, 273 NW2d 3 (1978). If a highway or walkway (whether public or private) terminates at a natural watercourse, the way is generally deemed to provide access to the water for the use of those persons entitled to use the highway or walkway. *Backus v Detroit*, 49 Mich 110, 13 NW 380 (1882); *Thies v Howland*, *supra*; 2000 *Baum Family Trust v Babel*, *supra*.

**Comment C:** Part 301 of the Natural Resources and Environmental Protection Act, MCL 324.30101 *et seq.*, concerning inland lakes and streams, does not extend riparian rights to an artificial watercourse. *Holton v Ward*, 303 Mich App 718, 730, 847 NW2d 1 (2014), lv den 497 Mich 980, 861 NW2d 20 (2015).

**Comment D:** Riparian rights are not alienable, severable, divisible or assignable apart from the land that includes or is bounded by a natural watercourse. *Thompson v Enz*, *supra*. However, riparian rights may be subject to easements, licenses and similar interests. *Little v Kin*, 468 Mich 699, 664 NW2d 746 (2003).

**Comment E:** Michigan courts have not addressed the question of how far from the water's edge a riparian parcel may extend. It is unclear whether a riparian parcel may extend beyond the watershed or whether non-riparian land becomes riparian when added (by common ownership) to a riparian parcel. For a discussion of these concepts as developed in other jurisdictions, see 1 Beck and Kelley, *Waters and Water Rights*, § 7.02(a)(2), (3d ed, Release 2-12/2010); Tarlock, *Law of Water Rights and Resources*, § 3.47 (2011 ed).

**Caveat:** In *Newaygo Portland Cement Co v Sheridan Twp*, 137 Mich 475, 100 NW 747 (1904), a property tax case, the court approved separate assessment of bottomlands and riparian rights severed from the upland. The court did not address the propriety of the severance of riparian rights. All later cases follow the holding in

*Thompson v Enz, supra*, that riparian rights are not severable.

## STANDARD 28.5

### LIABILITY FOR CONDOMINIUM ASSOCIATION ASSESSMENTS AFTER FORECLOSURE OF A FIRST MORTGAGE

**STANDARD:** A MORTGAGEE OF A FIRST MORTGAGE OR OTHER PURCHASER OF A CONDOMINIUM UNIT AT A SHERIFF'S SALE PURSUANT TO FORECLOSURE OF THE FIRST MORTGAGE IS LIABLE ONLY FOR CONDOMINIUM ASSESSMENTS THAT BECOME DUE ON OR AFTER THE DATE OF THE SALE.

**Problem:** Southern Bank held a first mortgage on a condominium unit owned by Richard Jones. The mortgage was foreclosed and Southern Bank purchased the condominium unit at the sheriff's sale held on March 1, 2014. Jones failed to redeem. The condominium association recorded a lien against the unit for assessments that became due both before and after the date of the sheriff's sale. Is Southern Bank liable for all of the assessments?

**Answer:** No. Southern Bank is liable only for the assessments that became due on or after the date of the sheriff's sale.

**Authority:** MCL 559.158. *Wells Fargo Bank v Country Place Condominium Ass'n*, 304 Mich App 582, 848 NW2d 425 (2014); *Federal Nat'l Mortgage Ass'n v Lagoons Forest Condominium Ass'n*, 305 Mich App 258, 852 NW2d 217 (2014).

**Comment A:** MCL 600.3240(4) provides that a purchaser at a foreclosure sale who pays condominium association assessments during the redemption period may include the amount of such payments in the redemption amount.

**Comment B:** MCL 559.211(2) provides that "Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof." *Federal Nat'l Mortgage Ass'n v Lagoons Forest Condominium*

*Ass'n*, 305 Mich App 258, 852 NW2d 217 (2014) addressed the conflict between MCL 559.158 and MCL 559.211(2), holding that MCL 559.158 governs a foreclosure sale and the foreclosure extinguishes any lien for assessments that became due before the date of the foreclosure sale.

# CHAPTER XXX

## RESTRICTIVE COVENANTS



### STANDARD 30.1

#### ENFORCEABILITY OF RESTRICTIVE COVENANT

**STANDARD: A CLEAR AND UNAMBIGUOUS RESTRICTIVE COVENANT IS ENFORCEABLE.**

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

**Answer:** Yes.

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

**Comment:** The interpretation and enforcement of a restrictive covenant is fact-specific.

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

## STANDARD 30.2

### EQUITABLE EXCEPTIONS TO ENFORCEABILITY OF RESTRICTIVE COVENANT BY INJUNCTION

**STANDARD: ENFORCEABILITY OF A VALID RESTRICTIVE COVENANT BY INJUNCTION IS SUBJECT TO THREE EQUITABLE EXCEPTIONS:**

- (A) TECHNICAL VIOLATIONS WITH THE ABSENCE OF SUBSTANTIAL INJURY;**
- (B) CHANGED CONDITIONS;**
- (C) LIMITATIONS AND LACHES.**

**Problem A:** Brian Jones constructed a lakefront house with a porch that violated a restrictive covenant imposing a minimum building setback requirement. The violation did not impair the lake view from either adjacent parcel. A stated purpose of the restrictive covenant was to preserve to each homeowner the full benefit and enjoyment of the owner's home and property with no greater restriction than necessary to ensure the same advantages to other lot owners. The homeowners association sought enforcement of the building setback restriction. Is the restrictive covenant enforceable by injunction?

**Answer:** No. The violation was only technical and did not violate the purpose of the restrictive covenant because it did not impair the lake view from the adjacent parcels.

**Problem B:** John Murphy owned 12 lots in a 45-lot subdivision subject to a restrictive covenant limiting use of the lots to single family residential purposes. A house on a lot not owned by Murphy was used for business purposes. Later, the road adjacent to Murphy's lots was widened and the local government rezoned Murphy's lots for office use. Murphy sought to construct an office building on his lots. Is the restrictive covenant enforceable against Murphy by injunction?

**Answer:** Yes. The changed conditions did not change the character of the subdivision sufficiently to subvert the original purpose of the restrictive covenant.

**Problem C:** Same facts as in Problem B, except that Mary Jones, a subdivision lot owner, filed a lawsuit against John Murphy with reasonable promptness after it was clear Murphy intended to violate the restrictive covenant. Is the restrictive covenant enforceable by injunction?

**Answer:** Yes. Jones timely sought to enforce the restrictive covenant.

**Problem D:** John Smith owned a house on one lot in a 400-lot subdivision subject to a restrictive covenant limiting use of the lots to single-family residential purposes. Forty of the lots, including Smith's, fronted on a major street. Fifteen of these lots had been used for commercial purposes for varying periods of years during the previous 20 years. During that time, there was no successful attempt by other lot owners to enjoin the commercial use. Smith began to convert his house to commercial use. Is the restrictive covenant enforceable against Smith by injunction?

**Answer:** No. The character of the part of the subdivision fronting on the major street had changed from residential use to commercial use. The other lot owners acquiesced in the change to commercial use by their failure to take action against the many violations of the restrictive covenant over many years. They are therefore barred by laches from obtaining injunctive relief against Smith.

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

Problem A: *Gamble v Hannigan*, 38 Mich App 500, 196 NW2d 807 (1972).

Problem B: *Rofe v Robinson (after remand)*, 415 Mich 345, 329 NW2d 704 (1982).

Problem C: *Rofe v Robinson (after 2<sup>nd</sup> remand)*, 126 Mich App 151, 336 NW2d 778 (1983).

Problem D: *Harrigan v Mulcare*, 313 Mich 594, 22 NW2d 103 (1946).

**Comment:** A technical violation is a slight deviation or a violation that does not add to or take from the objects and purposes of the general



scheme of development. *Webb v Smith*, 224 Mich App 203, 568 NW2d 378 (1997).

## STANDARD 30.3

### RECIPROCAL NEGATIVE EASEMENT

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

**(A) A COMMON GRANTOR,**

**(B) A GENERAL PLAN, AND**

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

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

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

restriction arising from the doctrine of reciprocal negative easements.

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

**Comment:** The doctrine of reciprocal negative easements imposes the same restrictions on a parcel conveyed by a common owner of a larger tract without an express restriction that the common owner imposed on previously conveyed, expressly restricted parcels.

# MICHIGAN LAND TITLE STANDARDS

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