

CHAPTER XII

LAND CONTRACTS



STANDARD 12.1

LAND CONTRACT VENDOR'S TITLE IMPERFECT AT TIME OF EXECUTION OF LAND CONTRACT

STANDARD: A LAND CONTRACT IS NOT INVALID BECAUSE THE LAND CONTRACT VENDOR HAD IMPERFECT TITLE AT THE TIME OF EXECUTION OF THE CONTRACT IF THE VENDOR:

- (A) ENTERED INTO THE CONTRACT IN GOOD FAITH;
AND
- (B) HAD AN INTEREST IN THE REAL PROPERTY SUCH THAT THE VENDOR COULD CONVEY TITLE PURSUANT TO AND AT THE TIME STATED IN THE CONTRACT.

Problem: Robert Brown sold Blackacre to John Green by land contract. At the time of the execution of the contract, Brown held only an option to purchase Blackacre. Did Green acquire an interest in Blackacre?

Answer: Yes.

Problem B: Robert Brown sold Blackacre to Sam Black by land contract. Before receiving a deed to Blackacre, Black sold Blackacre to John Green by land contract. Did Green acquire an interest in Blackacre?

Answer: Yes.

Authorities: Problem A: *Silfver v Daenzer*, 167 Mich 362, 133 NW 16 (1911); *Rogers v Eaton*, 181 Mich 620, 148 NW 348 (1914); *Soloman v Shewitz*, 185 Mich 620, 152 NW 196 (1915).

Problem B: *Adadow v Perry*, 225 Mich 286, 196 NW 190 (1923).

Comment: Rescission may be available to a land contract vendee if the vendor did not enter into the contract in good faith, even though the vendor could convey the requisite title at the time stated in the contract. *Allen v Talbot*, 170 Mich 664, 137 NW 97 (1912).

Note: If there is no recorded evidence of a vendor's interest in the real property described in a land contract, the unrecorded interest is void against a subsequent purchaser for value and without notice. See, Standard 3.18.

STANDARD 12.2

RECORDED REFERENCE TO UNRECORDED LAND CONTRACT

STANDARD: A RECORDED REFERENCE TO AN UNRECORDED LAND CONTRACT CONSTITUTES CONSTRUCTIVE NOTICE OF THE CONTRACT.

Problem A: John Doe sold Blackacre to Edward Lane by land contract. The land contract was not recorded. Doe later conveyed Blackacre to Richard Roe by recorded deed. The deed stated that it was subject to the land contract. Does the reference in the deed constitute constructive notice of Lane's interest?

Answer: Yes.

Problem B: John Doe sold Blackacre to Edward Lane by land contract. The land contract was recorded. Doe later conveyed Blackacre to Richard Roe by recorded deed. The deed stated that it was subject to the land contract. Lane later assigned his vendee's interest to Arthur Mills. Does the reference in the deed constitute constructive notice of Mills's interest?

Answer: Yes.

Problem C: John Doe sold Blackacre to Simon Grant by land contract. Later, Grant assigned his vendee's interest to Edward Lane. The assignment was recorded. After the assignment, Doe conveyed Blackacre to Richard Roe by deed. The deed stated that it was subject to Lane's vendee's interest. Does the reference in the deed constitute constructive notice of the assignment by Grant to Lane?

Answer: Yes.

Authorities: *Fitzhugh v Barnard*, 12 Mich 104 (1863); *Baker v Mather*, 25 Mich 51 (1872); *Houseman v Gerken*, 231 Mich 253, 203 NW 841 (1925).

STANDARD 12.3

CONVEYANCE OF VENDOR'S INTEREST IN LAND CONTRACT

STANDARD: A CONVEYANCE OF THE FEE TITLE INCLUDES THE GRANTOR'S INTEREST IN A LAND CONTRACT WITHOUT IDENTIFICATION OR ASSIGNMENT OF THE CONTRACT, UNLESS THE INSTRUMENT OF CONVEYANCE EVIDENCES A CONTRARY INTENT.

Problem: Ruth Roe sold Blackacre on land contract. Later, Roe deeded Blackacre to Simon Grant. The deed did not refer to the land contract, nor did Roe make a separate assignment of the contract. Did Grant acquire the vendor's interest in the land contract?

Answer: Yes.

Authorities: *Vos v Dykema*, 26 Mich 399 (1873); *American Cedar & Lumber Co v Gustin*, 236 Mich 351, 210 NW 300 (1926); *Mundy v Mundy*, 296 Mich 578, 296 NW 685 (1941); *Mulvihill v Westgate*, 306 Mich 202, 10 NW2d 827 (1943); *Kramer v Davis*, 371 Mich 464, 124 NW2d 292 (1963).

Comment: Although under some circumstances a land contract vendor's conveyance of fee title may permit the vendee to rescind, the vendor's interest in the contract will nevertheless vest in the grantee. *Walcrath Realty Co v Van Dyke*, 263 Mich 316, 248 NW 634 (1933); *In re Reason's Estate*, 276 Mich 376, 267 NW 863 (1936); *Hornbeck v Midwest Realty, Inc*, 287 Mich 230, 283 NW 39 (1938).

STANDARD 12.4

VENDEE'S INTEREST IN LAND CONTRACT HELD BY HUSBAND AND WIFE

STANDARD: A HUSBAND AND WIFE WHO ACQUIRE A VENDEE'S INTEREST IN A LAND CONTRACT HOLD THE INTEREST AS TENANTS BY THE ENTIRETIES UNLESS THE LAND CONTRACT EVIDENCES A CONTRARY INTENT.

Problem: Edward Lane and Elsie Lane, husband and wife, entered into a land contract for the purchase of Blackacre. Edward Lane died. Later, Elsie Lane conveyed Blackacre to Simon Grant by quit claim deed. Did Grant acquire the vendee's interest in Blackacre?

Answer: Yes.

Authorities: MCL 554.44, 554.45 and 565.152. *Auditor General v Fisher*, 84 Mich 128, 47 NW 574 (1890); *Zeigen v Roiser*, 200 Mich 328, 166 NW 886 (1918); *Stevens v Wakeman*, 213 Mich 559, 182 NW 73 (1921); *In re Selle Estate*, 96 Mich App 373, 292 NW2d 147 (1980).

STANDARD 12.5

DEED PURSUANT TO LAND CONTRACT BY MICHIGAN PERSONAL REPRESENTATIVE IN DECEDENT'S ESTATE

STANDARD: A DEED PURSUANT TO A LAND CONTRACT EXECUTED BY A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE QUALIFIED IN MICHIGAN IS VALID IF THE LAND CONTRACT WAS IN EXISTENCE AT THE DATE OF DEATH OF THE VENDOR.

Problem A: Edward Lane, a Michigan resident, sold Blackacre on land contract to Simon Grant. Lane died. Fred Adams was appointed and qualified in Michigan as personal representative of Lane's estate. Adams, as personal representative, deeded Blackacre to Grant. Did Grant acquire title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except Lane was an Arizona resident. Did Grant acquire title to Blackacre?

Answer: Yes. The answer is the same whether Adams was appointed in regular or ancillary probate proceedings.

Authority: MCL 700.3715.

Comment: Personal representative, as used in this Standard, includes a Michigan personal representative appointed in formal or informal probate proceedings and a foreign personal representative qualified in Michigan pursuant to MCL 700.3101, 700.3919, 700.4203 and 700.4301.

STANDARD 12.6

DEED PURSUANT TO LAND CONTRACT OF MICHIGAN REAL PROPERTY IN DECEDENT'S ESTATE BY FOREIGN PERSONAL REPRESENTATIVE NOT APPOINTED IN MICHIGAN

STANDARD: A DEED OF MICHIGAN REAL PROPERTY IN A DECE-
DENT'S ESTATE PURSUANT TO A LAND CONTRACT BY
A FOREIGN PERSONAL REPRESENTATIVE NOT APPOINT-
ED IN MICHIGAN, VESTS TITLE IN THE GRANTEE IF AU-
THENTICATED COPIES OF THE REPRESENTATIVE'S
APPOINTMENT AND ANY BOND ARE FILED WITH THE
APPROPRIATE MICHIGAN COURT.

Problem: Edward Lane, a resident of Ohio, entered into a land contract to sell Blackacre to Simon Grant. Blackacre was located in Alcona County, Michigan. Lane died and his estate was probated in Ohio. Fred Adams was appointed and qualified in Ohio as the personal representative of Lane's estate. Adams, as the personal representative, deeded Blackacre to Grant, but did not file with the Alcona County Probate Court an authenticated copy of his Ohio appointment as personal representative of Lane's estate. Did Grant acquire title to Blackacre?

Answer: No.

Authority: MCL 700.4203.

Comment A: Before March 29, 1986, a foreign fiduciary could not maintain proceedings to foreclose a Michigan land contract in behalf of the estate of a deceased vendor. A vendee who had fulfilled a land contract held by a foreign fiduciary of the deceased vendor's estate could, however, obtain a judicial conveyance of the real property pursuant to MCL 600.3175 or could seek other equitable relief in a Michigan court.

Comment B: Foreign personal representative, as used in this Standard, is defined in MCL 700.1104(g). See also, MCL 700.4101.

Note: See Standard 7.12 with respect to conveyances by foreign probate fiduciaries.

STANDARD 12.7

FORFEITURE OR FORECLOSURE OF LAND CONTRACT OF REAL PROPERTY IN POSSESSION OF RECEIVER

STANDARD: A FORFEITURE OR FORECLOSURE OF A LAND CONTRACT OF REAL PROPERTY IN THE POSSESSION OF A RECEIVER, WITHOUT THE APPROVAL OF THE COURT, IS VOIDABLE.

Problem: Edward Lane sold Blackacre to Brown Corporation on land contract. By circuit court proceedings, Brown Corporation's interest in Blackacre was placed in receivership. While the receivership was pending, Lane forfeited the land contract without court approval. Did Lane acquire marketable title to Blackacre?

Answer: No.

Authorities: *Campau v Detroit Driving Club*, 130 Mich 417, 90 NW 49 (1902); *In re Petition of Chaffee*, 262 Mich 291, 247 NW 186 (1933).

STANDARD 12.8

MISDESCRIPTION IN NOTICE OF SALE IN JUDICIAL FORECLOSURE OF LAND CONTRACT

STANDARD: THE NOTICE OF SALE PURSUANT TO A JUDGMENT OF FORECLOSURE OF LAND CONTRACT MUST DESCRIBE THE REAL PROPERTY BEING SOLD WITH COMMON CERTAINTY SUCH THAT THE PUBLIC BY EXERCISING ORDINARY INTELLIGENCE CAN IDENTIFY THE REAL PROPERTY AND MAY BE DIRECTED TO A MEANS OF OBTAINING AN EXACT DESCRIPTION.

Problem: In foreclosure of a land contract by judicial proceedings, the real property was described in the notice of sale as “Lot 26 of Long Pines Subdivision, according to the recorded plat thereof.” No such platted subdivision exists. Is the notice valid?

Answer: No.

Authorities: MCL 600.6052 and 600.6091. *Provident Mutual Life Insurance Co v Vinton Co*, 282 Mich 84, 275 NW 776 (1937); *Guardian Depositors Corp v Keller*, 286 Mich 403, 282 NW 194 (1938).

STANDARD 12.9

PUBLICATION OF NOTICE OF SALE IN JUDICIAL FORECLOSURE OF LAND CONTRACT

STANDARD: PUBLICATION OF NOTICE OF SALE IN JUDICIAL FORECLOSURE OF A LAND CONTRACT MAY NOT BE INITIATED UNTIL AFTER THE TIME FIXED FOR PAYMENT BY THE JUDGMENT, NOR WITHIN THREE MONTHS AFTER COMMENCEMENT OF THE ACTION. THE NOTICE MUST BE PUBLISHED ONCE EACH WEEK FOR AT LEAST SIX SUCCESSIVE WEEKS, AND THE SALE MUST BE HELD NOT LESS THAN 42 DAYS AFTER THE FIRST NOTICE OF SALE.

Problem: Blackacre was sold on land contract. The land contract was foreclosed by judicial proceedings. The affidavit of publication showed that notice of sale was published once each week for six successive weeks. The notice was first published after the time fixed for payment by the judgment had expired, and more than three months after commencement of the action, but the sale was held less than 42 days after the first publication and posting of the notice of sale. Is the sale valid?

Answer: No.

Authorities: MCR 3.410(c)(2). MCL 600.6052 and 600.3115. *Carpenter v Smith*, 147 Mich App 560, 383 NW2d 248 (1985).

Comment A: The 42-day period is calculated by excluding the day of first publication of notice and including the day of the foreclosure sale. *Wesbrook Lane Realty Corp v Pokorny*, 250 Mich 548, 231 NW 66 (1930). In *Carpenter v Smith*, 147 Mich App 560, 383 NW2d 248 (1985), the court held that, even if the time from first publication of notice to the date of sale is less than 42 days, the notice of foreclosure is sufficient if it is posted more than 42 days before the sale and is published once in each of the six weeks before the sale.

Comment B: MCL 600.6091 requires that the person authorized by the court to sell real property pursuant to a judgment of foreclosure shall give notice of the sale in the same manner as is required for notice of sale of real property on execution.

STANDARD 12.10

AFFIDAVIT OF POSTING OF NOTICE OF SALE IN JUDICIAL LAND CONTRACT FORECLOSURE

STANDARD: AN AFFIDAVIT OF POSTING OF A NOTICE OF SALE MUST BE FILED WITH THE COURT IN A JUDICIAL LAND CONTRACT FORECLOSURE. THE AFFIDAVIT MUST DISCLOSE THAT A NOTICE OF SALE WAS POSTED IN THE TOWNSHIP OR CITY WHERE THE SALE WAS HELD AND, IF THE REAL PROPERTY PROPOSED TO BE SOLD IS LOCATED IN ANOTHER TOWNSHIP OR CITY, THEN ALSO IN THAT TOWNSHIP OR CITY.

Problem: Blackacre was sold at a judicial land contract foreclosure sale which was held in a city other than that where Blackacre was located. The report of sale stated that notices of sale were posted in both cities; however, the affidavit filed with the court disclosed the posting of the notice of sale only in the city where the sale occurred. Was the sale valid?

Answer: No, because the affidavit of posting did not show compliance with the statutory requirement that notice of the sale be posted in both cities. While the recital in the report of sale did not take the place of any affidavit showing proper posting, there are circumstances under which the requirements of the statute have been held inapplicable.

Authorities: MCL 600.6052. *New York Baptist Union v Atwell*, 95 Mich 239, 54 NW 760 (1893).

Comment: MCL 600.6054 provides that the failure of any officer to give the notice of sale required by MCL 600.6052 does not affect the validity of a sale made to a purchaser in good faith without notice of the omission. The courts have applied earlier similar statutory provisions to validate a judicial sale when it was alleged that the notice of sale had not been properly posted. See *Kelso v Coburn*, 334 Mich 43, 53 NW2d 686 (1952), which holds that a party attacking a judicial sale for want of posting, but making no showing of injury, may not obtain equitable relief. See also, *Cross v Fruehauf Trailer Co*, 354 Mich 455, 92 NW2d 233 (1958).

STANDARD 12.11

CONFIRMATION OF REPORT OF SALE IN JUDICIAL LAND CONTRACT FORECLOSURE

STANDARD: CONFIRMATION OF A REPORT OF SALE MAY BE NECESSARY IN A LAND CONTRACT FORECLOSURE BY JUDICIAL PROCEEDINGS.

Authorities: *Wilson v Boyer*, 275 Mich 667, 267 NW 760 (1936); *Schmeltz v Rowen*, 287 Mich 657, 284 NW 597 (1939); *Teetzel v Atkinson*, 292 Mich 592, 291 NW 18 (1940); *Gordon Grossman Building Company v Elliott*, 382 Mich 596, 171 NW2d 441 (1969); *Colby v Tobba, Inc.*, 146 Mich App 592, 381 NW2d 411 (1985).

Comment: No specific statute, court rule or opinion requires confirmation of land contract foreclosure sales; however, confirmation of sale in mortgage foreclosure proceedings has been held to be necessary. See, *Demaray v Little*, 17 Mich 386 (1868); *Howard v Bond*, 42 Mich 131, 3 NW 289 (1879); *Mich Trust Co v Cody*, 264 Mich 258, 249 NW 844 (1933); *Detroit Trust Co v Hart*, 277 Mich 561, 269 NW 598 (1936). Although not explicitly required by Michigan law for land contract foreclosure proceedings, the practice of judicial confirmation of sale in land contract foreclosures is consistent with the requirements for mortgage foreclosures. See, Standard 16.33.

STANDARD 12.12

MISDESCRIPTION IN DEED PURSUANT TO JUDICIAL LAND CONTRACT FORECLOSURE

STANDARD: THE DESCRIPTION IN A DEED GIVEN PURSUANT TO A JUDICIAL LAND CONTRACT FORECLOSURE MUST IDENTIFY THE REAL PROPERTY WITH REASONABLE CERTAINTY, BUT A CLERICAL ERROR MAY BE CORRECTED.

Problem: A land contract described lots numbered consecutively from 74 through 93. The land contract was foreclosed by judicial proceedings and the judgment and notice of sale contained the correct description. The report of sale and the deed described the real property as lots numbered consecutively from 79 through 93, and the court confirmed the sale. Later, upon discovery of the error, the court, after notice, confirmed the sale *nunc pro tunc*, based on a corrected report, and ordered the recording of a correcting deed. Was the sale valid?

Answer: Yes. It was apparent on the face of the record that the error was only clerical.

Authority: *Walsh v Colby*, 153 Mich 602, 117 NW 207 (1908).

STANDARD 12.13

TIME TO CONTEST JUDICIAL LAND CONTRACT FORECLOSURE

STANDARD: A LAND CONTRACT VENDEE MAY NOT CONTEST THE VALIDITY OF A DEED GIVEN PURSUANT TO A LAND CONTRACT FORECLOSURE SALE AFTER FIVE YEARS FROM THE DATE THE REDEMPTION PERIOD EXPIRES.

Problem: Robert Brown was the vendee of a land contract foreclosed by judicial proceedings in 1998. Brown brought an action in 2005 against the purchaser at the foreclosure sale, alleging that the sale was invalid. Was Brown's action barred?

Answer: Yes.

Authorities: MCL 600.5801. *Craig v Black*, 249 Mich 485, 229 NW 411 (1930).

Comment: MCL 600.5801 applies only if the foreclosure proceedings are claimed to be invalid by the land contract vendee or a person claiming through the vendee. A vendor may not assert MCL 600.5801 as a defense against a claim of title which is adverse to the vendor. *Showers v Robinson*, 43 Mich 502, 5 NW 988 (1880); *Donovan v Ward* 100 Mich 601, 59 NW 254 (1894); *Lau v Pontiac Commercial & Savings Bank*, 260 Mich 73, 244 NW 233 (1932).

STANDARD 12.14

REDEMPTION PERIOD FROM JUDICIAL LAND CONTRACT FORECLOSURE SALE TOLLED DURING MILITARY SERVICE

STANDARD: THE MILITARY SERVICE OF A LAND CONTRACT VENDEE TOLLS THE RUNNING OF THE PERIOD OF REDEMPTION FROM A JUDICIAL LAND CONTRACT FORECLOSURE SALE.

Problem A: Edward Lane, as vendor, and Robert Brown, as vendee, executed a land contract for the sale of Blackacre in 2000. In 2002, Lane brought judicial proceedings to foreclose the land contract. At the foreclosure sale on December 10, 2002, Blackacre was sold to Lane. In January 2003, Brown entered military service. Lane deeded Blackacre to Simon Grant on June 11, 2003. Did Grant acquire marketable title to Blackacre?

Answer: No. The redemption period would not run against Brown during his military service.

Authorities: 50 USC App 526 and 533.

Comment A: The recording of an affidavit as to the military service of a person named in an instrument affecting title to real property is permitted. After July 14, 1965, the affidavit must include a description of the foreclosed real property, by either a recital of the description or by reference to some other recorded instrument that contains the description. The affidavit is *prima facie* evidence of the facts stated. MCL 565.451a, 565.451c and 565.453.

Comment B: Unless the court issues a waiver pursuant to 50 USC App 517, no sale, foreclosure or seizure made during or within 90 days after a person's military service will be upheld as valid. 50 USC App 533.

A false affidavit of non-military service is ineffective to support an otherwise valid foreclosure proceeding. *Wilkin v Shell Oil Co*, 197 F2d 42 (CA 10, 1951), *cert den*, 344 US 854, 73 S Ct 92, 97 L Ed 663 (1952), *reh den*, 344 US 888, 73 S Ct 183, 97 L Ed 687 (1952).

STANDARD 12.15

FORFEITURE OF LAND CONTRACT AND RECOVERY OF POSSESSION BY SUMMARY PROCEEDINGS

STANDARD: THE VENDOR MAY FORFEIT A LAND CONTRACT AND RECOVER POSSESSION OF THE REAL PROPERTY BY SUMMARY PROCEEDINGS FOR NONPAYMENT OR OTHER MATERIAL BREACH IF THE LAND CONTRACT AUTHORIZES FORFEITURE.

Problem: Robert Brown sold Blackacre to Edward Lane on land contract. The land contract authorized Brown to declare a forfeiture after nonpayment or other material default. After Lane failed to make the required payments, Brown served Lane with a notice of forfeiture. Lane did not cure the default. Brown commenced summary proceedings to recover possession of Blackacre in the district court and obtained a judgment for possession. Lane failed to redeem from the judgment and the district court issued a writ of restitution. Was Lane's interest in Blackacre terminated?

Answer: Yes.

Authorities: MCL 600.5726 through 600.5744. *Dershetski v Kudner*, 279 Mich 35, 271 NW 543 (1937); *Tilchin v Boucher*, 328 Mich 355, 43 NW2d 885 (1950).

Comment: Under some circumstances a land contract vendor may, after forfeiture, lawfully retake possession of the real property by self-help rather than by summary proceedings. See, *Rothenberg v Follman*, 19 Mich App 383, 172 NW2d 845 (1969), *lv den*, 383 Mich 770, 179 NW2d 20 (1970); *Emmons v Easter*, 62 Mich App 226, 233 NW2d 239 (1975); *Day v Lacchia*, 175 Mich App 363, 437 NW2d 400 (1989).

STANDARD 12.16

FORECLOSURE OF LAND CONTRACT BY MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

STANDARD: A FORECLOSURE OF A LAND CONTRACT BY THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY COMMENCED AFTER DECEMBER 9, 1981 MUST COMPLY WITH THE PROCEDURES SET FORTH IN THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY ACT.

Authorities: MCL 125.1448 and 600.3101.

Comment: Before December 10, 1981, the Michigan State Housing Development Authority could foreclose a land contract pursuant to MCL 600.3101, *et seq.*, in the same manner as other land contracts. Under 1981 P.A. 173, effective December 10, 1981, specific and mandatory foreclosure procedures were included in the Michigan State Housing Development Authority Act. See, MCL 125.1448a through 125.1448p.

