

CHAPTER XIX

EXECUTION LEVIES AND SALES

STANDARD 19.1

DURATION OF EXECUTION LEVY

STANDARD: AN EXECUTION LEVY AGAINST REAL PROPERTY CEASES TO BE VALID UPON THE EXPIRATION OF FIVE YEARS AFTER THE DATE OF RECORDING OF THE EXECUTION LEVY.

Problem: An execution levy was recorded against Blackacre in 1997. There was no sale of Blackacre pursuant to the levy. In 2004, is the levy a lien against Blackacre?

Answer: No.

Authorities: MCL 600.6051. *Dobby v Heath*, 327 Mich 29, 41 NW2d 325 (1950).

Comment: A sale may be made under an execution levy within five years after the date of recording of the execution levy, even though the judgment on which the levy is based expired before the sale. *Mosher v Borden*, 201 Mich 106, 166 NW 972 (1918). After the five-year period has expired, a sale made under an execution levy is void. *Bliss v Slater*, 144 Mich 648, 108 NW 86 (1906).

STANDARD 19.2

EFFECT OF FAILURE TO GIVE PROPER NOTICE OF EXECUTION SALE

STANDARD: THE VALIDITY OF A SALE ON EXECUTION LEVY TO A BONA FIDE PURCHASER IS NOT AFFECTED BY FAILURE TO COMPLY WITH THE STATUTORY PROVISIONS REGARDING NOTICE OF THE SALE.

Problem: Blackacre was sold to Ira Pierce pursuant to a sale on execution levy. The sheriff did not post a notice of the sale. Pierce purchased Blackacre at the sale in good faith without notice of the failure to post. The redemption period expired and the sheriff's deed to Pierce was recorded. Does Pierce hold title to Blackacre?

Answer: Yes.

Authorities: MCL 600.6052 and 600.6054. *Grand Rapids National Bank v Kritzer*, 116 Mich 688, 75 NW 90 (1898); *Kelso v Coburn*, 334 Mich 43, 53 NW2d 686 (1952).

STANDARD 19.3

RECORDING OF SHERIFF'S DEED ON EXECUTION SALE

STANDARD: IF A SHERIFF'S DEED UNDER AN EXECUTION SALE IS NOT RECORDED WITHIN 10 YEARS AFTER THE REDEMPTION PERIOD HAS EXPIRED, ANY INTEREST IN REAL PROPERTY ACQUIRED UNDER THE SHERIFF'S DEED IS NULL AND VOID.

Problem: Blackacre was sold to Ira Pierce in 1994 at an execution sale. A sheriff's certificate of sale was recorded. No sheriff's deed was recorded. In 2006, does Pierce hold title to Blackacre?

Answer: No.

Authorities: MCL 600.6055, 600.6062 and 600.6067. *Pike v Halpin*, 188 Mich 447, 154 NW 148 (1915).

Comment: The time periods for redemption from an execution sale are set forth in MCL 600.6062 and 600.6063.

STANDARD 19.4

PRIORITY OF EXECUTION LEVY OVER UNRECORDED CONVEYANCE

STANDARD: THE LIEN OF AN EXECUTION LEVY HAS PRIORITY OVER A PRIOR UNRECORDED CONVEYANCE OF WHICH THE EXECUTION CREDITOR HAD NO ACTUAL OR CONSTRUCTIVE NOTICE.

Problem A: Oscar Roy deeded Blackacre to Simon Grant in 2004. In 2005, Earl Carr obtained a judgment against Roy and recorded an execution levy against Blackacre. Grant's deed was not recorded. Carr had no actual or constructive notice of Grant's interest. Does Carr's levy have priority over Grant's title?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Grant is in open possession of Blackacre as of the date of the levy. Does Carr's levy have priority over Grant's title?

Answer: No. Carr has constructive notice of Grant's interest.

Authorities: Problem A: MCL 600.6051. *Lachelt v McInerney*, 185 Mich 413, 152 NW 86 (1915).

Problem B: *Coleman v Hoge*, 313 Mich 181, 20 NW2d 857 (1945).

Note: See Standard 18.2 regarding the rights of an attachment creditor with respect to an unrecorded conveyance.

