

CHAPTER XXVII

LEASES

STANDARD 27.1

LEASEHOLD ESTATE CREATED BY WRITTEN INSTRUMENT

STANDARD: TO CREATE AN ENFORCEABLE LEASEHOLD ESTATE BY A WRITTEN INSTRUMENT, THE INSTRUMENT MUST:

- (A) IDENTIFY THE PARTIES;**
- (B) CONTAIN AN ADEQUATE DESCRIPTION OF THE PREMISES;**
- (C) STATE THE CONSIDERATION; AND**
- (D) SPECIFY THE LEASE TERM.**

Problem A: John Doe, the owner of Blackacre, entered into a written lease with Richard Roe. The lease described a building located on Blackacre, provided for a term of five years and stated an annual rent. Does Roe have an enforceable leasehold estate in the building on Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that instead of annual rent, the sole consideration was Roe's performance of specified repairs to the building on the leasehold premises at Roe's expense. Does Roe have an enforceable leasehold estate in Blackacre?

Answer: Yes.

Authorities: Generally and Problem A: *Bushman v Faltis*, 184 Mich 172, 150 NW 848 (1915); *Brodsky v Allen Hayosh Ind., Inc.*, 1 Mich App 591, 137 NW2d 771 (1965).

Problem B: *Shaw v Hill*, 79 Mich 86, 44 NW 422 (1889); *Dept. of Natural Resources v Board of Trustees of Westminster Church of Detroit*, 114 Mich App 99, 318 NW2d 830 (1982).

Comment: A lease for a term of more than one year or a memorandum of the lease must be in writing. MCL 566.106 and 566.108.

STANDARD 27.2

EFFECT OF CONVEYANCE OF FEE TITLE ON LESSOR'S INTEREST IN LEASE

STANDARD: A CONVEYANCE OF FEE TITLE TO REAL PROPERTY INCLUDES THE GRANTOR'S INTEREST AS LESSOR IN ANY LEASE OF THE REAL PROPERTY UNLESS A CONTRARY INTENT APPEARS IN THE INSTRUMENT OF CONVEYANCE.

Problem A: John Doe deeded Blackacre to Simon Grant. At the time of the conveyance, Blackacre was subject to a lease. Does the deed include Doe's interest in the lease?

Answer: Yes.

Authorities: *Perrin v Lepper*, 34 Mich 292 (1876); *Hansen v Prince*, 45 Mich 519, 8 NW 584 (1881); *Plaza Investment Company v Abel*, 8 Mich App 19, 153 NW2d 379 (1967).

Comment: This Standard does not address the nature or extent of the grantee's obligations and liabilities under the lease, or the extent to which rights under the lease may be reserved to the grantor under a deed or other instrument.

STANDARD 27.3

EFFECT OF FORECLOSURE ON LEASE MADE AFTER RECORDED MORTGAGE

STANDARD: FORECLOSURE OF A MORTGAGE AND EXPIRATION OF THE STATUTORY REDEMPTION PERIOD WITHOUT REDEMPTION EXTINGUISHES A LEASE MADE AFTER THE RECORDING OF THE MORTGAGE.

Problem: Marjorie Smith mortgaged Blackacre to First Bank and the mortgage was recorded. Later, Smith leased Blackacre to John Keyes. Smith defaulted on the mortgage during the term of the lease. First Bank foreclosed the mortgage and the statutory redemption period expired without redemption. Is the lease extinguished?

Answer: Yes.

Authorities: MCL 600.3236 (as to foreclosure by advertisement) and 600.3130 (as to judicial foreclosure).

Comment A: In the case of foreclosure by advertisement, a foreclosing mortgagee is not required to give personal notice of the foreclosure to a junior lessee to extinguish the lease. See MCL 600.3208 (requiring only that a foreclosing mortgagee publish a notice of foreclosure in a local newspaper for four consecutive weeks and post the notice on the mortgaged premises) and *Cheff v Edwards*, 203 Mich App 557, 513 NW2d 439 (1994). In the case of judicial foreclosure, a foreclosing mortgagee is not required to name a junior lessee in the foreclosure proceeding to extinguish the lease. *Dolase v Bellow-Claude Neon Co*, 261 Mich 57, 245 NW 596 (1933).

Comment B: This Standard does not address the effect of a non-disturbance agreement between a mortgagee and a tenant of the mortgaged property, nor the effect of a mortgagee's subordination of its mortgage to a lease.

