

## CHAPTER V

### HOMESTEAD

#### STANDARD 5.1

#### DEED OR ASSIGNMENT OF HOMESTEAD LAND BEFORE JANUARY 1, 1964

**STANDARD:** A DEED OR ASSIGNMENT OF ANY INTEREST IN HOMESTEAD LAND EXECUTED BY A MARRIED MAN BEFORE JANUARY 1, 1964 (THE EFFECTIVE DATE OF THE MICHIGAN CONSTITUTION OF 1963) IS INVALID WITHOUT THE SIGNATURE OF HIS WIFE.

**Problem A:** Richard Roe owned Blackacre and occupied it with his wife as a homestead. Roe, as a married man, deeded Blackacre in 1960 to Simon Grant. Roe's wife did not sign the deed. Did Grant acquire marketable title to Blackacre?

**Answer:** No. The Michigan Constitution of 1908, like that of 1850, required the signature of the wife on an alienation of land constituting a homestead.

**Problem B:** Richard Roe, a single man, purchased Blackacre from Joan Doe on land contract in 1959. Roe later married. In 1961, while Roe and his wife occupied Blackacre as a homestead, Roe assigned his vendee's interest to Simon Grant. Roe's wife did not sign the instrument of assignment. In 1962, Grant paid the balance owing under the land contract and Doe conveyed Blackacre to him. Did Grant acquire marketable title to Blackacre?

**Answer:** No. Roe's vendee's interest in the land contract was subject to his wife's homestead right. The interest could therefore not be alienated without the wife's signature. The same result would follow if Roe had voluntarily surrendered his vendee's interest to Doe.

**Authorities:** Generally: Michigan Constitution of 1908, Article XIV, Sec 2 (effective until January 1, 1964); Michigan Constitution of 1850, Article XVI, Sec 2; CL 1948 623.74 (repealed, January 1, 1963, by 1961 P.A. 236, being MCL 600.9901).

Problem A: *Dye v Mann*, 10 Mich 291 (1862); *Ring v Burt*, 17 Mich 465 (1869); *Lozo v Sutherland*, 38 Mich 168 (1878); *Hall v Loomis*, 63 Mich 709, 30 NW 374 (1886); *Evans v Grand Rapids, Lansing & Detroit R Co*, 68 Mich 602, 36 NW 687 (1888); *King v Welborn*, 83 Mich 195, 47 NW 106 (1890); *Maata v Kippola*, 102 Mich 116, 60 NW 300 (1894); *Mailhot v Turner*, 157 Mich 167, 121 NW 801 (1909); *Myers v Myers*, 186 Mich 215, 152 NW 934(1915).

Problem B: *Ter Keurst v Zinkiewicz*, 253 Mich 383, 235 NW 191 (1931); *Irvine v Irvine*, 337 Mich 344, 60 NW2d 298 (1953); *Adams v Evans*, 343 Mich 94, 72 NW2d 131 (1955).

**Comment A:** A conveyance of a homestead is made invalid by the absence of the wife's signature only if the conveyance would otherwise impair or destroy the homestead right. In *Weaver v Michello*, 193 Mich 572, 160 NW 612 (1916), it was held that if a married man, acting alone, conveyed a homestead to a straw man, who then conveyed the homestead to the married man and his wife, a tenancy by the entireties was thereby created.

**Comment B:** A wife who has never been a resident of Michigan can have no homestead in this state, even though her husband may have one. *Stanton v Hitchcock*, 64 Mich 316, 31 NW 395 (1887); *Leonetti v Tolton*, 264 Mich 618, 250 NW 512 (1933).

**Comment C:** This Standard deals with the effect of a conveyance of, or a contract to convey, a homestead. The Standard does not address the possible or partial invalidity of conveyances of, or contracts affecting, parcels of land which include, but which are in excess of, a 40-acre homestead, as are described in *Engle v White*, 104 Mich 15, 62 NW 154 (1895).

**Note:** See Standard 5.4 regarding the validation of a conveyance of a homestead interest by a married man without the signature of his wife.

## STANDARD 5.2

### DEED OR ASSIGNMENT OF HOMESTEAD LAND ON OR AFTER JANUARY 1, 1964

**STANDARD:** A DEED OR ASSIGNMENT OF ANY INTEREST IN HOMESTEAD LAND (EXCEPT ENTIRETIES PROPERTY), EXECUTED BY A MARRIED MAN ON OR AFTER JANUARY 1, 1964 (THE EFFECTIVE DATE OF THE MICHIGAN CONSTITUTION OF 1963), IS NOT RENDERED INVALID BY THE ABSENCE OF THE SIGNATURE OF HIS WIFE. THE TITLE OF THE GRANTEE OR ASSIGNEE MAY, HOWEVER, BE SUBJECT TO THE DOWER OF THE WIFE.

**Problem A:** Richard Roe purchased Blackacre on land contract, and occupied it with his wife as a homestead. In 1973 Roe, as a married man, assigned his vendee's interest to Simon Grant. Roe's wife did not sign the instrument of assignment. Did Grant acquire Roe's interest in Blackacre?

**Answer:** Yes.

**Problem B:** Richard Roe owned Blackacre and occupied it with his wife as a homestead. In 1973 Roe, as a married man, conveyed Blackacre to Simon Grant by deed. Roe's wife did not sign the deed. Did Grant acquire marketable title to Blackacre?

**Answer:** No. Although the deed was valid to convey Roe's interest to Grant, Grant's interest was subject to the dower of Roe's wife.

**Authority:** Since January 1, 1964, the effective date of the Michigan Constitution of 1963, there is no requirement that the wife sign an alienation of land constituting a homestead, title to which is vested in the husband.

**Comment:** Although after 1963 a married man holding title to homestead land in his name alone may validly convey his interest in the land without the signature of his wife. The conveyance does not extinguish the dower of the wife. See, Standard 4.1.



## STANDARD 5.3

### MORTGAGE OF HOMESTEAD LAND

**STANDARD:** A MARRIED MAN AND, SINCE APRIL 17, 1984, A MARRIED WOMAN, CANNOT, WITHOUT THE SIGNATURE OF THE OTHER SPOUSE, CREATE A VALID MORTGAGE UPON ANY INTEREST IN THE LAND WHICH CONSTITUTES THEIR HOMESTEAD, EXCEPT BY A MORTGAGE GIVEN TO SECURE ALL OR PART OF THE PURCHASE PRICE.

**Problem A:** Richard Roe acquired title to Blackacre in 1960, and occupied it with his wife as a homestead. Roe, as a married man, executed a mortgage describing Blackacre in 1961. Roe's wife did not sign the mortgage. Was the mortgage valid?

**Answer:** No. However, the mortgage will be valid 25 years after it is recorded unless before the expiration of the 25 years a notice of invalidity is recorded in the office of the register of deeds in the county in which the homestead land is located.

**Problem B:** Same facts as in Problem A, except that the mortgage was given in 1965. Was the mortgage valid?

**Answer:** No. Although the limitation on a mortgage of a homestead provided in the Michigan Constitution of 1908 was not included in the 1963 Michigan Constitution, the limitation on a homestead mortgage given without the signature of the wife, provided in the revised judicature act, applies to mortgages not give to secure all or a portion of the purchase price.

**Problem C:** Mary Doe acquired title to Blackacre in 1979, and occupied it as a homestead with her husband. On August 10, 1984, Doe executed a mortgage describing Blackacre. Doe's husband did not sign the mortgage. Was the mortgage valid?

**Answer:** No.

**Problem D:** In connection with his purchase of Blackacre as an intended homestead, Richard Roe, a married man, executed a purchase money mort-

gage to the former owner. Roe's wife did not sign the mortgage. Was the mortgage valid?

**Answer:** Yes. A mortgage is a purchase money mortgage if the proceeds are applied to the purchase price, irrespective of whether the vendor of the land is the mortgagee.

**Authorities:** Problem A: Michigan Constitution of 1908, Article XIV, Sec 2; Michigan Constitution of 1850, Article XVI, Sec 2; CL 1948, 623.74 (repealed by 1961 P.A. 236, being MCL 600.9901); MCL 600.6023(1)(h). *Watertown Fire Insurance Co v Grover & Baker Sewing Machine Co*, 41 Mich 181, 1 NW 961 (1879); *Shoemaker v Collins*, 49 Mich 595, 14 NW 559 (1883); *Girzi v Carey*, 58 Mich 447, 19 NW 139 (1884).

Problem B: MCL 600.6023(1)(h).

Problem C: MCL 600.6023(1)(h).

Problem D: MCL 600.6023(1)(h). CL 1948, 623.74 (repealed by 1961 P.A. 236, being MCL 600.9901). *Amphlett v Hibbard*, 29 Mich 298 (1874); *Fournier v Chisholm*, 45 Mich 417, 8 NW 100 (1881); *Converse v Barhard*, 114 Mich 622, 72 NW 611 (1987).

**Comment:** The Committee expresses no opinion as to whether MCL 600.6023(1)(h) conflicts with Article 10, Sec 1 of the Michigan Constitution of 1963.

**Note:** See Standard 5.4 regarding validation of a mortgage of homestead land in which a spouse did not join.

## STANDARD 5.4

### VALIDATION OF MORTGAGES, DEEDS AND ASSIGNMENTS OF HOMESTEAD LAND

**STANDARD:** A MORTGAGE OF HOMESTEAD LAND, ALTHOUGH INVALID WHEN EXECUTED BY ONE SPOUSE BUT NOT BY THE OTHER, BECOMES VALID AFTER IT HAS BEEN RECORDED FOR 25 YEARS IN THE OFFICE OF THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE MORTGAGED LAND IS LOCATED, UNLESS A CLAIM OF INVALIDITY IS RECORDED DURING THE 25 YEARS FOLLOWING THE RECORDING OF THE MORTGAGE. A CONVEYANCE OF ANY INTEREST IN HOMESTEAD LAND, ALTHOUGH INVALID WHEN EXECUTED BY A MARRIED MAN BUT NOT BY HIS WIFE, BECAME VALID IF IT HAD BEEN RECORDED FOR 25 YEARS BEFORE JANUARY 1, 1964 (THE EFFECTIVE DATE OF THE MICHIGAN CONSTITUTION OF 1963), IF NO CLAIM OF INVALIDITY WAS RECORDED WITHIN 25 YEARS AFTER THE DATE OF RECORDING OF THE CONVEYANCE.

**Problem:** Richard Roe acquired title to Blackacre in 1957 and occupied it with his wife as a homestead. Roe, as a married man, executed and recorded a mortgage describing Blackacre in 1958. The mortgage was not a purchase money mortgage. Roe's wife did not sign the mortgage. No claim of invalidity of the mortgage was recorded during the 25 years following the date of recording of the mortgage. In 1984 is the mortgage valid?

**Answer:** Yes.

**Authorities:** Michigan Constitution of 1908, Article XIV, Sec 2 (effective until January 1, 1964); CL 1948, 623.74 (repealed effective January 1, 1963); MCL 600.6023(1)(h), effective January 1, 1963.

**Comment A:** The Michigan Constitution of 1963 does not include a provision invalidating mortgages or other alienations of homestead land without the wife's signature. MCL 600.6023(1)(h), effective January 1, 1963, states that a mortgage (other than a purchase money mortgage) of

homestead land is invalid when not executed by both spouses, but also provides for validation of the mortgage after it has been recorded for 25 years without the recording of any claim of invalidity. There is no similar provision addressing alienations of homestead land other than by mortgage.

**Comment B:** This Standard does not address the effect, if any, of the statute of limitations, MCL 600.5801, or the provisions of MCL 600.3175.