

CHAPTER VII

CONVEYANCES BY ESTATE FIDUCIARIES AND TITLES DERIVED FROM ESTATES OF DECEDENTS



STANDARD 7.1

TITLE DERIVED THROUGH INTESTATE DECEDENT

STANDARD: THE TITLE TO REAL PROPERTY OF AN INTESTATE DECEDENT'S TITLE IS VESTED AS OF THE TIME OF DEATH IN THE HEIRS AT LAW, SUBJECT TO:

- (A) THE RIGHTS TO HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCES;
- (B) THE WIDOW'S RIGHT TO ELECT DOWER;
- (C) THE RIGHT AND DUTY OF THE PERSONAL REPRESENTATIVE TO POSSESS THE REAL PROPERTY AND TO RECEIVE THE INCOME FROM THE REAL PROPERTY;
- (D) THE POSSIBILITY OF SALE FOR ANY PURPOSE PERMITTED BY THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC);
- (E) THE LIEN OF ANY FEDERAL OR MICHIGAN ESTATE TAX; AND
- (F) ANY FEDERAL OR STATE TAX THAT IS REQUIRED TO BE PAID BEFORE THE ESTATE CAN BE CLOSED.

Problems: See, Standard 7.3.

Authorities: (a) As to the vesting of title in the heirs-at-law: *Diel v Diel*, 298 Mich 127, 298 NW 478 (1941); *Fowler v Cornwell*, 328 Mich 89, 43 NW2d 73 (1950); *Pardeike v Fargo*, 344 Mich 518, 73 NW2d 924 (1955).

(b) As to the surviving spouse's and minor children's rights to homestead, exempt property and family allowances: MCL 700.2401 through 700.2405.

(c) As to the widow's right to elect dower: MCL 700.2202.

(d) As to the duty of a personal representative to take possession: MCL 700.3709. *Casper v Ralph*, 323 Mich 173, 35 NW2d 151 (1948).

(e) As to the possibility of sale during administration: MCL 700.3617.

(f) As to the lien of federal estate tax and the statute of limitations applying to the tax: 26 USC 6324(a). See, Standards 20.9 through 20.14. See also, the Uniform Federal Lien Registration Act, MCL 211.661 *et seq.*

(g) As to the lien of Michigan inheritance tax and the statute of limitations applying to the tax: MCL 205.203 and 205.203a. This tax applies to the estates of decedents dying before October 1, 1993. MCL 205.223. As to the lien of Michigan estate tax: MCL 205.243. This tax applies to estates of decedents dying after September 30, 1993. MCL 205.223. As to the lien for other state taxes administered by the Michigan Department of Treasury under the Revenue Act: MCL 205.29. See, Standards 21.1 and 21.2. See also, the State Tax Lien Registration Act, MCL 211.681 *et seq.*

(h) As to the payment of Michigan individual income tax by the estate: MCL 206.451.

Comment A: The former Revised Probate Code (RPC) established a surviving spouse's right to remain in the dwelling house for a period not to exceed one year. MCL 700.282a. Under EPIC, MCL 700.1101 *et seq.*, effective April 1, 2000, which repealed the RPC, there is no parallel provision. But see MCL 700.2403 which may permit the value of continued possession of the home for a definite period to be

established and granted to the surviving spouse as part of the family allowance.

Comment B: Article VIII of EPIC, MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or proceedings commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

STANDARD 7.2

TITLE DERIVED THROUGH TESTATE DECEDENT

STANDARD: THE WILL OF A TESTATE DECEDENT, WHEN PROBATED, CONVEYS THE DECEDENT'S TITLE TO REAL PROPERTY AS OF THE TIME OF DEATH SUBJECT TO:

- (A) THE RIGHT OF THE SURVIVING SPOUSE TO ELECT A STATUTORY SHARE;**
- (B) THE RIGHT TO HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE;**
- (C) THE WIDOW'S RIGHT TO ELECT DOWER;**
- (D) THE RIGHT AND DUTY OF THE PERSONAL REPRESENTATIVE TO POSSESS THE REAL PROPERTY AND TO RECEIVE THE INCOME FROM IT;**
- (E) THE POSSIBILITY OF SALE FOR ANY PURPOSE PERMITTED BY THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC);**
- (F) THE LIEN OF ANY FEDERAL OR MICHIGAN ESTATE TAX; AND**
- (G) ANY FEDERAL OR STATE TAX THAT IS REQUIRED TO BE PAID BEFORE THE ESTATE CAN BE CLOSED.**

Problems: See, Standard 7.3.

Authorities: (a) As to the conveyance of title by will: *In re Allen's Estate*, 240 Mich 661, 216 NW 446 (1927); *Stewart v Hunt*, 303 Mich 161, 5 NW2d 737 (1942).

(b) As to the surviving spouse's right to elect a statutory share: MCL 700.2202.

(c) As to the surviving spouse's and minor children's right to homestead, exempt property and family allowances: MCL 700.2401 through 700.2405.

(d) As to the widow's right to elect dower: MCL 700.2202.

(e) As to the duty of a personal representative to take possession: MCL 700.3709.

(f) As to the possibility of sale during administration: MCL 700.3902.

(g) As to the lien of federal estate tax and the statute of limitations applying to the tax: 26 USC 6324(a). See, Standards 20.9 through 20.14. See also, the Uniform Federal Lien Registration Act, MCL 211.661 *et seq.*

(h) As to the lien of Michigan inheritance tax and the statute of limitations applying to the tax: MCL 205.203 and 205.203a. This tax applies to the estates of decedents dying before October 1, 1993. MCL 205.223. As to the lien of Michigan estate tax: MCL 205.243. This tax applies to the estates of decedents dying after September 30, 1993. MCL 205.223. As to the lien for other state taxes administered by the Michigan Department of Treasury under the Revenue Act: MCL 205.29. See, Standards 21.1 and 21.2. See also, the State Tax Lien Registration Act, MCL 211.681 *et seq.*

(i) As to the payment of Michigan individual income tax by the estate: MCL 206.451.

Comment A: The former Revised Probate Code (RPC) established a surviving spouse's right to remain in the dwelling house for a period not to exceed one year. MCL 700.282a. Under EPIC, MCL 700.1101 *et seq.*, effective April 1, 2000, which repealed the RPC, there is no parallel provision. But see MCL 700.2403 which may permit the value of continued possession of the home for a definite period to be established and granted to the surviving spouse as part of the family allowance.

Comment B: Article VIII of EPIC, MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or proceedings commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

STANDARD 7.3

DISTRIBUTION OF ESTATE REAL PROPERTY BY COURT ORDER

STANDARD: A COURT ORDER OF DISTRIBUTION OF ESTATE REAL PROPERTY DETERMINES:

- (A) THE PERSONS ENTITLED TO THE ESTATE AND THEIR PROPORTIONATE SHARES OF THE ESTATE, WHETHER BY THE LAW OF DESCENT, THE WILL, OR AN AGREEMENT; AND**
- (B) THAT THE ESTATE HAS BEEN FULLY ADMINISTERED SO THAT THE ESTATE REAL PROPERTY, TITLE TO WHICH VESTED AT THE DECEDENT'S DEATH IN HEIRS AT LAW OR THE DEVISEES, IS FREE OF THE DEBTS AND CHARGES TO WHICH IT WAS SUBJECT.**

Problem A: Jane Doe, owner of Blackacre, died testate. Her estate was probated. Blackacre, which was not specifically devised, was not included in the inventory or described in the order distributing the residue. Lucy Doe, sole residuary devisee, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No, unless it can be established that there is no lien for federal estate tax or Michigan estate or inheritance tax attaching to Blackacre. If Blackacre had been included as an administered asset there might have been increased liability for estate or inheritance taxes, the lien of which attached at Jane Doe's death.

Problem B: Same facts as in Problem A, except that Jane Doe died intestate and Blackacre was deeded by Lucy Doe, her sole heir, to Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. The reasoning is the same as in the Answer to Problem A.

Problem C: John Doe, owner of Blackacre, died testate. His will was admitted to probate. Blackacre was devised to his widow for life, with a vested remainder to Doe's niece. Blackacre was included in the inventory.

All debts, taxes and administration expenses were paid. Notice of hearing on the final account and on the petition for distribution of the residue was given to all parties in interest. The court entered an order allowing the account and distributing Blackacre to the widow outright. After the death of the widow, the niece deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Although the order of distribution was erroneous, it had the effect of an order construing the will and became res judicata unless set aside or reversed. An erroneous order that is no longer appealable conveys title contrary to the laws of descent, the will, or an agreement, as of the date of the decedent's death. Accordingly, title to Blackacre became vested in the widow and, upon her death, vested in her heirs or devisees.

Problem D: John Doe, owner of Blackacre, died intestate leaving his four children, Mary, Jane, Harry and Joseph Doe as his heirs. His estate was probated, Blackacre was inventoried and all debts, taxes and expenses paid. Notice of hearing on the final account and petition for distribution of residue was given. Through error, the order of distribution assigned the residue to Mary Doe and Jane Doe. Three years later they deeded Blackacre to Simon Grant, a good faith purchaser for value. Did Grant acquire marketable title to Blackacre?

Answer: Yes. The order of distribution is, in effect, a determination of heirs and is not subject to collateral attack, as against a good faith purchaser for value.

Problem E: John Doe, owner of Blackacre, died intestate July 1, 1979, leaving his four daughters as his heirs. On July 15, 1979, the daughters deeded Blackacre to Simon Grant. Later Doe's estate was probated and an order of distribution was entered assigning the residue to the four daughters. Did Grant acquire marketable title to Blackacre?

Answer: Yes. Title vested in the heirs upon Doe's death.

Problem F: John Doe, owner of Blackacre, died intestate in 1992. A petition for administration of Doe's estate was filed listing his four sisters as his heirs. A personal representative was appointed and qualified. An inventory was filed listing Blackacre and other property of an aggregate value in excess of \$100,000. A hearing on claims was held but

no claim was presented. In 1999, the four sisters deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. The possibility still exists of the entry of an order distributing the estate real property which, through error or otherwise, would constitute a determination of different heirs. Although the statute of limitations may bar the lien of federal estate tax, the lien of Michigan inheritance tax is not barred in the absence of an order determining the tax or an order distributing the estate real property.

Problem G: John Doe, owner of Blackacre, died intestate. His estate was probated. Blackacre was inventoried and all debts, taxes and expenses were paid. The personal representative filed a final account, which was allowed, and an order of distribution was entered assigning the residue to Doe's heirs, but Blackacre was described erroneously. The heirs deeded Blackacre to Simon Grant using the correct description. Did Grant acquire marketable title to Blackacre?

Answer: Yes. Title vested in the heirs upon Doe's death. Misdescription of estate real property in the order of distribution was immaterial. The result would have been the same had Doe died testate.

Problem H: Same facts as in Problem G, except that the order of distribution did not refer to Blackacre. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem I: John Doe, owner of Blackacre, died intestate leaving his four children, Mary, Jane, Harry and Joseph Doe as his heirs. His estate was probated, Blackacre was inventoried and all debts, taxes and expenses paid. Notice of hearing on the final account was given. The order of distribution assigned Blackacre to Mary Doe in accordance with a written agreement signed by all of the heirs which was filed with the court and referred to in the order. The personal representative of the estate deeded Blackacre to Mary Doe. Did Mary Doe acquire marketable title to Blackacre?

Answer: Yes.

Authorities: Generally: MCL 600.841, 700.3501 *et seq.*, 700.3805, 700.3914, 700.3952 and 700.3953.

Problems A and B: 26 USC 6324(a). MCL 205.203. *In re Cress' Estate*, 335 Mich 551, 56 NW2d 380 (1953).

Problem C: *Calhoun v Cracknell*, 202 Mich 430, 168 NW 547 (1918); *Thompson v Thompson*, 229 Mich 526, 201 NW 533 (1924); *Harvey v Security Trust Co*, 242 Mich 284, 218 NW 679 (1928); *Loesch v First National Bank of Ann Arbor*, 249 Mich 326, 228 NW 717 (1930); *In re Dowling's Estate*, 308 Mich 129, 13 NW2d 233 (1944); *Dow v Scully*, 376 Mich 84, 135 NW2d 360 (1965).

Problem D: *Benjamin v Fairchild*, 242 Mich 274, 218 NW 663 (1928); *In re Estate of Taylor*, 271 Mich 404, 260 NW 895 (1935).

Problem E: *In re Allen's Estate*, 240 Mich 661, 216 NW 446 (1927); *Kinne v Farmers Mutual Insurance Co*, 241 Mich 637, 217 NW 755 (1928); *Stewart v Hunt*, 303 Mich 161, 5 NW2d 737 (1942). *Nerreter v Bissell*, 304 Mich 175, 7 NW2d 261 (1943); *Jones v Causey*, 45 Mich App 271, 206 NW2d 534 (1973), leave to appeal denied, 389 Mich 817.

Problem F: MCL 700.3402 and 700.3412.

Problem G: MCL 700.3505; and 700.3908 through 700.3912.

Problem H: MCL 700.3505; and 700.3908 through 700.3912

Problem I: MCL 700.3914. See also, MCL 700.3906, 700.3909, 700.3910 and 700.3912.

Note 1: As to the lien of Michigan inheritance tax and the statute of limitations applying to the tax, see MCL 205.203 and 205.203a. This tax applies to estates of decedents dying before October 1, 1993 (See, MCL 205.223.) As to the lien of Michigan estate tax, see MCL 205.243. This tax applies to estates of decedents dying after September 30, 1993 (See, MCL 205.223.) As to the lien for other state taxes administered by the Michigan Department of Treasury under the Revenue Act, see MCL 205.29. See also, Standards 21.1 and 21.2

and the State Tax Lien Registration Act, MCL 211.681 *et seq.* With respect to federal estate tax liens, see Standards 20.9 through 20.14.

Note 2: After June 30, 1979, probate proceedings can be either independent or supervised.

Caveat: If at the time of entry of an order of distribution of estate real property, the debts, expenses, taxes and other charges against the estate have not been paid or provided for, the entry of the order of distribution will not release or discharge these obligations.

STANDARD 7.4

INSIGNIFICANT IRREGULARITIES IN SUPERVISED PROBATE SALE

STANDARD: NOTWITHSTANDING A NON-JURISDICTIONAL IRREGULARITY IN SUPERVISED PROBATE SALES PROCEEDINGS BEFORE APRIL 1, 2000, A CONVEYANCE OF AN INTEREST IN REAL PROPERTY BY A FIDUCIARY MAY NOT BE AVOIDED IF:

- (A) THE SALE WAS AUTHORIZED BY LAW;
- (B) ANY REQUIRED BOND WAS GIVEN AND APPROVED;
- (C) THE PRESCRIBED NOTICE OF THE SALE WAS GIVEN;
- (D) THE SALE WAS CONFIRMED; AND
- (E) THE REAL PROPERTY IS HELD BY ONE WHO PURCHASED IN GOOD FAITH.

Problem A: Jane Doe, the owner of Blackacre, died intestate. Her estate was probated and Richard Roe qualified as personal representative. Roe as personal representative filed a report of sale of Blackacre to Simon Grant, a purchaser in good faith, for the purpose of paying debts. The report was confirmed and a bond on sale was filed and approved. Roe deeded Blackacre to Grant. Through error Roe was described as executor rather than as personal representative in the petition, the report of sale and the deed. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that certain of Jane Doe's heirs were minors and no general guardian or guardian ad litem acted or was appointed for them. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem C: Same facts as in Problem A, except that the personal representative failed to give proper notice to the heirs of the hearing on his report of the sale. Did Grant acquire marketable title to Blackacre?

Answer: No. Failure to give the notice was jurisdictional.

Authorities: Generally: *Osman v Traphagen*, 23 Mich 80 (1871); *Goodall v Henkel*, 60 Mich 382, 27 NW 556 (1886); *Fender v Powers*, 67 Mich 433, 35 NW 80 (1887).

Problem A: *Norman v Olney*, 64 Mich 553, 31 NW 555 (1887).

Problem B: *Coon v Fry*, 6 Mich 506 (1859); *Wheelock v Lake*, 117 Mich 11, 75 NW 140 (1898).

Problem C: *Stowell v Johnson*, 280 Mich 627, 274 NW 354 (1937).

Comment A: Problem C does not address the application of MCL 600.5801, the general statute of limitations, or of MCL 565.492, which provides that the recorded fiduciary's deed is *prima facie* evidence of the regularity of the sale.

Comment B: Before July 1, 1979, the effective date of the Revised Probate Code (RPC), validation of fiduciaries' conveyances was governed by MCL 709.38. MCL 709.38 was repealed by MCL 700.993, and replaced by MCL 700.658 of the RPC which contained substantially the same provisions. The Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, effective April 1, 2000, has no provision comparable to MCL 700.658. Transactions authorized for personal representatives are now set forth in MCL 700.3715.

STANDARD 7.5

DEED UNDER POWER OF SALE GRANTED TO TWO OR MORE PERSONAL REPRESENTATIVES

STANDARD: ALL QUALIFIED AND SURVIVING PERSONAL REPRESENTATIVES MUST EXECUTE A DEED PURSUANT TO A TESTAMENTARY POWER OF SALE UNLESS THE WILL AUTHORIZES LESS THAN ALL OF THEM TO CONVEY.

Problem: The will of John Doe naming Richard Roe and Edgar Poe as personal representatives with power of sale was admitted to probate. Roe and Poe both qualified. Richard Roe, as personal representative, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Unless there is recorded evidence of the prior death or resignation of Poe or some provision in the will authorizing only one personal representative to convey, all personal representatives must join in executing a deed.

Authorities: MCL 700.3715(f). *Nichols v Pospiech*, 289 Mich 324, 286 NW 633 (1939).

Note: See Standards 7.1 and 7.2 for other rights or interests to which any conveyance of a decedent's real property may be subject.

STANDARD 7.6

POWERS OF SUCCESSOR OR SURVIVING PERSONAL REPRESENTATIVES

STANDARD: A SUCCESSOR PERSONAL REPRESENTATIVE HAS THE SAME POWERS AND DUTIES AS THE ORIGINAL PERSONAL REPRESENTATIVE TO COMPLETE THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATE, BUT THE SUCCESSOR PERSONAL REPRESENTATIVE OF A TESTATE ESTATE MAY NOT EXERCISE A POWER EXPRESSLY MADE PERSONAL TO THE PERSONAL REPRESENTATIVE NAMED IN THE WILL.

UNLESS THE WILL PROVIDES OTHERWISE:

- (A) EACH POWER EXERCISABLE BY SURVIVING PERSONAL CO-REPRESENTATIVE(S) MAY BE EXERCISED BY THE REMAINING PERSONAL CO-REPRESENTATIVE(S) AFTER THE APPOINTMENT OF ONE OR MORE IS TERMINATED; AND**
- (B) IF ANY PERSON NOMINATED AS PERSONAL CO-REPRESENTATIVE(S) IS NOT APPOINTED, THE REMAINING APPOINTED PERSONAL CO-REPRESENTATIVE(S) MAY EXERCISE ALL THE POWERS INCIDENT TO THE OFFICE.**

Problem A: The will of John Doe, the owner of Blackacre, was admitted to probate. It contained a valid power of sale and named Richard Roe, Edgar Poe and Samuel Smith as personal representatives. Roe and Poe were appointed and qualified as personal representatives. No rights of a surviving spouse were involved. Smith was not appointed. Poe and Roe, as personal representatives, deeded Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes, unless it appears from the will that the testator intended to limit the exercise of the power of sale to all of the named personal representatives acting together.

Problem B: The will of Jane Doe, the owner of Blackacre, was admitted to probate. It contained a valid power of sale and named Richard Roe, Edgar Poe and Samuel Smith as personal representatives. Smith was appointed and qualified but died (or resigned). Poe predeceased Jane Doe, and Roe declined to serve. William West was appointed and qualified as personal representative. No rights of a surviving spouse were involved. West, as personal representative, deeded Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes, unless it appears from the will that the testatrix intended to limit the exercise of the power of sale to the named personal representatives.

Problem C: The will of John Doe, the owner of Blackacre, was admitted to probate. It contained a valid power of sale and appointed Richard Roe and Edgar Poe as personal representatives. After Roe and Poe had qualified, Poe died (or resigned). No rights of a surviving spouse were involved. Roe, as surviving personal representative, deeded Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes, unless it appears from the will that the testator intended to limit the exercise of the power of sale to both of the named personal representatives acting together.

Problem D: Jane Doe, a resident of Colorado, was the owner of Blackacre, located in Michigan. She died and her will, appointing Richard Roe as personal representative and containing a valid power of sale, was admitted to probate in Colorado. Ancillary administration of the estate occurred in Michigan and the will was admitted to probate. William West was appointed as personal representative and qualified. In this capacity, West deeded Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes, unless it appears from the will that the testatrix intended to limit the exercise of the power of sale to the named personal representative.

Authorities: Generally: MCL 700.3716 and 700.3718.

Problem A: MCL 700.3716 and 700.3718.

Problem B: MCL 700.3716, 700.3717 and 700.3618.

Problem C: MCL 700.3613, 700.3718 and 700.7405.

Problem D: MCL 700.3716 and 700.3718.

Comment: An independent personal representative may not exercise a testamentary power expressly made personal to the personal representative named in the will. MCL 700.3613 and 700.3716.

Note: See Standards 7.1 and 7.2 for other rights or interests to which any conveyance of a decedent's real property may be subject.

STANDARD 7.7

TESTAMENTARY POWER TO SELL DOES NOT INCLUDE POWER TO MORTGAGE IN SUPERVISED PROBATE PROCEEDINGS COMMENCED BEFORE APRIL 1, 2000

STANDARD: A TESTAMENTARY POWER TO SELL REAL PROPERTY DOES NOT INCLUDE THE POWER TO MORTGAGE REAL PROPERTY IN SUPERVISED PROBATE PROCEEDINGS COMMENCED BEFORE APRIL 1, 2000.

Problem: The will of John Doe, the owner of Blackacre, was admitted to probate under supervised probate proceedings commenced on March 1, 2000. The will appointed Richard Roe as personal representative and contained a valid power of sale. Roe qualified as personal representative. Roe, as personal representative, borrowed \$10,000 which he used for proper estate purposes. To secure the loan, Roe executed a mortgage describing Blackacre. Is the mortgage valid?

Answer: No.

Authority: *Parkhurst v Trumbull*, 130 Mich 408, 90 NW 25 (1902).

Comment A: See Standard 7.17 with respect to the power to mortgage by an independent personal representative under the Revised Probate Code.

STANDARD 7.8

LIMITATION ON EXERCISE OF TESTAMENTARY POWER OF SALE

STANDARD: A TESTAMENTARY POWER OF SALE, GIVEN FOR A SPECIFIC PURPOSE, MAY BE EXERCISED ONLY FOR THAT PURPOSE.

Problem: The will of John Doe, the owner of Blackacre, was admitted to probate. The will named Richard Roe as personal representative, provided for the support of Doe's children during their minority and contained a valid power of sale of Blackacre, qualified by the phrase "if the sale is necessary to provide funds to support my children while they are minors." The petition for probate disclosed that at the date of Doe's death each of his children had reached majority. No rights of a surviving spouse were involved. Roe was appointed and qualified as personal representative, and gave a deed describing Blackacre to Simon Grant under the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: No.

Authorities: MCL 700.3715. *Petit v Flint & Pere Marquette R. Co*, 114 Mich 362, 72 NW 238 (1897).

STANDARD 7.9

DOWER AS AFFECTING PROBATE SALES

STANDARD: TITLE TO REAL PROPERTY OF A MARRIED MALE DECEDENT DOMICILED IN MICHIGAN AT THE TIME OF HIS DEATH IS SUBJECT TO THE DOWER INTEREST OF HIS WIDOW, UNLESS:

(A) DOWER HAS BEEN BARRED;

**(B) THE WIDOW HAS ELECTED NOT TO TAKE DOWER;
OR**

(C) THE WIDOW HAS FAILED TO MAKE A TIMELY ELECTION AFTER PROPER NOTICE.

Problem A: John Doe, domiciled in Michigan and owner of Blackacre, died intestate leaving Mary Doe, his widow, as one of his heirs. Richard Roe was appointed and qualified as personal representative. Roe negotiated a sale of Blackacre for the purpose of paying debts and expenses of administration except that no notice of right of election was given to the widow. Roe filed a report of sale to Simon Grant, gave notice of hearing on the report of sale and filed and had approved the bond on sale as required by the court. The sale was confirmed and Roe conveyed to Grant by personal representative's deed. Did Grant acquire marketable title to Blackacre?

Answer: No. Under the facts stated, Mary Doe has not barred dower and the statutory notice has not been served upon her; therefore her right to elect to take dower still exists. The result would have been the same if Doe had died testate without specifically devising Blackacre.

Problem B: Same facts as in Problem A, except that Doe, while married to Mary Doe, sold Blackacre on land contract to Simon Grant. Mary Doe did not sign the land contract. Richard Roe, as personal representative, upon receiving the balance due under the land contract, conveyed to Grant by deed pursuant to the land contract as provided by MCL 700.3715. Did Grant acquire marketable title to Blackacre?

Answer: No.

Problem C: Same facts as in Problem A, except that (1) Blackacre was occupied by the widow, (2) the personal representative timely served on the widow statutory notice of right of election, (3) proof of service was filed, and (4) the widow failed to make an election within the statutory period. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem D: Same facts as in Problem A, except that after execution of the personal representative's deed to Simon Grant, the widow gave a quit claim deed of Blackacre to Grant. The deed recited her intent to bar her dower. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Authorities: Problems A and B: MCL 700.2202. *Rosen v Tackett*, 222 Mich 673, 193 NW 192 (1923).

Problem C: MCL 700.2203.

Problem D: MCL 558.13 (as to barring of dower).

Comment: Under certain circumstances, laches or estoppel may bar a widow's claim of consummate dower as against the validity of deeds such as are discussed in this Standard. See, *Rosen v Tackett*, *supra*.

Note: See Standard 4.7 as to the inchoate dower of a non-resident wife.

Caveat: If a decedent was not domiciled in Michigan, the surviving spouse is entitled to elect against the will only as may be provided by the law of the decedent's domiciliary state at the date of death. See, MCL 700.2202(6).

STANDARD 7.10

PURCHASE OF ESTATE REAL PROPERTY BY FIDUCIARY BEFORE JULY 1, 1979

STANDARD: THE TITLE ACQUIRED BY A FIDUCIARY PURCHASING ESTATE REAL PROPERTY IN AN INDIVIDUAL CAPACITY, DIRECTLY OR INDIRECTLY, BEFORE JULY 1, 1979 IS NOT MARKETABLE.

Problem A: The will of John Doe, the owner of Blackacre, was admitted to probate. The will appointed Richard Roe as executor and contained a valid power of sale. On May 2, 1979, Roe, who had qualified as executor, deeded Blackacre pursuant to the power of sale to Simon Grant who, with his wife, then deeded Blackacre to Roe. Did Roe acquire marketable title to Blackacre?

Answer: No.

Problem B: John Doe, the owner of Blackacre, died intestate. Richard Roe was appointed and qualified as administrator of Doe's estate. Roe obtained a license to sell Blackacre and sold it on May 2, 1979 to Simon Grant. The sale was confirmed. Grant and his wife then deeded Blackacre to Roe and Alice Roe, husband and wife. Did the Roes acquire marketable title to Blackacre?

Answer: No.

Authorities: MCL 709.27 (repealed effective July 1, 1979 by 1962 P.A. 83, being MCL 700.993). *Sheldon v Estate of Rice*, 30 Mich 296 (1874); *Houlihan v Fogarty*, 162 Mich 492, 127 NW 793 (1910); *In re Culhane's Estate*, 269 Mich 68, 256 NW 807 (1934); *Schutz v Kalamazoo Improvement Co*, 284 Mich 305, 279 NW 521 (1938); *Smith v Withey*, 309 Mich 364, 15 NW2d 671 (1944); *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978); *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980).

Comment A: Laches or estoppel may bar claims of heirs or others claiming under the estate, contesting the validity of deeds such as are discussed in this Standard.

Comment B: The Committee expresses no opinion regarding the validity of a conveyance to a fiduciary under a will expressly authorizing the fiduciary to purchase real property from the estate.

Comment C: *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978) and *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980) held that transactions in violation of MCL 709.27 are merely voidable, not void.

Comment D: The limitations period for actions to recover real property claimed by another through a deed made upon sale by an executor, administrator, guardian or testamentary trustee is five years. MCL 600.5801.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent. See Standard 8.7 with respect to self-dealing transactions by non-testamentary trustees.

STANDARD 7.11-1

PURCHASE OF ESTATE REAL PROPERTY BY FIDUCIARY AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000

STANDARD: THE TITLE ACQUIRED BY A FIDUCIARY PURCHASING ESTATE REAL PROPERTY IN AN INDIVIDUAL CAPACITY, DIRECTLY OR INDIRECTLY, AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000, IS NOT MARKETABLE UNLESS THE SALE WAS MADE WITH EXPRESS COURT AUTHORITY AND AFTER NOTICE TO ALL INTERESTED PARTIES AND A HEARING. IN INDEPENDENT PROBATE PROCEEDINGS FOR A DECEDENT'S ESTATE, TITLE IS ALSO MARKETABLE IF THE WILL OR A CONTRACT ENTERED INTO BY THE DECEDENT EXPRESSLY AUTHORIZED THE TRANSACTION OR ALL INTERESTED PARTIES CONSENTED AFTER FAIR DISCLOSURE.

Problem A: The will of John Doe, the owner of Blackacre, was admitted to probate. The will appointed Richard Roe as personal representative and contained a valid power of sale. Roe, after qualifying as personal representative on November 21, 1999, deeded Blackacre to Simon Grant who, with his wife, then deeded Blackacre to Roe. Did Roe acquire marketable title to Blackacre?

Answer: No.

Problem B: John Doe, the owner of Blackacre, died intestate. Richard Roe was appointed and qualified as personal representative of Doe's estate. On November 21, 1999, Roe sold Blackacre to Simon Grant. The sale was confirmed. Grant and his wife then deeded Blackacre to Roe and Alice Roe, husband and wife. Did the Roes acquire marketable title to Blackacre?

Answer: No.

Problem C: John Doe, the owner of Blackacre, died intestate on July 30, 1999. Richard Roe was appointed and qualified as personal representative of Doe's estate. Roe deeded Blackacre to himself on September 1, 1999 with probate court authority after petition to the court, notice to

all interested parties and a hearing. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem D: Richard Roe, while acting as conservator of the estate of Mary Roe, a minor and the owner of Blackacre, sold Blackacre to himself on August 1, 1999 with probate court authority after petition to the court, notice to all interested parties and a hearing. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem E: Same facts as in Problem C, except Roe, as independent personal representative, deeded Blackacre to himself pursuant to specific authority contained in John Doe's will. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem F: Same facts as in Problem C, except Roe as independent personal representative, deeded Blackacre to himself after a fair disclosure of the pending transaction was made to and written consent was obtained from all interested parties and filed in the proceedings. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem G: Same facts as in Problem C, except Roe, as personal representative in supervised proceedings, deeded Blackacre to himself pursuant to specific authority contained in Doe's will. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Authorities: Problems A and B: MCL 700.642 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*). *Sheldon v Estate of Rice*, 30 Mich 296 (1874); *Houlihan v Fogarty*, 162 Mich 492, 127 NW 793 (1910); *In re Culhane's Estate*, 269 Mich 68, 256 NW 807 (1934); *Schutz v Kalamazoo Improvement Co*, 284 Mich 305, 279 NW 521 (1938); *Smith v Withey*, 309 Mich 364, 15 NW2d 671 (1944); *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978); *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980).

Problem C: MCL 700.642 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Problem D: MCL 700.482 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Problems E and F: MCL 700.345 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Problem G: MCL 700.664 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Comment A: Laches or estoppel may bar claims of heirs or others claiming under the estate, contesting the validity of deeds such as are discussed in this Standard.

Comment B: *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978) and *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980) held that transactions in violation of MCL 709.27, repealed by the Revised Probate Code (RPC), now MCL 700.642 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*), are merely voidable, not void.

Comment C: MCL 700.992 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*) provided transition rules for the application of the RPC to proceedings pending on July 1, 1979 or commenced after June 30, 1979 for a decedent whose death occurred before July 1, 1979.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent. See Standard 8.7 with respect to self-dealing transactions by non-testamentary trustees.

STANDARD 7.11-2

PURCHASE OF ESTATE REAL PROPERTY BY FIDUCIARY AFTER MARCH 31, 2000

STANDARD: THE TITLE ACQUIRED BY A FIDUCIARY PURCHASING ESTATE REAL PROPERTY IN AN INDIVIDUAL CAPACITY, DIRECTLY OR INDIRECTLY, AFTER MARCH 31, 2000 IS NOT MARKETABLE UNLESS:

- (A) THE SALE IS MADE WITH EXPRESS COURT AUTHORITY AND AFTER NOTICE TO ALL INTERESTED PARTIES AND A HEARING;
- (B) THE WILL OR A CONTRACT ENTERED INTO BY THE DECEDENT EXPRESSLY AUTHORIZED THE TRANSACTION; OR
- (C) ALL INTERESTED PARTIES CONSENT TO THE SALE AFTER FAIR DISCLOSURE.

Problem A: The will of John Doe, the owner of Blackacre, was admitted to probate. The will appointed Richard Roe as personal representative and contained a valid power of sale. Roe, after qualifying as personal representative on November 21, 2000, deeded Blackacre to Simon Grant who, with his wife, then deeded Blackacre to Roe. Did Roe acquire marketable title to Blackacre?

Answer: No.

Problem B: John Doe, the owner of Blackacre, died intestate. Richard Roe was appointed and qualified as personal representative of Doe's estate on November 21, 2000. Roe sold Blackacre to Simon Grant. The sale was confirmed. Grant and his wife then deeded Blackacre to Roe and Alice Roe, husband and wife. Did the Roes acquire marketable title to Blackacre?

Answer: No.

Problem C: John Doe, the owner of Blackacre, died intestate on June 1, 2000. Richard Roe was appointed and qualified as personal representative of Doe's estate. Roe deeded Blackacre to himself with probate court

authority after petition to the court, notice to all interested parties and a hearing. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem D: Richard Roe, while acting as conservator of the estate of Mary Roe, a minor and the owner of Blackacre, deeded Blackacre to himself on August 1, 2000 with probate court authority after petition to the court, notice to all interested parties and a hearing. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem E: Same facts as in Problem C, except Roe, as personal representative acting in informal proceedings, deeded Blackacre to himself pursuant to specific authority contained in Doe's will. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem F: Same facts as in Problem C, except Roe as personal representative in informal proceedings, deeded Blackacre to himself after fair disclosure of the pending transaction was made to and written consent was obtained from all interested parties and filed in the proceedings. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Problem G: Same facts as in Problem C, except Roe, as personal representative in formal proceedings, deeded Blackacre to himself pursuant to specific authority contained in Doe's will. Did Roe acquire marketable title to Blackacre?

Answer: Yes.

Authorities: Problems A and B: MCL 700.3713. *Sheldon v Estate of Rice*, 30 Mich 296 (1874); *Houlihan v Fogarty*, 162 Mich 492, 127 NW 793 (1910); *In re Culhane's Estate*, 269 Mich 68, 256 NW 807 (1934); *Schutz v Kalamazoo Improvement Co*, 284 Mich 305, 279 NW 521 (1938); *Smith v Withey*, 309 Mich 364, 15 NW2d 671 (1944); *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978); *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980).

Problem C: MCL 700.3713

Problem D: MCL 700.5421.

Problems E and F: MCL 700.3713.

Problem G: MCL 700.3715(f).

Comment A: Laches or estoppel may bar claims of heirs or others claiming under the estate, as against the validity of deeds such as are discussed in this Standard.

Comment B: *Carpenter v Mumby*, 86 Mich App 739, 273 NW2d 605 (1978) and *Thiele v Cruikshank*, 96 Mich App 7, 292 NW2d 150 (1980) held that transactions in violation of MCL 709.27, repealed by the Revised Probate Code (RPC), now MCL 700.3713, are merely voidable, not void.

Comment C: Article VIII of the Estates and Protected Individuals Code (EPIC), MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

Comment D: The limitations period for actions to recover real property claimed by another through a deed made upon sale by an executor, administrator, guardian or testamentary trustee is five years. MCL 600.5801.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent. See Standard 8.7 with respect to self-dealing transactions by non-testamentary trustees.

STANDARD 7.12

CONVEYANCE OF MICHIGAN REAL PROPERTY BY FOREIGN FIDUCIARY NOT QUALIFIED IN MICHIGAN

STANDARD: A FIDUCIARY APPOINTED BY A COURT IN A FOREIGN JURISDICTION DURING THE ADMINISTRATION OF AN ESTATE CANNOT CONVEY MARKETABLE TITLE TO MICHIGAN REAL PROPERTY UNLESS QUALIFIED AS A FIDUCIARY IN MICHIGAN.

Problem A: Jane Doe, a resident of Ohio and the owner of Blackacre, a parcel of real property in Michigan, died intestate. Her estate was probated in Ohio. The fiduciary of the estate deeded Blackacre to Simon Grant pursuant to Ohio law. Did Grant acquire marketable title to Blackacre?

Answer: No.

Problem B: Jane Doe, a resident of Utah and the owner of Blackacre, a parcel of real property in Michigan, died testate. Her will, which appointed Richard Roe as personal representative with power of sale, was admitted to probate in Utah. After qualifying in Utah as fiduciary, Roe conveyed Blackacre to Simon Grant by a deed pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: No.

Problem C: Same facts as in Problem A or B, except that Jane Doe was the owner of a vendor's or vendee's interest in Blackacre. Did Grant, who was not a party to the land contract, acquire marketable title to Doe's interest in Blackacre?

Answer: No. Neither a vendor's nor a vendee's interest can be conveyed by a foreign fiduciary who is not qualified in Michigan.

Authorities: *Thayer v Lane*, Walk Chan 200 (1843); *Sheldon v Estate of Rice*, 30 Mich 296 (1874); *Dickinson v Seaver*, 44 Mich 624, 7 NW 182

(1880); *Reynolds v McMullen*, 55 Mich 568, 22 NW 41 (1885); *Colvin v Jones*, 194 Mich 670, 161 NW 847 (1917); *Jones v Turner*, 249 Mich 403, 228 NW 796 (1930).

Comment A: Fiduciary, as used in this Standard, is defined in MCL 700.1104(e).

Comment B: This Standard does not address conveyances by trustees under *inter vivos* trusts or transactions in which an interest in Michigan real property is acquired by a foreign testamentary trustee.

Note 1: See Standard 16.8 with respect to discharge or assignment of Michigan mortgages by a foreign fiduciary.

Note 2: After March 28, 1985 and before April 1, 2000, a foreign fiduciary not qualified in Michigan could execute and deliver a deed pursuant to a land contract upon receiving satisfaction of the land contract. See, Standard 12.6.

Note 3: After March 31, 2000, a foreign fiduciary can convey marketable title to Michigan real property upon compliance with MCL 700.4203. See, Standards 7.13-2 and 7.14-2.

STANDARD 7.13-1

CONVEYANCE OF MICHIGAN REAL PROPERTY BY FOREIGN FIDUCIARY QUALIFIED AS PERSONAL REPRESENTATIVE OF INTESTATE ESTATE IN MICHIGAN AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000

STANDARD: AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000, A FOREIGN FIDUCIARY APPOINTED ADMINISTRATOR OF AN INTESTATE ESTATE IN ANOTHER STATE MAY, MORE THAN 30 DAYS AFTER THE DEATH OF THE DECEDENT, QUALIFY AS A PERSONAL REPRESENTATIVE IN MICHIGAN, PROVIDED NO LOCAL ADMINISTRATION OR PETITION FOR LOCAL ADMINISTRATION IS PENDING IN MICHIGAN, AND MAY IN THAT CAPACITY CONVEY MARKETABLE TITLE TO MICHIGAN REAL PROPERTY.

Problem A: John Doe, a single man and a resident of Pennsylvania, died on July 10, 1979 owning Blackacre, a farm in Michigan. Richard Roe was appointed administrator of Doe's estate in Pennsylvania. More than 30 days after Doe's death, Roe qualified as personal representative in Michigan. No local administration or petition for local administration was pending at that time. On August 20, 1979, Roe deeded Blackacre to Simon Grant for a purpose permitted by statute and the sale was confirmed, no subsequent petition for local administration having been filed. All estate and inheritance taxes were paid. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that before Roe's sale of Blackacre, a petition for the appointment of a local resident as personal representative was filed in a Michigan court, but Grant had no actual notice of the filing of the petition. Did Grant acquire marketable title to Blackacre?

Answer: Yes. Although Roe's authority to act as personal representative was terminated upon the filing of the petition for local administration,

Grant, who had no actual notice of the filing, was entitled to rely on the authority of Roe.

Authorities: MCL 700.235, 700.236 and 700.237 (all repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Comment A: For sales of Michigan land by a foreign fiduciary in independent proceedings, see MCL 700.301, *et seq.* (Repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*)

Comment B: MCL 700.992 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*) provided transition rules for the application of the Revised Probate Code to proceedings pending on July 1, 1979 or commenced after June 30, 1979 for a decedent whose death occurred before July 1, 1979.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent.

STANDARD 7.13-2

CONVEYANCE OF MICHIGAN REAL PROPERTY BY DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE QUALIFIED AS PERSONAL REPRESENTATIVE OF INTESTATE ESTATE IN MICHIGAN AFTER MARCH 31, 2000

STANDARD: AFTER MARCH 31, 2000, A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE APPOINTED ADMINISTRATOR OF AN INTESTATE ESTATE IN ANOTHER STATE MAY QUALIFY AS A PERSONAL REPRESENTATIVE IN MICHIGAN, IF NO LOCAL ADMINISTRATION OR PETITION FOR LOCAL ADMINISTRATION IS PENDING IN MICHIGAN, AND MAY IN THAT CAPACITY CONVEY MARKETABLE TITLE TO MICHIGAN REAL PROPERTY.

Problem A: John Doe, a single man, and a resident of Pennsylvania, died on July 10, 2002 owning Blackacre, a farm in Michigan. Richard Roe was appointed administrator of Doe's estate in Pennsylvania. Roe qualified as personal representative in Michigan. No local administration or petition for local administration was pending in Michigan. Roe deeded Blackacre to Simon Grant on July 20, 2002. No local administration or petition for local administration was pending at the time of the conveyance. All estate taxes were paid. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that before Roe's conveyance of Blackacre, a petition for the appointment of a Michigan resident as personal representative was filed in Michigan. Grant had no actual notice of the petition. Did Grant acquire marketable title to Blackacre?

Answer: Yes. Although Roe's authority terminated upon the filing of the petition for local administration, Grant was entitled to rely on Roe's apparent authority.

Authorities: MCL 700.4203 and 700.4204.

Comment A: Article VIII of the Estates and Protected Individuals Code (EPIC), MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

Comment B: “Foreign personal representative” is defined in MCL 700.1104 as a personal representative appointed in another jurisdiction. Although “domiciliary foreign personal representative” is not defined by statute, the Committee interprets the term as used in EPIC to mean a foreign personal representative appointed by a court in the jurisdiction in which the non-resident decedent resided at the time of death.

Comment C: The provision in MCL 700.4204 that the authority of a domiciliary foreign personal representative may be exercised only if local administration or a petition for local administration “is not pending” in Michigan, is not limited to the county or counties in which the real property is located. Accordingly, a domiciliary foreign personal representative, even if qualified in one county, has no authority to convey estate real property if local administration or a petition for local administration is pending in another county.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent.

STANDARD 7.14-1

CONVEYANCE OF MICHIGAN REAL PROPERTY BY FOREIGN FIDUCIARY QUALIFIED AS PERSONAL REPRESENTATIVE OF TESTATE ESTATE IN MICHIGAN AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000

STANDARD: AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000, A FOREIGN FIDUCIARY APPOINTED PURSUANT TO A WILL ADMITTED TO PROBATE IN ANOTHER STATE MAY, MORE THAN 30 DAYS AFTER THE DEATH OF THE DECEDENT, QUALIFY AS A PERSONAL REPRESENTATIVE IN MICHIGAN AND MAY IN THAT CAPACITY CONVEY MARKETABLE TITLE TO MICHIGAN REAL PROPERTY.

Problem A: John Doe, a single man and a resident of Pennsylvania, died on July 10, 1979 owning Blackacre, a farm in Michigan. His will was admitted to probate in Pennsylvania, where Richard Roe qualified as executor. More than 30 days after Doe's death, Doe's will was admitted to probate in Michigan and Roe qualified as personal representative. Roe deeded Blackacre to Simon Grant on July 20, 1981 for a purpose permitted by Michigan statute and the sale was confirmed. All estate and inheritance taxes were paid. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Doe's will contained a power of sale and Roe deeded Blackacre to Grant without any court proceedings relating to the sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem C: John Doe, a single man and a resident of Pennsylvania, died on July 10, 1979 owning Blackacre, a farm in Michigan. His will was admitted to probate in Pennsylvania, where Richard Roe qualified as executor. More than 30 days after Doe's death, an authenticated copy

of Doe's will and the order admitting the will were deposited in a Michigan probate court. Richard Roe then qualified as independent personal representative in Michigan. Roe deeded Blackacre to Simon Grant on August 20, 1979. Did Grant acquire marketable title?

Answer: Yes.

Authorities: MCL 700.152, 700.153, 700.235, 700.236, 700.308(2) and 700.664 (all repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Comment: MCL 700.992 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*) provided transition rules for the application of the Revised Probate Code to proceedings pending on July 1, 1979 or commenced after June 30, 1979 for a decedent whose death occurred before July 1, 1979.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent.

STANDARD 7.14-2

CONVEYANCE OF MICHIGAN REAL PROPERTY BY DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE QUALIFIED AS PERSONAL REPRESENTATIVE OF TESTATE ESTATE IN MICHIGAN AFTER MARCH 31, 2000

STANDARD: AFTER MARCH 31, 2000, A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE APPOINTED PURSUANT TO A WILL ADMITTED TO PROBATE IN ANOTHER STATE MAY QUALIFY AS A PERSONAL REPRESENTATIVE IN MICHIGAN, IF NO LOCAL ADMINISTRATION OR PETITION FOR LOCAL ADMINISTRATION IS PENDING IN MICHIGAN, AND MAY IN THAT CAPACITY CONVEY MARKETABLE TITLE TO MICHIGAN REAL PROPERTY.

Problem: John Doe, a single man and a resident of Pennsylvania, died on May 1, 2000 owning Blackacre, a farm in Michigan. His will was admitted to probate in Pennsylvania, where Richard Roe qualified as executor. Doe's will was admitted to probate in Michigan and Roe qualified as personal representative. No local administration or petition for local administration was pending at that time. Roe deeded Blackacre to Simon Grant on July 20, 2002. All estate taxes were paid. No local administration or petition for local administration was pending at the time of the conveyance. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Authorities: MCL 700.3201, 700.3408, 700.3409, 700.3715 and 700.4203.

Comment: Article VIII of the Estates and Protected Individuals Code (EPIC), MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent.

STANDARD 7.15

NOTICE OF PROBATE HEARING BEFORE JULY 1, 1979

STANDARD: BEFORE JULY 1, 1979, MARKETABILITY OF TITLE TO REAL PROPERTY ACQUIRED THROUGH PROBATE PROCEEDINGS WAS NOT ADVERSELY AFFECTED BY FAILURE TO GIVE NOTICE OF HEARING ACCORDING TO THE PROBATE CODE, IF THE NOTICE WAS GIVEN PURSUANT TO THE APPLICABLE PROBATE COURT RULE.

Problem A: John Doe, the owner of Blackacre, died intestate on May 7, 1974. His estate was probated. Notices of hearings on the petition for administration, the petition for allowance of claims, the petition for determination of Doe's heirs, and the administrator's final account were given in accordance with Probate Court Rule (PCR) 106. There was only one publication of notice in each instance. Doe's estate was closed in 1975. The residue, including Blackacre, was assigned to Ruth Roe and Nancy Poe, who were determined by the probate court to be Doe's heirs at law. Roe and Poe deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: Yes. The probate court Rules required only one publication of notice for each hearing. The Probate Code required three publications, but the Supreme Court has held that its constitutional power to establish rules of practice and procedure for all state courts supersedes conflicting statutory provisions. Accordingly, one publication of notice for each hearing was sufficient. MCL 702.56, 708.2, 702.76, 704.39 and 701.32, repealed effective July 1, 1979 by MCL 700.993 (Revised Probate Code), repealed effective April 1, 2000 by MCL 700.8102 (Estates and Protected Individuals Code).

Authorities: PCR 106. *Michigan Constitution* 1963, Article VI, Sec 5. *Darr v Buckley*, 355 Mich 392, 84 NW2d 837 (1959); *Perin v Peuler*, 373 Mich 531, 130 NW2d 4 (1964); *Buscaino v Rhodes*, 385 Mich 474, 189 NW2d 202 (1971).

Comment A: The Revised Probate Code (MCL 700.31, repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*), effective July 1, 1979, provided as follows: “Except as otherwise provided by law, any notice required by law shall be governed by Supreme Court rule.” See also, PCR 16.

Comment B: The Estates and Protected Individuals Code (MCL 700.1401), effective April 1, 2000, provides as follows: “Unless otherwise provided by supreme court rule, notice must be given by 1 of the following methods:...”

Caveat 1: *Buscaino and Perin, supra*, were overruled by *McDougall v Schanz*, 461 Mich 15, 597 NW2d 148 (1999) to the extent that *Buscaino* and *Perin* held that the Michigan Supreme Court had authority to promulgate rules which superseded conflicting statutory provisions. *McDougall* held that the Supreme Court’s constitutional rule-making authority extended only to matters of practice and procedure, not to adoption of court rules that establish, abrogate, or modify substantive law.

The Committee expresses no opinion as to whether the holding in *McDougall* applies retroactively.

Caveat 2: The U. S. Supreme Court in *Tulsa Professional Collection Services v Estate of Pope, Jr.*, 485 U. S. 478, 108 S. Ct. 1340, 99 L Ed 2d 565, (1988) held that the Oklahoma Probate Code provision stating that publication of a Notice of Requirement to File Claims qualified as sufficient notice to all estate creditors was unconstitutional, as a violation of the Due Process Clause of the Fourteenth Amendment. The Court held that creditors of an estate who are “known or reasonably ascertainable” by the fiduciary must be given notice by mail, or other means sufficient to assure actual notice.

The Committee expresses no opinion as to whether the Michigan court rules and statutory provisions cited in the Standard are consistent with the notice requirements established by the U.S Supreme Court in the *Tulsa* case.

STANDARD 7.16-1

CONVEYANCE OF REAL PROPERTY BY INDEPENDENT PERSONAL REPRESENTATIVE AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000

STANDARD: AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000, AN INDEPENDENT PERSONAL REPRESENTATIVE MAY CONVEY MARKETABLE TITLE TO REAL PROPERTY TO A GOOD FAITH PURCHASER FOR VALUE, IF THE LETTERS OF AUTHORITY DO NOT RESTRICT THE POWER OF THE INDEPENDENT PERSONAL REPRESENTATIVE TO MAKE THE CONVEYANCE.

Problem: John Doe, the owner of Blackacre, died January 10, 1980. Richard Roe qualified as the independent personal representative of Doe's estate. Roe deeded Blackacre to Simon Grant, a good faith purchaser for value. Roe's letters of authority did not restrict Roe's power to convey real property. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Authorities: MCL 700.331, 700.334, 700.335 and 700.349 (all repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Comment: MCL 700.992 (repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*) provided transition rules for the application of the Revised Probate Code to proceedings pending on July 1, 1979 or commenced after June 30, 1979 for a decedent whose death occurred before July 1, 1979.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a sale of real property of a decedent.

STANDARD 7.16-2

CONVEYANCE OF REAL PROPERTY BY PERSONAL REPRESENTATIVE APPOINTED IN INFORMAL APPOINTMENT PROCEEDINGS AFTER MARCH 31, 2000

STANDARD: AFTER MARCH 31, 2000, A PERSONAL REPRESENTATIVE ACTING IN AN INFORMAL APPOINTMENT PROCEEDING MAY CONVEY MARKETABLE TITLE TO REAL PROPERTY TO A GOOD FAITH PURCHASER FOR VALUE, IF LETTERS OF APPOINTMENT ARE IN EFFECT WHEN THE CONVEYANCE IS MADE AND THE PURCHASER HAS NO ACTUAL KNOWLEDGE OF ANY RESTRICTION AGAINST THE CONVEYANCE.

Problem A: John Doe died May 1, 2002 owning Blackacre. Richard Roe was appointed personal representative of Doe's estate, pursuant to informal appointment proceedings, and his letters of appointment contained no restrictions. Doe left no widow or minor children. Roe deeded Blackacre to Simon Grant, a good faith purchaser for value, on September 10, 2002. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Roe's letters of appointment contained restrictions against the sale. Grant had no actual knowledge of the restrictions. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Authorities: MCL 700.3307, 700.3711, 700.3714, 700.3715 and 700.3716.

Comment A: Article VIII of the Estates and Protected Individuals Code (EPIC), MCL 700.8101 *et seq.*, provides transition rules for the application of EPIC to proceedings pending on April 1, 2000 or commenced after March 31, 2000 for a decedent whose death occurred before April 1, 2000.

Comment B: MCL 700.3714 provides that restrictions contained in the letters of appointment of a supervised personal representative are valid, irrespective of whether a third party has actual knowledge of the restrictions.

Note: See Standards 7.1 and 7.2 for other rights or interests that may affect a conveyance of real property of a decedent.

STANDARD 7.17

MORTGAGE OF REAL PROPERTY BY INDEPENDENT PERSONAL REPRESENTATIVE AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000

STANDARD: AFTER JUNE 30, 1979 AND BEFORE APRIL 1, 2000, AN INDEPENDENT PERSONAL REPRESENTATIVE MAY GIVE A VALID MORTGAGE OF REAL PROPERTY TO A GOOD FAITH MORTGAGEE FOR VALUE, UNLESS THE LETTERS OF AUTHORITY RESTRICT THE POWER TO MORTGAGE OR THE MORTGAGEE HAS ACTUAL KNOWLEDGE OF LIMITATIONS CONTAINED IN A COURT ORDER OR THE WILL, IF ANY.

Problem: John Doe, the owner of Blackacre, died intestate on March 1, 1991. Richard Roe qualified as independent personal representative of Doe's estate on May 1, 1991. Roe mortgaged Blackacre for value to Simon Grant, a good faith mortgagee. Did Grant obtain a valid mortgage?

Answer: Yes, unless the letters of authority restricted Roe's power to mortgage or unless there was a court order or a will limiting Roe's power to mortgage and Grant had actual knowledge of those limitations.

Authorities: MCL 700.334(w) and 700.349 (both repealed effective April 1, 2000, by 1998 P.A. 386, being MCL 700.1101 *et seq.*).

Note: See Standards 7.1 and 7.2 for other rights or interests which may affect a mortgage of real property of a decedent.

STANDARD 7.18

MORTGAGE OF REAL PROPERTY BY PERSONAL REPRESENTATIVE APPOINTED IN FORMAL OR INFORMAL APPOINTMENT PROCEEDINGS AFTER MARCH 31, 2000

STANDARD: AFTER MARCH 31, 2000, A PERSONAL REPRESENTATIVE ACTING IN FORMAL OR INFORMAL APPOINTMENT PROCEEDINGS MAY GIVE A VALID MORTGAGE OF REAL PROPERTY TO A GOOD FAITH MORTGAGEE FOR VALUE, UNLESS THE LETTERS OF APPOINTMENT RESTRICT THE POWER TO MORTGAGE OR THE MORTGAGEE HAS ACTUAL KNOWLEDGE OF LIMITATIONS CONTAINED IN A COURT ORDER OR THE WILL, IF ANY.

Problem: John Doe, the owner of Blackacre, died intestate on June 1, 2001. Richard Roe qualified as personal representative of Doe's estate. Roe mortgaged Blackacre for value to Simon Grant, a good faith mortgagee. Did Grant obtain a valid mortgage?

Answer: Yes, unless the letters of appointment restricted Roe's power to mortgage or unless there was a court order or a will limiting Roe's power to mortgage and Grant had actual knowledge of those limitations.

Authorities: MCL 700.3501(3), 700.3714 and 700.3715(y).

Comment: With respect to the mortgage of estate real property in independent probate proceedings after June 30, 1979 and before April 1, 2000, see Standard 7.17.

Note: See Standards 7.1 and 7.2 for other rights or interests which may affect a mortgage of real property of a decedent.

