

Clarity Awards for 1996

By the Plain English Committee

For our Clarity Awards, we group all documents that lawyers write into five categories—laws, lawsuits, contracts, real estate, and estate planning. For our 1996 awards, we selected six documents in four of these categories as follows:

In laws:

- Homestead Exemption Affidavit and Property Transfer Affidavit forms, written by the Michigan Department of Treasury.

In lawsuits:

- Request for Hearing on a Motion form, written by Keith Beasley, Court Administrator of Macomb County Circuit Court.

- Michigan court forms, written in a project that Judge S. J. Elden started in 1974 and chaired for more than 15 years.

- Standard civil jury instructions, written by the Michigan Supreme Court's Committee on Standard Civil Jury Instructions.

In contracts:

- Motor Vehicle Lease, written by the Ford Motor Credit Company.

In estate planning:

- *Questions from the Legal Hotline for Older Michiganians*, written by Harold Garcia-Shelton.

Following is a discussion of these awards in more detail:

Homestead Exemption Affidavit and Property Transfer Affidavit

On March 15, 1994, Michigan voters approved property-tax-reform Proposal A, a

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.



Pictured at the Clarity Awards presentation ceremony at the State Bar's Michael Franck Building are (seated, left to right) Mark Hilpert, Robert Aitken and Keith Beasley; (standing, left to right) committee chair George Hathaway, Laurie Picard Mitchell, Stephen Secrest, Margaret Cumming, Richard Mossburg, Paula Campbell Kelly, Judge Harold Hood, committee member Prof. Joseph Kimble and Harold Garcia-Shelton.

proposal that changed the way schools are funded by decreasing property taxes and increasing sales taxes. In December 1994, the state Legislature then passed enabling legislation for Proposal A (1994 PA 415, effective January 1, 1995). This legislation included a property-tax exemption for homeowners and a cap on increases in annual property-tax assessments. However, to carry out this legislation, the Michigan Department of Treasury, under its administrative rule-making responsibilities, was required to quickly develop sworn-statement (affidavit) forms for homeowners and taxpayers to use. Although the legislation was complex, the Department of Treasury was able to develop clear, user-friendly forms for homeowners and taxpayers to use under the new law. For an example of one of these forms, see Figure 1—Property Transfer Affidavit.¹

According to State Treasurer Douglas B. Roberts, "The Michigan Department of

Treasury is committed to providing the best possible service for our taxpayers. We were very pleased with the final forms. They proved to be very effective for the more than 2.5 million homeowners who filed them."

The department's senior forms analyst, Laurie Picard Mitchell, attributes the successful designs to cooperation from local government officials, real estate professionals, and attorneys. Mitchell noted that simple, readable designs are critical for these forms, because once they are completed by the homeowner, they are handled by as many as four different businesses or governments before being filed with the state.

Some of the techniques that the Treasury uses to develop clear forms are:

- Group related items together.
- Use white space efficiently.
- Place items on the form in order of how frequently they are used.

• Write instructions in the second person (*you*), and in the active voice to make the directions easily understood.

Request for Hearing on a Motion

Keith Beasley, Court Administrator of Macomb County Circuit Court, has developed a court form ("Request for Hearing on a Motion") that replaces the praecipe, notice of hearing, and proof of service. We discussed this form in the February 1996 Plain Language Column.²

Michigan Court Forms

Judge S. J. Elden was the driving force behind the Michigan Supreme Court's approved court forms. We discussed this project and the forms in our very first Plain Language Column in May 1984, in our February 1996 column, and in many columns in between.³

Civil Jury Instructions

The Michigan Supreme Court's Committee on Standard Civil Jury Instructions—with Judge Harold Hood as chair and Sharon Brown as reporter—has developed many clear civil jury instructions. We discussed these in the March 1996 Plain Language Column.⁴

Motor Vehicle Lease

A team from Ford Motor Credit Company's Legal Office has eliminated the legalese from Ford Credit's Red Carpet Lease. The team members are Robert Aitken, Margaret Cumming, Paula Campbell Kelly, Richard Mossburg, Stephen Secrest, Stanley Szuba, and Karen Watkins. We discussed their lease in the December 1995 Plain Language Column.⁵

Questions from the Legal Hotline for Older Michiganians

Normally, we only give Clarity Awards for primary documents—the laws, lawsuit papers, contracts, real-estate papers, and estate-planning papers themselves. We normally don't give Clarity Awards for documents *about* the primary documents. The reason is that we are trying to get lawyers to write the primary documents in clear

language, instead of writing secondary documents in clear language to explain the primary documents that they continue to write in legalese. However, this book is so well-written, and covers so many of the questions that you always wanted to know but were afraid to ask (or if you did ask, you never got a clear answer), that we give it a Clarity Award. It covers questions on many topics, including some about estate planning. So we put it in the category of

estate planning. An example question and answer is shown in Figure 2. The book was written by Harold Garcia-Shelton from a project sponsored by Ford Motor Company and Ford Motor Company's Office of the General Counsel. According to Mr. Garcia-Shelton:

I was working as an attorney at the Legal Hotline for Older Michiganians when the managing attorney, Katherine Martin, asked me to write a source book for the pro bono

Figure 1

Michigan Department of Treasury
L-4260 (1/95)

PROPERTY TRANSFER AFFIDAVIT

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). It is used by the assessor to ensure the property is assessed properly and receives the correct *taxable value*. It must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer. If it is not filed timely, a penalty of \$5/day (maximum \$200) applies. The information on this form is not confidential.

1. Street Address of Property	2. County	4. Date of Transfer (or land contract was signed)
3. City/Township/Village of Real Estate	<input type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> Village	5. Purchase Price of Real Estate

6. Property Identification Number (PIN). If you don't have a PIN, attach legal description.

PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.

7. Seller's (Transferor) Name	8. Buyer's (Transferee) Name and Mailing Address
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Items 9-13 are optional. However, by completing them you may avoid further correspondence.

Transfers include deeds, land contracts, transfers involving trusts or wills, certain long-term leases and interest in a business. See the back for a complete list.

9. Type of <i>Transfer</i> <input type="checkbox"/> Land Contract <input type="checkbox"/> Deed <input type="checkbox"/> Other (specify)	10. Is the transfer between related persons? <input type="checkbox"/> Yes <input type="checkbox"/> No
11. Amount of Down Payment	12. If you financed the purchase, did you pay market rate of interest? <input type="checkbox"/> Yes <input type="checkbox"/> No
13. Amount Financed (Borrowed)	

Exemptions

The Michigan Constitution limits how much a property's *taxable value* can increase while it is owned by the same person. Once the property is transferred, the *taxable value* must be adjusted by the assessor to 50 percent of the property's usual selling price. Certain types of transfers are exempt from adjustment. Below are brief descriptions of the types of exempt transfers; full descriptions are in MCL Section 211.27a(7)(a-m). If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- transfer from a spouse
- change in ownership solely to exclude or include a spouse
- transfer subject to a life lease or life estate (**until** the life lease or life estate expires)
- transfer to effect the foreclosure or forfeiture of real property
- transfer by redemption from a tax sale
- transfer into a trust where the sole beneficiary is the settlor (creator of the trust) or the settlor's spouse
- transfer resulting from a court order unless the order specifies a monetary payment
- transfer creating or ending a joint ownership if at least one person is an original owner of the property (or his/her spouse)
- transfer to establish or release a security interest (collateral)
- transfer of real estate through normal public trading of stocks
- transfer within an entity under common control of affiliated group
- transfer resulting from transactions that qualify as a tax-free reorganization
- other, specify:

Certification

I certify that the information above is true and complete to the best of my knowledge.

Owner's Signature	Date	If signers is other than the owner, print name and title.
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attorneys at Ford Motor. I eventually agreed. As Dickens might have said, it was a miserable experience; it was a great experience. Let me tell you why.

It was a miserable experience in that I had never done it before and didn't realize how much work it would be. (It's one of those tasks that you would never do if you knew in advance, of course.) To write this book, I had to solve two problems: what to put in it and how to organize it. Here's where two major players helped—Katherine Martin and Professor Joseph Kimble of Thomas Cooley Law School.

Katherine Martin helped me with the first problem. She did some mysterious program-crunching on the computer, cranking out a representative month or two of questions presented to the Hotline attorneys. (Incidentally, the general area of probate generated the most questions, with Medicaid/Medicare close behind.) I then looked through months of case notes and drafted typical questions that represented the sample. That was the easier part; the harder part lay ahead—the answers. But I managed to draft some acceptable answers, with help from Ms. Martin and the Hotline attorneys. However, an even tougher problem remained—how to

present it so that people would read it. Luckily, I had here another guide—the tenets of Plain English (through Professor Kimble).

As to the organization, I wanted to use a question-and-answer format to draw the reader in to the specific area of interest. But I didn't want to give the answer in a traditional structure. Too, I wanted the answer to serve many purposes: to give the reader some substance but not too much; to refer practicing attorneys to the sources for more information; and to inform seniors of helpful organizations and publications. All this and readable too—a tall order. What did I come up with?

I generally began the answer with an even briefer answer, a "teaser." Sometimes I probably erred on the side of being conversational, but I thought it better to do that than not have the reader want to continue reading the entire answer. (In a way, I was following one tenet of Plain English—give the reader a short summary up front.) In the body of the answer, I tried to follow other tenets of Plain English. Use short sentences. Prefer the simple term to the needlessly complex one ("sued" instead of "commenced a lawsuit"). For internal clarity, I used the active voice and placed the logical agent up

front. (To illustrate, instead of saying: "If your claim is not paid within two days, suit may be commenced in small claims court," I used: "If the store doesn't pay your claim within two days, you can sue in small claims court.") To close the answer, I referred the reader to an organization or a publication for more information.

When I began this article, I said that it was not only a miserable experience, but also a great experience. I learned a lot by researching the answers. The feedback from organizations such as Blue Cross has been very positive. And most important, I have earned the praise of people I respect.

Now, back to the Dickens quote in the first paragraph. That's for those who think that Plain English is completely divorced from good writing. (Oh, you say that you don't consider Dickens all that great, that you've also read Martin Chuzzlewit as well as *A Tale of Two Cities*. Well, you may have a point. But would you have preferred that I lead with "It was a dark and stormy night"?) I hope that by seeing the Dickens quote, you were led into reading this article and will eventually read my book. So the quote, like the brief answer I use for each question in the book, acted as a "teaser" to draw you in.

And if I have been Dickensian (in the sense of wordiness) either in this article or in the book, it is certainly no fault of Katherine Martin or Gretchen Bour, both from the Hotline. ■

Figure 2

Question 86: Do I have to have a will? What happens if I don't?

No, you don't have to have a will, but if you don't, the state of Michigan has a "will" for you. Confusing?

It works like this. If you die without a will, it is called "intestacy." The state has a law that sets out how your wealth is distributed if you die intestate; in essence, this plan acts as a "will." (The problem is that you didn't come up with this plan, so it may not suit your wishes very well.)

The state plan assumes that most people would want most of their estate to go to their surviving spouse and some to their children. That is the plan generally. Here are some specifics.

If you die without a will, your surviving spouse gets the first \$60,000 of your estate, and then splits the remainder with the children of your marriage. (If you have children from another marriage, your kids would get more—they would share equally in half the estate, your surviving spouse getting the other half; so your surviving spouse would not get the first \$60,000.) If you have no children and no parent surviving you, then all your estate goes to your surviving spouse.

There are other provisions in the state intestate distribution plan, e.g., if you have no surviving spouse and no issue, but you have parents surviving. And if you have none of these surviving, then your estate goes to your sisters and brothers (or their children). The plan goes even further, but you get the idea.

Now, if this state plan suits you, you may decide not to have a will. However, for many people, something else is preferred. For example, many people find that one child has done well while another child has not, so they want one to get more than another. They need a will to vary the shares. Plus a will allows you to name your personal representative to carry out the provisions in your will.

So should you have a will? Yes, unless the state intestate scheme suits you.

Footnotes

1. Although both the enabling legislation and the form contain the word *affidavit*, the developed form is actually a "certification," since it requires only the signature of the person who filled out the form. An affidavit would require the additional notarization of a notary, thus making the form extremely impractical to easily prepare.
2. Hathaway, Beasley, and Elden, *Request for Hearing on a Motion*, 75 Mich B J 172 (February 1996).
3. Ulrich, *Plain English in Judicial Administration*, 63 Mich B J 390 (May 1984); Hathaway, *Michigan Court Forms for Service and Proof of Service*, 65 Mich B J 1260 (December 1986); Ryan, *Michigan Court Forms: The Divorce Package*, 66 Mich B J 172 (February 1987); Conley, *Michigan Court Forms: A Topical Index*, 66 Mich B J 544 (June 1987); Plain English Committee, *The Clarity Award*, 71 Mich B J 430 (May 1992); Hathaway, Beasley, and Elden, *Request for Hearing on a Motion*, 75 Mich B J 172 (February 1996).
4. Hathaway, *Jury Instructions*, 75 Mich B J 298 (March 1996).
5. Hathaway, *Motor Vehicle Leases*, 74 Mich B J 1284 (December 1995).