

MSHDA Legal Training Program

Michigan State Housing Development Authority

Management Innovation: Internal Operations

HFA Staff Contact

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APPLICATION FOR NCSHA

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“TRAINING FOR IN-HOUSE ATTORNEYS”

A. Overview

In 2011, Michigan State Housing Development Authority’s (“MSHDA”) Legal division created a training program for attorneys based on three areas: (1) Real Estate Law; (2) Affordable Housing; and (3) MSHDA’s Act, Rules, and Case Law. The program was created to respond to the challenges listed below:

1. Difficulty finding attorneys with relevant experience after the Great Recession.
2. Loss of Senior Staff Attorneys.
3. Anticipated Difficulty Keeping Attorneys Due to End of Defined Benefits Plans for Staff Joining MSHDA after 1997.
4. The Earlier Training of Attorneys Had Not Been Well Planned or Organized.

B. Creating the Program

We determined that an effective MSHDA inhouse attorney must understand the basics of three areas:

1. Real Estate Law.
2. Affordable Housing Programs.
3. MSHDA’s Act, Rules, and related case law.

Senior attorneys were assigned to teach concepts during weekly staff meetings. External trainings — usually provided by the Michigan Real Property Law Section and the ABA Affordable Housing forum-- were selected if the training addressed a listed topic under one of the three areas. Guest speakers also provided trainings on listed topics.

One goal of the training sessions was to help attorneys quickly learn the basics of the three areas. Another goal was to ensure attorneys could apply what they learned. Work assignments have been and continue to be used to reinforce the topics; senior attorneys have also reviewed the work of less experienced attorneys and served as resources and mentors.

C. Results

We have run the program since 2011. We have added topics, such as Real Estate 101, when we encountered attorneys with no experience in real estate law. We have repeated topics based on requests and attorney turnover. Several years ago, we began to record our sessions.

The program has been successful. We believe the program has been successful in teaching attorneys the basics and the skills necessary to do their jobs well. Senior attorneys have improved their understanding of topics by giving presentations. Offering organized and clear presentations has enabled attorneys to learn concepts quicker and better. Ironically, we believe the program has led to turnover—many of our attorneys, once trained, have left for better paying jobs.

One goal that has emerged recently is how to ensure attorneys can think and problem solve independently. Our supervising attorneys must allow the new attorneys to think and problem-solve for themselves. (We have found that this is easier said than done.)

D. Attachments

Attached are the following outlines that have been used for the program:

1. 2012 and 2018 overviews of the training program.
2. Samples of articles and outlines used for training.

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TRAINING TOPICS/SCHEDULE FOR 2012

Real Property Law & Principles	Affordable Housing	MSHDA (Policies, Act, Etc.)	Best Practices
Land Control Documents	Low Inc Housing Tax Credits	PILOTS & Property Taxes	Microsoft Word Training
a. Purchase Agreements	Housing Bonds	MSHDA Borrower Entities	Attorney Organizational Training
b. Option Agreements	HOME	a. LDHA	Working with Clients
c. Land Contracts	Project-Based Section 8	b. Nonprofit Housing Corporations	Ethics Training for In-House Counsel
Leases	Project Based Vouchers		
Title Insurance and Endorsements:	Cross-Cutting Federal Reqs		Improving MSHDA Legal
Surveys	a. Prevailing Wages	Management Agent Agreements	a. Brainstorming
Zoning	b. Section 3	Insurance Requirements	b. Incorporating Best Practices
	Subsidy Layering	MSHDA Underwriting Process	c. Developing/using Checklists
Construction Process (DR):	Preservation	MSHDA Closing Process	
Mortgage Cut-Off (Why)	Federal Compliance		
General and Sub Contractors		Limited Dividends	
Title Insurance and Liens	NSP (2011)	MSHDA Reserves and Escrows	
Initial to Final Closing			
Federal Standards	NMTC	MSHDA:	
Mortgages (Priorities)(DR)		Board	
Condominiums (JM)		Legislation	
Ground Leases & Ln Trans (JM)		Policies/Procedures	
Closing Protection Letters (JM)			

Training for Attorneys (Seminars/Webinars Attorneys have attended)

Date	Name of Training	Who Signed Up	Who Attended
1/8/2012 to 1/13/2012	NCSHA - HFA Institute Conference in Washington, DC	Will Moseng	Will Moseng
1/10/2012 to 1/12/2012	NCSHA - HFA Institute Conference in Washington, DC	Margaret Meyers	Margaret Meyers
1/26/2012	Affinity University Microsoft Word - Using Styles Webinar	Margaret Meyers Laurie Kelly Will Moseng John Millhouse Jon Stuckey Donald Rencher Kara Hart-Negrich Scott Grammer	Margaret Meyers Laurie Kelly Will Moseng John Millhouse Jon Stuckey Donald Rencher Kara Hart-Negrich Scott Grammer
1/31/2012	Lorman's A1A Contracts: The Owner-General Contractor Agreement Audio Conference	Margaret Meyers John Millhouse Kara Hart-Negrich	
2/2/2012	Real Property Law Section Homeward Bound: Title Insurance in Turbulent Times Webinar	Jon Stuckey Laurie Kelly John Millhouse	
2/15/2012	Real Property Law Section Quick Hits Seminar: Transactions Boot Camp on Purchase Agreements Seminar Dickinson Wright's office in Troy	Jon Stuckey Donald Rencher Kara Hart-Negrich	

Training for Attorneys (In-House Training Attorneys have attended)

Date	Name of Training	Who Attended
11/9/2011	Low Income Housing Tax Credit presented at Attorney meeting	Will Moseng
(note this was presented in 2011)	by Chris LaGrand, Chad Benson and Andy Martin	Laurie Kelly John Millhouse Margaret Meyers Scott Grammer Donald Rencher Clarence Stone
1/11/2012	Project-Based Vouchers presented at Attorney meeting by Katherine French and Lisa Kemmis	Laurie Kelly John Millhouse Jon Stuckey Donald Rencher Kara Hart-Negrich Clarence Stone
1/18/2012	Burning Bond Cap presented at Closing Document Issues meeting by Jeff Sykes	Laurie Kelly Jon Stuckey Will Moseng Wayne Hillyard Kara Hart-Negrich Donald Rencher Clarence Stone John Millhouse

AUTHORITY DOCS AND TRAINING TOPICS:

12/18/2018

Real Estate

Title Insurance
Legal Descriptions
Review of MSHDA Initial Closing Documents
Reviewing a survey (????)
Payment & Performance (Ron Strote)
Construction Liens
AIA Forms
Closings
Tax-Exempt Bond Requirements for Closings
Insurance Requirements for Closings
Foreclosure and Deeds in Lieu

Affordable Housing

Lending Parameters
4% LIHTC (Chad Benson, Will Moseng, Tony Freedman)
4% LIHTC and Tax-Exempt Bond Requirements
9% LIHTC

Authority

Advisory Opinion
Authority Act
Wisenski Case
Parkwood Case
PILOTS (Need Training)
FOIA
Open Meetings Act

The Michigan State Housing Development Authority

I. The Authority

The Michigan State Housing Development Authority (the “Authority”) was created by act 346 of the Public Acts of 1966¹ (the “Act”) to help provide decent, safe and sanitary housing for the low and moderate income citizens of the State of Michigan². The Authority itself is composed of eight members, appointed by the Governor, three of whom are heads of principal departments within the State. One of the five remaining members is designated as the “residential member,” who must be a resident of a federally-subsidized housing unit administered by the Authority. Of the remaining four members, not more than two may be from any one political party.³ The Legislature did not give the Act immediate effect. Thus, the Act was not in effect until March 10, 1967.⁴ In the interim, then-governor George Romney requested an advisory opinion from the Michigan Supreme Court as to whether the Act was constitutional.⁵

II. The Advisory Opinion

The Governor and the Supreme Court raised several constitutional issues concerning the Authority. First, could the Authority borrow money in its own name and not obligate the State? Second, was such borrowing impermissible as providing the credit of the State to “any person, association or corporation, public or private”?⁶ Third, was the financing of the construction of housing a private “work of internal improvement” as prohibited under the Constitution?⁷ Fourth, are the funds of the Authority State funds? And finally, could the Legislature appropriate funds to the Authority on purely a majority vote?

The Court found that the Authority could, indeed, borrow money in its own name without obligating the State.⁸ Article 9, s 13 of the 1963 Constitution allows public bodies corporate to borrow money in their own names. Because the Authority is a “public body corporate and politic,”⁹ it therefore has that power. The Court went on to state that the limitation on such borrowing is measured by the “corporate purposes” of the body, as described in its constituting documents, in this case, the Act. In general, when the Authority borrows, it issues revenue bonds—bonds that will be repaid through a source of revenue, in the Authority’s case, payments on mortgages. The Authority has no taxing power.

The Court also found that the Act does not impermissibly grant the credit of the State to a private entity. For the purpose of this argument, the “private entity” would be the Authority itself, as a public body

¹ MCL 125.1401, *et seq.*

² MCL 125.1401.

³ MCL 125.1421.

⁴ *Advisory Opinion on the Constitutionality of Act 346 of the Public Acts of 1966*, 380 Mich 354, 158 NW2d 416 (1968).

⁵ *Ibid.*

⁶ Const. 1963, art 9, s 18.

⁷ Const. 1963 art 3, s 6.

⁸ Except in very limited circumstances, for the State to borrow money, a vote of two-thirds of both houses of the Legislature is required, as well as the approval of the electorate. Const. 1963, Art 9,s 15.

⁹ MCL 125.1421.

corporate. Article 9 s 18 would be violated if the credit of the State was used to back Authority bonds. But the Act itself states, “The state shall not be liable on notes or bonds of the authority and such notes or bonds shall not be a debt of the state. The notes and bonds shall contain on the face thereof a statement to such effect.”¹⁰

The Court also examine Article 3, s 6 of the 1963 Constitution, which says “[t]he state shall not be a party to, nor be financially interested in, any work of internal improvement” The Court concluded that financing the construction of housing for low and moderate income individuals *was* a work of internal improvement, but was a *private* rather than *public* work of improvement. However, the Court also concluded that the *State* was neither a party to, nor financially interested in, that work:

Moneys of the state housing development authority are not moneys of the State. The funds to be established under the act are trust funds to be administered by the state housing development authority. The State has no beneficial interest in such funds, and when such funds are used to finance the construction of housing, the State cannot be said to be financially interested in such construction. The state government can neither gain nor lose by reason of such construction. We conclude, therefore, that while the construction of private housing is not a public work of internal improvement, the act does not make the State party to, financially interested in, or engaged in carrying on such work, and the act does not therefore offend against Constitution 1963, art. 3, s 6.

It’s important to note that if the money of the Authority were money of the State, then all of the work the Authority does in providing financing for housing would be prohibited by the Constitution.

Finally, the Court held that appropriations to the Authority purely for the purposes of administering the Authority were for a public purpose, but that appropriations to the Authority for other purposes were not. Therefore, for appropriations to the Authority that are not for administration, a vote of two-thirds of both houses of the Legislature is required.¹¹

III. Direct Lending Programs

The Authority issues bonds to provide proceeds for it to make loans to finance the acquisition, construction and/or rehabilitation of single-family and multi-family residences. In general, the Authority issues bonds, the interest on which is exempt from Federal income tax.¹² For multi-family residences, the bonds are issued pursuant to 26 USC 142, and for single-family homes they’re issued pursuant to 26 USC 143. The fact that the interest is exempt from Federal tax (and also from Michigan and local income taxes) means that the purchasers of the bonds will accept a lower interest rate than they would want if the interest were taxable. Because of that, the Authority is generally able to charge a lower interest rate to its borrowers. In the case of the developers of multi-family projects, that means that they can charge their tenants lower rents. In the case of purchasers of single-family homes, this lower interest rate

¹⁰ MCL 125.1431.

¹¹ Const. 1963, Art 4, s 30.

¹² The interest is also exempt from State income tax. MCL 125.1443.

means that such loans are affordable to lower-income borrowers. The Authority generates most of its income through the “spread” between the interest that it pays on its bonds and the interest rate it charges on its mortgage loans. This spread is limited by Federal law.¹³

In order for the multi-family bonds to qualify under 26 USC 142, (a) 20% or more of the units must be occupied by persons or families whose income does not exceed 50% of the area median income (“AMI”), or (b) 40% or more of the units must be occupied by persons or families whose income does not exceed 60% of the AMI. (This is frequently referred to as the “20 at 50 or 40 at 60 test.”) These restrictions must remain in effect for the “qualified project period.” The qualified project period is the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of (i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied, (ii) the 1st day on which no tax-exempt bond issued with respect to the project is outstanding, or (iii) the date on which any section 8 assistance to the project terminates.

For its direct lending programs, the Authority typically issues a “pool” of bonds. The total bond proceeds from any given issue is generally between \$20 million and \$100 million, and the funds are intended to finance a number of different developments. These bonds are “general obligation,” or “GO” bonds of the Authority, meaning that the full faith and credit of the Authority is pledged to their repayment. The bond documents state specifically that a) the State of Michigan is not obligated to repay the bonds, and b) the Authority has no taxing power.

The Authority currently operates two principal direct lending programs, it’s “NOFA” program and a program funded solely with tax exempt bond proceeds. The NOFA program is so called because it is held in rounds that are announced by a “notice of funds availability.” With the NOFA, the Authority invites developers to submit proposals for funding that require a certain amount of “gap” funding. The funds of which the Authority is announcing availability are funds that can be used to fill that gap. The NOFA program has prescribed times for application, review and awarding of funds. The program funded only with tax exempt bonds has no time constraints.

In both programs, the Authority expects that the development will qualify for the 4% Low Income Housing Tax Credit (“LIHTC”). Projects qualify for the 4% credit if 50% or more of their aggregate basis is financed with the proceeds of tax exempt bonds.¹⁴ The gap occurs when the tax exempt mortgage that the rents of the development can support, plus the proceeds that the tax credits will yield, plus whatever other sources the developer can access for the development is less than the total development cost (“TDC”). Currently, the Authority uses HOME¹⁵ and Mortgage Resource Funds (“MRF”), frequently referred to as “Preservation Funds”) to fill the gap. For the NOFA, the Authority issues a notice indicating how much gap funding is available, and developers apply to receive those funds. Funds are awarded based on three criteria: (1) Ratio of gap financing to hard debt from MSHDA;

¹³ For single family bonds, the limit is 1.125% (26 USC 143(g)(2)). For multi-family bonds, it’s 1.5% (26 CFR 1.148-2(d)(2)(iii)).

¹⁴ 26 USC 42(h)(4)(B).

¹⁵ See 24 CFR Part 92.

(2) Level of per-unit gap financing needed to complete the project; and (3) Tax exempt bond financing supported by the project. Generally, the lower (1) and (2) are, and the higher (3) is, the more likely the development will get funded. Acceptable developments are ranked based on the three criteria, and the gap funds are awarded until the next development on the list will not have enough gap funds to be completely funded.

Prior to the NOFA Program, the Authority utilized various “TEAM” programs (TEAM stands for “Tax Exempt Apartments in Michigan.”) The TEAM Program itself was simply a program utilizing tax-exempt bond proceeds and LIHTC to finance developments. The HOME Team Advantage program was targeted towards developments with fewer than 50 units, and utilized HOME funds to make the project affordable. The Authority also financed some projects as “TEAM with HOME,” for larger developments (typically 50-150 units) that needed some gap funding in addition to the mortgage loan and tax credits.

At the same time, and continuing to the present, the Authority operated a “Taxable Bond” program. In this program, the Authority funds the project with bonds, the interest on which is taxable as ordinary income. The developments must have competed in the 9% LIHTC round and been awarded 9% credits. The program provides loan funds for projects that can support some debt service. While for a number of developments financed under this program the Authority actually sold bonds, currently it is using its general operating funds. If the Authority finances enough of these developments, it may sell taxable bonds and replace the operating funds with bond proceeds.

Prior to the various iterations of the TEAM Program, the Authority operated its “70/30” tax exempt bond program.¹⁶ In that program, at least 30% of the units had to be income and rent restricted. Twenty per cent had to be targeted for families at or below 50% AMI (thus meeting the “20 at 50” test), and 10% had to be targeted for families at or below 30% AMI. Rents for the restricted units had to be commensurate with the income limits. The balance of the units could be market rate units.

Before the 70/30 Program, the Authority operated a series of programs that together came to be referred to as the “80/20” program. This was in response to the end of new Federal project-based Section 8 subsidies, which occurred in the early 80s. Initially, prior to the Tax Reform Act of 1986, 20% of the units would be occupied by families at 80% or less AMI. Another 60% were reserved for families at 150% or 125% of AMI, depending on whether the development was located in an eligible distressed area¹⁷ or not. The remaining 20% could be available without regard to income. With the passage of the Tax Reform Act of 1986, the 20 at 50 or 40 at 60 test was established for developments financed with tax-exempt bonds, so the 80/20 program modified its “base” mode to require that 20% of the units would be available for families at 50% or less AMI, and the rest would be available without regard to income. The Authority also began instituting its own subsidy programs to reduce the rents for a certain percentage of units in a development.

In addition, during the 70/30 and 80/20 programs, the Authority also authorized a series of “soft” loans. The subsidies provided to developments were generally repayable, but could be forgiven if certain

¹⁶ Established November 15, 1990.

¹⁷ “Eligible distressed area” is defined in MCL 125.1411(u).

criteria were met. The Authority also instituted “small-size development loans,” “security loans” and “amenity loans,” among others, to provide additional financing for various contingencies. These loans generally were non-interest-bearing, non-amortizing loans. They permitted developers to borrow more money but not increase their debt load, thereby allowing them to keep rents lower.

Before the 80/20 program, the Authority loaned money under programs designed to take advantage of Federal subsidies for housing. In fact, being able to access those programs was one of the primary reasons behind the Authority’s initial formation.¹⁸ The most recent of the subsidy programs was the U.S. Department of Housing and Urban Development’s (“HUD”) project based Section 8 program.¹⁹ In that program, HUD determines the fair market rents (“FMR”) for the county in which the development was located. For earlier Section 8 projects, tenants could have incomes as high as 80% AMI. Later projects required tenants to be at 50% AMI or lower. Not all of the units in a development are required to be eligible for a subsidy. For those tenants receiving the subsidy, they pay 30% of their income for rent, up to the FMR. The subsidy pays any remaining balance. This basically guarantees a stream of income to the owner from which to pay debt service and operating costs.

At initial closing, the owner, the Authority and HUD entered into an Agreement to enter into HAP Contract (“AHAP”), and at or prior to the final closing, the parties entered into a Housing Assistance Payments (“HAP”) Contract. The HAP contract sets out the terms for the subsidies that the owner will receive.

Prior to the Section 8 Program, HUD provided subsidies under 24 CFR Part 236 (the “236 Program”). The developments financed under this program were financed through HUD-insured mortgages. HUD would provide interest reduction payments (“IRP”) to the Authority to write down the interest on the Authority’s loan to very low rates, typically 1%. In addition, HUD would, in most cases, pay the developer either rental supplement (“Rent Supp”) payments or rental assistance payments (“RAP”) based on the tenants’ income to further reduce payments by the tenants.

In addition to having to meet the various requirements that might be imposed because of tax-exempt bonds, a HAP contract, the HOME program or other Federal requirements, the loans the Authority makes under its direct lending programs also have to meet the requirements of Section 44 of the Act (MCL 125.1444).

The Authority has, as of August 2016, loans from each of the programs described above in its existing portfolio of loans.

IV. Low Income Housing Tax Credits

The Authority also administers the LIHTC program for Michigan.²⁰ The Authority allocates the credits and monitors participating developments for compliance. It also performs the various administrative and reporting tasks required by the Internal Revenue Service (“IRS”). As indicated earlier, there are two

¹⁸ See *Advisory Opinion, supra*.

¹⁹ See 24 CFR Part 883.

²⁰ MCL 125.1422b.

types of credits: the 4% credit and the 9% credit. The amount of the 9% credit available for any calendar year is essentially \$1.75 multiplied by the population of the State.²¹ The Authority allocates the credit competitively, based on its Qualified Allocation Plan (“QAP”),²² which it promulgates periodically. The 4% credit is available for any project in which at least 50% of the development’s aggregate basis is financed with tax exempt bonds.

As of July 2014, neither the 4% nor the 9% credits were actually either 4% or 9%, but were actually somewhat less, based on a formula. However, the 9% credit is now permanently 9%, and there is legislation pending to make the 4% credit 4%. The credits are credits against the income tax owed by the taxpayer taking advantage of the credits.²³ The amount of the credit is calculated by multiplying the applicable percentage (either the 4% or the 9% number) times the qualified basis of the development. The qualified basis is the applicable fraction multiplied by the eligible basis. The applicable fraction is essentially the percentage of the building that is occupied by tenants meeting the 20 at 50 or 40 at 60 test. The eligible basis is essentially the adjusted basis of the property. So the credit in 4% transactions is 0.0375 (or whatever the 4% fraction is) times the basis of the development, times the percentage of the development that is low income. In a building that has a \$5 million basis, and 80% of the units are low income (tax-credit eligible), the credit would be $0.0375 \times \$5,000,000 \times .8$, which equals \$150,000. This credit is available to the taxpayer each year for 10 consecutive years, assuming that the development remains in compliance. So the total credit would be \$1.5 million.

Normally, the developer forms a limited partnership or a limited liability company in order to take advantage of the credits. The developer, or an entity controlled by the developer, is normally the general partner or manager of the entity, and owns a small fraction of the total entity, typically 0.1% or less. The rest of the entity is sold to a tax credit investor, who generally has little or no involvement in running the entity or the development. The tax credit investor is typically a syndicator who has located any number of investors who want to take advantage of the tax credits. The investors buy an interest in an entity that the syndicator has created. That entity, in turn, uses the investors’ money to buy an interest in the owner of the development. That interest will usually be the remaining 99.9%. The syndicator will agree to buy that interest for somewhat less than what the credits are worth. Typically, that amount is \$0.85 to \$0.90 per dollar of credit. So in our example above, if the syndicator paid \$0.85, then it would purchase its interest in the owning entity for \$1.275 million. The owner then uses that money as equity in the development to pay for various costs of acquisition and construction. That means the developer doesn’t have to borrow as much money and can therefore charge the tenants lower rents.

While the credits are available to the investors for ten years, each development has a fifteen year “compliance period.” If the development fails to meet IRS requirements for LIHTC developments (primarily income and rent restrictions) over that time, the IRS can recapture a portion of the credits. The IRS also requires that states impose at least an additional fifteen year “extended use period” on

²¹ 26 USC 42(h)(3)(c).

²² 26 USC 42(m)(1)(B).

²³ 26 USC 38.

LIHTC developments. During that period, the state must monitor for the rent and income compliance, but the IRS won't take any action; the state must enforce the requirements. In Michigan, the Authority monitors the developments for compliance.

V. Pass Through Loans

The Authority also makes "pass-through" loans to finance multi-family developments.²⁴ In these developments, the Authority issues tax exempt bonds for one specific project and makes the real estate loan at the same time. The bonds issued for these developments are "limited obligation" bonds, meaning that the Authority itself is not responsible for repaying the bondholders. Rather, the developer must secure "credit enhancement" for the bonds. The Act states that "[t]he proposed credit enhancement may be in the form of a letter of credit, bonding, guarantee, mortgage insurance, or other appropriate security in an amount sufficient to assure the authority that repayment of notes or bonds issued by the authority is reasonably secure."²⁵ Typically, the Authority also obtains a mortgage on the development to secure repayment of the loan.

At the closing, the Authority issues its bonds, makes the loan to the development and receives the agreed-upon credit enhancement and any other security. It then assigns the loan, the credit enhancement and any other security to the bond trustee. The developer will then construct and operate the development, and make payments to the trustee. The trustee, in turn, will make scheduled payments to the bondholders. The Authority will continue to monitor the development for compliance but will have little additional involvement in the development.

In pass-through transactions, the Authority does little underwriting of the actual development. Its review is limited primarily to the sufficiency of the credit enhancement. The developer receives the low-interest loan and access to the 4% tax credits, but does not have as much involvement of the Authority in either the origination of the loan or in the ongoing operation of the development.

VI. Homeownership Programs

The Authority currently operates a number of single family homeownership programs. Its primary program is funded with the proceeds of tax-exempt mortgage revenue bonds. These bonds are issued under Section 143 of the Internal Revenue Code.²⁶ Section 143 limits the purchase price of the home being financed and the income of the purchaser. In addition, except in targeted areas, the purchaser cannot have owned an interest in his or her principal residence within the prior three years. The home being purchased must become the purchaser's principal residence. And a loan under Section 143 cannot be used to refinance a previous loan. Section 143 also requires that a percentage of the loans be placed in targeted areas. Because much of the State is designated as a targeted area, the Authority has not had difficulty in meeting that requirement.

²⁴ See generally MCL125.1444c.

²⁵ MCL 125.1444c(5)(a).

²⁶ 26 USC 143.

Income and purchase price limits are calculated county by county. In addition, income limits vary based on whether the residence being purchase is in a targeted area or not. The calculation ranges from 100% to 140% of the applicable median income. The “applicable median income” is the greater of the area median gross income and the statewide median gross income. Current income limits range from \$60,400 to \$122,360. The purchase price limit throughout the state is \$224,500.

The Authority has generally provided down payment assistance (“DPA”) loans to borrowers who meet additional criteria. Presently, those borrowers cannot have assets available to them in excess of \$7,500. Presently, the DPA loans are funded using a portion of the tax-exempt bond proceeds. Previously, the Authority used HOME funds, Temporary Assistance for Needy Families (“TANF”) funds, and its own funds. The loans are limited to \$7,500 and are due on sale or refinance. They do not bear interest, and the borrower does not make monthly payments. At the time of pay off, if the borrower is selling the home, the amount due under the DPA will be no more than the net proceeds of the sale, after the first loan and ordinary and customary closing costs have been paid.

The Authority also operates a Mortgage Credit Certificate (“MCC”) Program.²⁷ The programmatic requirements regarding the borrower’s income, the purchase price and so forth are essentially the same as in the single-family mortgage program. However, in this case, the Authority does not make a mortgage loan. Rather, participating lenders make the loans at a market interest rate and hold them, or sell them in the secondary market. The Authority issues an MCC to the borrower. The MCC entitles the borrower to a credit on his or her federal income tax. By statute, the credit can be between 10% and 50% of the interest the borrower pays on the loan each year.²⁸ The Authority currently has elected to use 20% in its program. If the borrower is paid regular wages, the borrower can file a W-4 to reduce the amount of taxes withheld each pay period, based on the projected amount of the credit, thus providing the borrower with additional cash-flow throughout the year to make monthly mortgage payments.

As an example, if the borrower borrows \$100,000 at 4.5% interest, in the first year, the borrower would pay approximately \$4,500 in interest. With a 20% MCC, the borrower would be entitled to a \$900 credit on his or her taxes. The amount deducted from the borrower’s wages could be reduced by \$75 per month (\$900 divided by 12), which the borrower could use to help make payments on the mortgage. This would reduce the effective rate of interest to about 3.6%.

The Authority has also begun a mortgage-backed securities (“MBS”) loan program. This is purely a conventional loan program, with Federal Housing Administration (“FHA”) mortgage insurance. The program is intended to be primarily for people who have previously owned their homes. In both the single-family and MCC programs, buyers generally are first-time homeowners. FHA will allow DPA loans with mortgages that they insure if the DPA loan is made by a housing finance agency (“HFA”). Since the

²⁷ Pursuant to MCL 125.1432b, the Authority is designated as the administrator of the mortgage credit certificate program for Michigan.

²⁸ 26 USC 25(d)(1).

Authority is an HFA, it can make DPA loans in this circumstance. In exchange for the ability to make the borrower the DPA loan, the Authority charges the borrower a slightly higher interest rate.

In the MBS Program, the loans are originated by private lenders. The Authority reviews the loans to make sure they comply with Authority requirements.²⁹ The lenders then sell the loan to the Authority's servicer, who bundles the loans into securities guaranteed by Ginnie Mae. In the process, the Authority originates a DPA loan that the Authority continues to hold until the first loan is repaid, at which time the DPA loan is due. The securities themselves are sold to individual investors, and the payments on the mortgage loans are used to repay the investors.

VII. Housing Choice Vouchers

The Authority administers HUD's Housing Choice Voucher program (previously known as Section 8) throughout the State.³⁰ (There are also a number of municipalities that administer voucher programs within their boundaries.) The Authority administers the program on a county-by-county basis. Independent contractors hired by the Authority administer the program in each county. Some contractors serve more than one county. Waiting lists for the program are maintained on a county-by-county basis.

Presently, new voucher recipients must be at or below the Federal poverty limit. The voucher holder is free to rent any unit available, but the voucher will only pay up to the area fair market rent ("FMR"). The voucher holder is required to pay 30% of his or her income towards rent, and the voucher pays for the remaining amount of the FMR. A tenant with no income would have the entire rent for his or her unit paid for through the voucher. When the tenant moves, the voucher stays with the tenant, so the tenant can use the voucher at his or her next residence.

The Authority may also allocate up to 20% of its vouchers for project-based assistance. Such vouchers are assigned to specific projects rather than specific tenants. Currently, the Authority typically allocates vouchers to projects to assist those projects in renting to tenants with special needs.

²⁹ MCL 125.1444(7).

³⁰ See generally 24 CFR Part 982.

Description/Explanation of Documents

INITIAL CLOSING DOCUMENTS INDEX

1. Sign-In Schedule of Persons Present at Initial Closing (Legal 001)

Lists people who attended the Closing

2. Authority Signatory Resolution with attached Certificate

This is the Michigan State Housing Development Authority (the “Authority”) Signatory Resolution in effect at the time the documents for the Closing were signed. This demonstrates that the person(s) who signed on behalf of the Authority was/were authorized to do so. The certificate, typically signed by the Director or Deputy Director of Legal Affairs, attests to the authenticity of the resolution.

3. Authority Authorizing Mortgage Loan Resolution with attached Certificate and Staff Report

The resolution indicates that the Authority has authorized the loan(s) and describes the terms and conditions pursuant to which the loan(s) will be disbursed. In particular, the resolution refers to the terms and conditions contained in the staff report. The staff report gives detailed information about the development, the development team, and the structure of the transaction. The certificate attests to the authenticity of the resolution.

4. Authority Internal Approvals (CD 700s)

These are statements by various Authority staff indicating certain conditions contained in the staff report have been met, particular documents submitted by parties to the transaction are acceptable, and certain determinations have been made. The Housing Development Officer (“HDO”) assigned to the development is responsible for collecting these from the appropriate signatories. The closing attorney should be certain that between the CD 700s and the documents that the attorney has prepared or collected cover all of the General and Special Conditions in the staff report.

5. Initial Closing Certification to Attorney General (CD 490)

This is a letter from the Director of Legal Affairs to the Attorney General’s office requesting that office to review the documents attached to the CD 490 to assure that if the transaction is closed using those documents, the transaction will comply with the requirements of the applicable bond issue, the proceeds of which will be used to finance the loan involved. The Assistant Attorney General reviewing the documents will generally also make sure that the documents comply with the transaction as described in the staff report. The Assistant Attorney General does not receive or review any documents relating to the construction or rehabilitation of the development, except the Building Loan Agreement. A cover letter also accompanies the CD 490, and provides additional information regarding the closing.

6. **Mortgage Loan Commitment (Legal 003)**

Through the Mortgage Loan Commitment, the Authority enters into a binding contract with the Sponsor and the Mortgagor to make a mortgage loan (and any subordinate loans) to the Mortgagor. The Commitment spells out in detail the terms and conditions that must be met before the mortgage loan is closed. The Sponsor and Mortgagor must sign the Commitment within 15 days of execution by the appropriate officer of the Authority. The Commitment is effective for a period of 60 days from acceptance by the Sponsor and Mortgagor, within which time, the Sponsor and Mortgagor must execute the closing documents, which may include a Closing Escrow Agreement. The Commitment specifically states that it does not merge with the closing of the transaction.

7. **HOME Written Agreement**

For developments receiving a loan utilizing HOME funds, the Authority and the Mortgagor must enter into a HOME written agreement, pursuant to the terms of 24 CFR 92.504. Basically, this is a commitment of HOME funds to the project. The agreement explains to the Mortgagor its responsibilities under the HOME program. While the virtually all of the information is contained in other documents in the transaction, this collects all of those terms, conditions and responsibilities into one document.

8. **Organizational Documents of Mortgagor**

These demonstrate that the mortgagor is validly existing and is an eligible entity for a loan under the Authority's Act.

a. **Authority Certificate of Approval of Amended and Restated Limited Partnership Agreement and Restated Certificate of Limited Partnership/Amended and Restated Operating Agreement and Articles of Organization**

This certificate is signed by the Director or Deputy Director of Legal Affairs, and indicates that the Mortgagor has been duly formed under the Authority's Act.

b. **Mortgagor's Closing Certificate** with certified copy of Certificate of Limited Partnership or Articles of Organization and Limited Partnership Agreement or Operating Agreement**

The Mortgagor's Closing Certificate is a set of representations by an authorized agent of the Mortgagor. The representations include the fact that the certificate of limited partnership and the limited partnership agreement (or corresponding documents for other types of entities) that the Mortgagor presented at the closing were currently in effect, and that there is no litigation or other investigation that would challenge the Mortgagor's existence. The certificate also includes the signatures of persons authorized to sign on behalf of the Mortgagor.

The Certificate of Limited Partnership is a certified copy of the certificate filed with the Corporations, Securities and Commercial Licensing Bureau of the Department of Licensing and Regulatory Affairs. It indicates that the partnership is legally formed.

The Limited Partnership Agreement is the document that sets out most of the relationships between the partners in the partnership. It also must contain the language required by the Authority's Act that makes the Mortgagor an eligible entity under the Act.

c. Certificate of Status or Good Standing**

This indicates that the entity is still in good standing with the Corporations, Securities and Commercial Licensing Bureau, and has not dissolved.

9. Organizational Documents of Mortgagor's General Partner or Manager

- a. Closing Certificate** with certified copy of Articles of Incorporation or Organization and Bylaws or Operating Agreement**
- b. Certificate of Resolution**
- c. Certificate of Good Standing or Non-Cancellation**

10. Organizational documents of Manager or Member of Mortgagor's General Partner/Manager

- a. Closing Certificate** with certified copy of Articles of Incorporation or Organization and Bylaws or Operating Agreement**
- b. Certificate of Resolution**
- c. Certificate of Good Standing or Non-Cancellation**

11. Organizational documents of Additional Guarantor

- a. Closing Certificate** with certified copy of Articles of Incorporation or Organization and Bylaws or Operating Agreement**
- b. Certificate of Resolution**
- c. Certificate of Good Standing or Non-Cancellation**

These are basically the same categories of documents as those for the Mortgagor. Typically, the general partner or manager of the mortgagor will be an entity. Therefore, we need to know the same information about that entity as we did about the Mortgagor. Eventually, we need to keep "drilling down" until we reach an actual person who will be signing. Because these entities may be corporations or limited liability companies, they will also have to adopt a resolution authorizing the actions to be taken. That resolution is then certified by an officer of the company. We also need the same type of information for any entity that is serving as a guarantor.

12. Mortgage Note (Legal 011)

This is the Mortgagor's promise to repay the mortgage loan. It contains the terms of the loan, including the loan amount, the interest rate and the length of the loan term.

13. Mortgage (Legal 012)

Through the Mortgage, the Mortgagor pledges the development as security for repayment of the Mortgage Note. If the Mortgagor defaults in any of the terms of the Mortgage or the Mortgage Note, the Authority can foreclose on the development and sell it in order to satisfy the debt. The Mortgage also incorporates the terms of the Regulatory Agreement. So if the Mortgagor defaults on the terms of the Regulatory Agreement, that is also a default under the Mortgage, and the Authority can foreclose. The Mortgage gets recorded with the Register of Deeds for the County in

which the Development is located.

14. Regulatory Agreement (Legal 013)

The Regulatory Agreement contains the programmatic terms that the Mortgagor must abide by. If there are HOME funds in the transaction, the Regulatory Agreement incorporates the HOME requirements. The same is true with Section 8 or project-based vouchers. It sets out the income and rent restrictions of the various programs that are part of the transaction. It also sets out the restrictions for loans funded with the proceeds of tax-exempt bonds during the “qualified project period.” It indicates that the covenants contained in the Regulatory Agreement “run with the land.” This is permitted by the Authority’s Act (MCL 125.1422(dd) and (ee)) regardless of the fact that there is no privity of estate.

The Regulatory Agreement provides for a limitation on the return the Mortgagor can receive on its equity investment in the development (a “limited dividend” payment). It also establishes various reserves that are held by the Authority, such as the Replacement Reserve and the Operating Assurance Reserve.

The Regulatory Agreement also has extensive provisions concerning the operation of the development. It authorizes the Authority to inspect the development; it requires the Mortgagor to submit certain reports; it outlines how the Mortgagor is to handle its funds and its books and accounts; and it lists certain prohibited activities.

15. Equity Bridge Loan Note (Legal 011)

This Note is specific to the Equity Bridge Loan Program. The concept is to lend the owner sufficient funds to allow the investors LIHTC equity payments come in at a later date, thus making the project a better investment and thus, we hope, encouraging the investor to pay more for the credits. The investor has to pay in 20% of the equity before construction is complete, but has up to five years thereafter to pay in the balance. As of August 2016, no one has elected to use this program.

16. Equity Bridge Loan Mortgage (Legal 012)

This mortgage secures repayment of the Equity Bridge Loan.

17. Preservation Fund Note (Legal 011)

This Note represents the Preservation Fund Loan (from the Mortgage Resource Fund, formerly the Preservation Fund). In the Authority’s NOFA (Notice of Funds Availability) program, developers compete for allocations of “soft” funds, comprised of Preservation Funds, HOME funds, or both. Projects are scored based on the lowest ratio of soft funds needed to hard funds that can be supported.

Preservation Funds come from developments that have paid off their loans, have received all of the limited dividends to which they are entitled, and still have additional funds in escrows or other accounts. Pursuant to the Parkwood case (Parkwood Limited Dividend Housing Association v

State Housing Development Authority (258 Mich App 495, 671 NW 2d 144, 2003)), the Authority is entitled to retain those remaining funds.

Both the Preservation Fund loan and the HOME loan typically bear interest at the rate of 3% simple interest per year, and they have a term of 50 years. As long as the first mortgage is outstanding, the Preservation Fund Loan will be paid with 50% of surplus cash. Payments will not start, however, until 12 years after amortization of the first loan begins, or when the developer has received all deferred developer fee, whichever is first. Once the first loan is paid in full, the mortgagor pays the payment that had gone to the first loan to reduce the Preservation Fund loan, and the HOME loan receives 50% of surplus cash. When the Preservation Fund loan is paid, then the HOME loan receives the payment that had gone towards the first loan.

18. Preservation Fund Mortgage (Legal 012)

This secures the Preservation Fund loan

19. HOME Note (Legal 011)

20. HOME Mortgage (Legal 012)

See the description for the Preservation Fund Note and Mortgage.

21. Construction/Third Party Loan Documents

- a. Note
- b. Mortgage
- c. Collateral Security Agreements
- d. Intercreditor Agreement
- e. Recorded Affordability Covenants

Typically, the Authority does not permit third-party loans on its developments. These documents would be part of a closing only in circumstances where we would be making a HOME loan only, for example

22. Environmental Indemnification Agreement (Legal 037)

This document provides that the Mortgagor will indemnify the Authority for damages it may suffer based on environmental issues. While most of our loan documents are non-recourse, the indemnification provides for a certain amount of recourse to the principals of the mortgagor who sign the document.

23. Security Agreement/Financing Statement (Legal 015) and Amendment to Security Agreement, Assignment and Agreement re: Equity Pay-In

The Security Agreement and Financing Statement provide additional security for the Authority's loan(s). They pledge the personal property of the development as security for the loan(s). The Financing Statement perfects the Authority's interest in that property.

The Amendment to Security Agreement adds the

24. HUD Consent to Assignment of HAP as Security
25. Completion Guaranty
26. Operating Deficit Guaranty
27. Recapture Guaranty
28. Equity Bridge Loan Guaranty
29. Building Loan Agreement (Legal 014)
30. Construction Contract (Legal 016) with attached Exhibits:
 - a. Legal Description
 - b. Trade Payment Breakdown
 - c. Index to Specifications
 - d. Index to Drawings
 - e. MSHDA-Approved Equal Employment Opportunity Plan
 - f. MSHDA-Approved Section 3 Hiring Plan (HOME or NSP only)
 - g. Incentive Payment Agreement
31. General Conditions to Construction Contract (Legal 017)
 - a. Prevailing Wage Determination Letter [*if applicable*]
 - b. Federal Labor Standards (HUD-4010) [*if applicable*]
 - c. Equal Opportunity Clause [*if applicable*]
 - d. Section 3 Clause [*if applicable*]
32. General Contractor's Residential Builder's License
33. Lobbying Certifications from Mortgagor and Contractor
34. Copy of Recorded Notice of Commencement
35. Early Start Agreement
36. Payment and Performance Bonds (Legal 020 and 019) or Completion Assurance Agreement (Legal 021) and Letter of Credit
37. Copies of Building Permits and Other Required Permits, if applicable
38. Architect's Errors and Omissions Certificate and Insurance Policy
39. Architect's Annual Registration Certificate
40. Assignment of Owner-Architect Agreement (Legal 023A)
41. Owner-Architect Agreement (Legal 023)
42. Design Architect's Certificate (Legal 024)
43. Surveyor's Certification of Facts (Legal 025)** and Survey**
44. Mortgagee's Title Insurance Policy with Endorsements (Zoning 3.1, Pending Disbursement, Comprehensive, Survey-Same Parcel and Property Tax ID) and Copies of all Exceptions
 - a. First Mortgage Policy
 - b. EBL Mortgage Policy
 - c. Preservation Mortgage Policy
 - d. HOME Mortgage Policy
45. Mortgagor's Attorney Opinion (Legal 027)
46. Evidence of Zoning Compliance**
47. Certified Copy of PILOT Ordinance**
48. Notification to Local Assessor of Tax Exemption (Legal 031)
49. Assurance of Availability of Public Utilities (new construction or gut rehab only)
50. Mortgagor's Application for Disbursement with Legal CD 701
51. Closing Escrow Agreement
52. Insurance Policies and Certificates

- a. Mortgagor's General Property (Special Form) with Loss of Rents
- b. Mortgagor's General Liability Insurance
- c. General Contractor's Broad Form Comprehensive General Liability
- d. Worker's Compensation and Employer's Liability
- e. Management Agent's Employee Crime and Dishonesty Policy
- 53. Management Agreement (Mgmt 401) with Marketing Addendum (Mgmt 401B), if applicable
- 54. Construction Transition Plan
- 55. Authority-approved Affirmative Fair Housing Marketing Plan
- 56. Copy of Recorded Deed
- 57. Closing Statement, Bill of Sale, Assignment of Leases, Permits, Etc.
- 58. Assignment of HAP Contract with copy of original HAP Contract
- 59. 2530 Approvals from HUD; Letter Approving Assignment of HAP Contract
- 60. 42m Letter and Estoppel Certificate
- 61. Useful Life Certificate (Tax Exempt Bonds only)
- 62. Special Condition Agreements or Submissions
 - a. Subsidy Layering Review with HUD Approval
 - b. Uniform Relocation Act - Approval of URA plan and copies of Notices
 - c. Seller's Responsibilities and Waiver of Surplus Cash/Limited Dividends
 - d. Van Transportation Agreement
 - e. Authority to Use Grant Funds (HUD 7015.16) or Memo re: Categorical Exemption from NEPA Review
- 63. Federal ID Number:
- 64. Tax Credit Reservation or Commitment
- 65. Documentation re: Brownfield and/or Historic Tax Credits
- 66. UCC-11 Searches from Secretary of State for Mortgagor, General Partner(s) and Seller
- 67. Discharges of Prior Mortgage, Regulatory Agreement and Financing Statement

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

Real Estate 101 Outline

2/5/2020

Deeds

Three types:

Warranty Deed

Grantor “conveys and warrants” to Grantee

Grantor Warrants that Grantor has the right to convey title

Grantor warrants the title is free from encumbrances, except those listed

In Michigan, requires a certificate from county Treasurer, indicating no taxes are due, in order to record

Quit Claim Deed

Grantor “quit claims” to Grantee

Grantor conveys whatever title Grantor has, which may be none

Deed “C”; Fiduciary’s Deed

Grantor warrants that Grantor did nothing to encumber title to the property

No representations regarding the state of title before Grantor took title

Used by fiduciaries (e.g. personal representatives or trustees) or foreclosing lenders when the Grantor is unfamiliar with the state of the title before the Grantor took title.

A deed must:

Contain the names (and addresses, in order to be recorded) of the Grantor and Grantee

Contain a legal description of the property conveyed

List the consideration being paid for the conveyance

Be signed by the Grantor

Be acknowledged by the Grantor (in order to be recorded)

Be delivered and accepted, in order to be valid

Mortgages

A mortgage is a pledge of real estate to secure the performance of an obligation

Most mortgages secure repayment of a debt, evidenced by a note

The note is the promise of the Mortgagor to repay the debt

Should describe the terms of the loan, e.g. the amount, the interest rate, the term and the payments; will the loan amortize over the term, or is there a balloon payment?

Typically is not recorded (nor is it in recordable form)

Typically provides that if there is a default in payment, or in the terms of the mortgage, the mortgagee may declare the entire outstanding debt to be due and payable ("acceleration of the debt")

The mortgage is the Mortgagor's pledge of the Mortgagor's property to secure repayment of the note

The Mortgagor "mortgages and warrants" the property to the Mortgagee

A mortgage must:

Contain the names (and addresses, in order to be recorded) of the Mortgagor and Mortgagee

Contain a legal description of the property mortgaged

Describe the obligation being secured by the mortgage

Be signed by the Mortgagor

Be acknowledged by the Mortgagor (in order to be recorded)

Be delivered and accepted, in order to be valid

Other provisions a mortgage may contain:

Escrows for paying taxes and insurance condominium dues, ground rents, etc. (for single-family residential mortgages, the Real Estate Settlement Procedures Act (RESPA) governs many of the escrow provisions)

Insurance requirements

How to apply insurance or condemnation payments

Covenant against waste

Power of sale

If the Mortgagee takes title to the mortgaged property, the lien of the mortgage merges into the Mortgagee's title and is extinguished unless the Mortgagee demonstrates an intention not to have the lien merge.

If the Mortgagor defaults, the Mortgagee may accelerate the debt and either sue on the note, or foreclose

May either foreclose by advertisement or foreclose judicially

Foreclosure by advertisement¹

The mortgage must contain a power of sale in order to foreclose by advertisement.

The Authority must first give the mortgagor notice of default in the mortgage or note and accelerate the balance due.

The Authority must then publish notice of the foreclosure sale once a week for four weeks in a newspaper of general circulation in the county in which the property is located.

A copy of the notice must also be posted on the premises.

The notice must contain:

- (a) The names of the Mortgagor and of the Mortgagee, and the assignee of the mortgage, if any.
- (b) The date of the mortgage, and when recorded.
- (c) The amount claimed to be due on the mortgage at the date of the notice.
- (d) A description of the mortgaged premises, conforming substantially with that contained in the mortgage.
- (e) The length of the redemption period.

A sheriff then conducts an auction sale of the premises at the county courthouse.

Property is sold to the highest bidder.

Mortgagee typically bids what is owed on the note.

Mortgagee does not need to pay the sheriff if the Mortgagee's bid is equal to or less than the amount owed.

If the Mortgagee is the successful bidder, it is deemed to have received the amount bid, up to the amount of the note.

Successful bidder receives a sheriff's deed giving the bidder an equitable interest in the property, but Mortgagor retains legal title and right to possession during the redemption period.

Upon the expiration of the redemption period, the sheriff's deed "becomes operative" and vests full legal title in the successful bidder.

¹ The Michigan State Housing Development Authority (the "Authority") must foreclose under its own statute, MCL 125.1449-125.1449v for foreclosure by advertisement, and MCL 125.1448-125.1448p for judicial foreclosure. The corresponding sections of the Revised Judicature Act, for all other mortgages, are MCL 600.3201 *et seq.*, and MCL 600.3101 *et seq.*, respectively.

Upon expiration of the redemption period, the successful bidder takes the title the Mortgagor had at the time the mortgage was executed, thus cutting off subsequent liens, easements, etc.

The redemption period is typically six months, but can be longer if the Mortgagor has paid a substantial amount of the debt, or shorter if the property is abandoned.

The Mortgagor or anyone claiming under the Mortgagor, e.g. subordinate lien holders, may redeem the property.

Upon redemption, the register of deeds cancels the sheriff's deed, and title is restored to the Mortgagor.

Judicial Foreclosure

If a mortgage does not contain a power of sale, it must be foreclosed judicially.

Mortgagee may elect to foreclose judicially if there is some problem or error regarding the mortgage, e.g. the legal description is incorrect.

Jurisdiction is in the circuit court in the county in which the mortgage premises are situated.

The action is, by statute, equitable in nature, so no jury trial.

The court may not order a sale of the mortgage property within 6 months after the filing of the complaint for foreclosure.

The sale is conducted by the county clerk, and the successful bidder receives a clerk's deed.

The redemption period is six months.

Effect of clerk's deed and redemption are the same as for foreclosure by advertisement.

Land Contracts (Vendor and Purchaser)

A land contract is a contract for the purchase of property in which the buyer pays the purchase price in more installments than the down payment and the payment at the closing of the sale.

Similar to a purchase agreement, but more payments, and the purchaser generally gets possession at the time of signing the land contract; however, the majority position is that the contract should address when the purchaser gets possession.

A land contract has some elements of a conveyance in that it vests equitable title in the purchaser, while the seller retains legal title.

It also has elements of a financial transaction in that it generally addresses how much is owed, what interest that balance will bear, when it will be repaid, and how much each payment will be.

Land contract may be recorded if it meets the requirements for recording.²

² See MCL 565.201.

Practice has generally been to record a memorandum of land contract, although the better practice may be to record an affidavit pursuant to MCL 565.451a(e).³

Either (or both) the vendor and the vendee may mortgage their respective interests, but generally the vendor must pay off the vendor's mortgage before conveying title.

The land contract should address who pays the taxes. Generally, either the vendor receives escrow payments from the purchaser and pays the taxes, or the purchaser is responsible for paying the taxes directly.

Land contracts may be forfeited or foreclosed.

Despite language in Sec. 48 of the Act, land contracts cannot be foreclosed by advertisement.

Procedures in Sec. 48 *et seq.* may be used to judicially foreclose a land contract the Authority holds. (Sec. 31 of the Revised Judicature Act (MCL 600.3101, *et seq.*) may be used for non-Authority land contracts.)

Land contracts may be forfeited under Chapter 57 of the RJA (MCL 600.5701 *et seq.*, Summary Proceedings to Recover Possession of Premises).

Land contract must have a provision allowing forfeiture.

Vendor must send the vendee a Notice of Forfeiture, giving the vendee 15 days to comply with the terms of the contract—generally by paying the outstanding amount due; the balance due may not be accelerated.

If the vendee does not cure the default the vendor may commence an action for possession in District Court.

Either party may demand a jury trial.

After the trial, if the court finds for the vendor, the court will issue a judgment that the amount due on the contract must be paid within 90 days (if less than 50% of the original amount of the contract has been paid, or 6 months if 50% or more has been paid), or the vendor may obtain a writ of restitution.

Tenancies and estates

Tenants in common

Absent an express contrary intention in a conveyance, the ownership interest for two or more co-owners is as tenants in common.

Each co-tenant has an undivided fractional interest (typically equal) in title to the property.

Each co-tenant can convey his or her undivided interest.

³ See Martinelli & Moseng, *Recording Land Contract and Lease Memoranda*, 13 Mich Real Prop Rev 31 (1986).

Upon the death of a co-tenant that co-tenant's interest goes to the co-tenant's heirs.

Joint tenants

Created by a conveyance to two or more persons "as joint tenants," or "as joint tenants, and not as tenants in common."

Creates a right of survivorship among the joint tenants.

Survivorship right takes precedence over a devise in a will or intestate succession.

Joint tenancy will be converted to a tenancy in common, with each tenant having an equal share, if one of the joint tenants conveys to a stranger to title.

Joint tenants with full rights of survivorship

Same as a joint tenancy except the survivorship aspect cannot be defeated by a conveyance.

Conveyance must clearly indicate the survivorship feature, such as "as joint tenants with full rights of survivorship," "as joint tenants, and to the survivor," etc.

Creates a joint life estate with a contingent remainder to the survivor.

Cannot be severed by a conveyance.

A conveyance continues the joint life estate with the contingent remainder, substituting the new joint tenant in the joint life estate, but with the measuring lives being those of the original joint tenants.

Tenants by the entireties

Exists only between spouses.

Presumption, in the absence of specific language to the contrary, is that a conveyance to a married couple creates a tenancy by the entireties.

Neither spouse may convey an interest in property held by the entireties without the consent of the other.

Upon the death of one spouse, the other holds the absolute title.

Based upon the common law assumption that a husband and wife were one entity.

Upon divorce, whether mentioned in the judgment or not, property held by the entireties becomes property held as tenants in common.

Property held by two people who later marry does not, by operation of the marriage, become entireties property.

Partnerships

The partners have a tenancy in partnership.

A partner has an equal right with the other partners to possess property for partnership purposes.

In a co-partnership, subject to the terms of a partnership agreement, any co-partner can convey partnership property.

In a limited partnership the partnership agreement generally specifies that the general partner may convey property of the partnership; however, this can be varied pursuant to the partnership agreement.

Life estates

A life estate is an estate of possession, limited by the life of the estate holder or, less commonly, a third person.

The person who holds the balance of the fee simple, other than the life estate holds the "remainder."

Typically the life tenant cannot affect the remainder.

"Lady bird deeds": the holder of a life estate, coupled with an absolute power to dispose of the fee estate by *inter vivos* conveyance, can convey a fee simple estate during the lifetime of the holder. If the power is not exercised, the gift over becomes effective.

Legal Descriptions

Legal descriptions are how we concisely describe real property.

Necessary because real property can't be picked up and shown or handed to someone.

Not the same as an address.

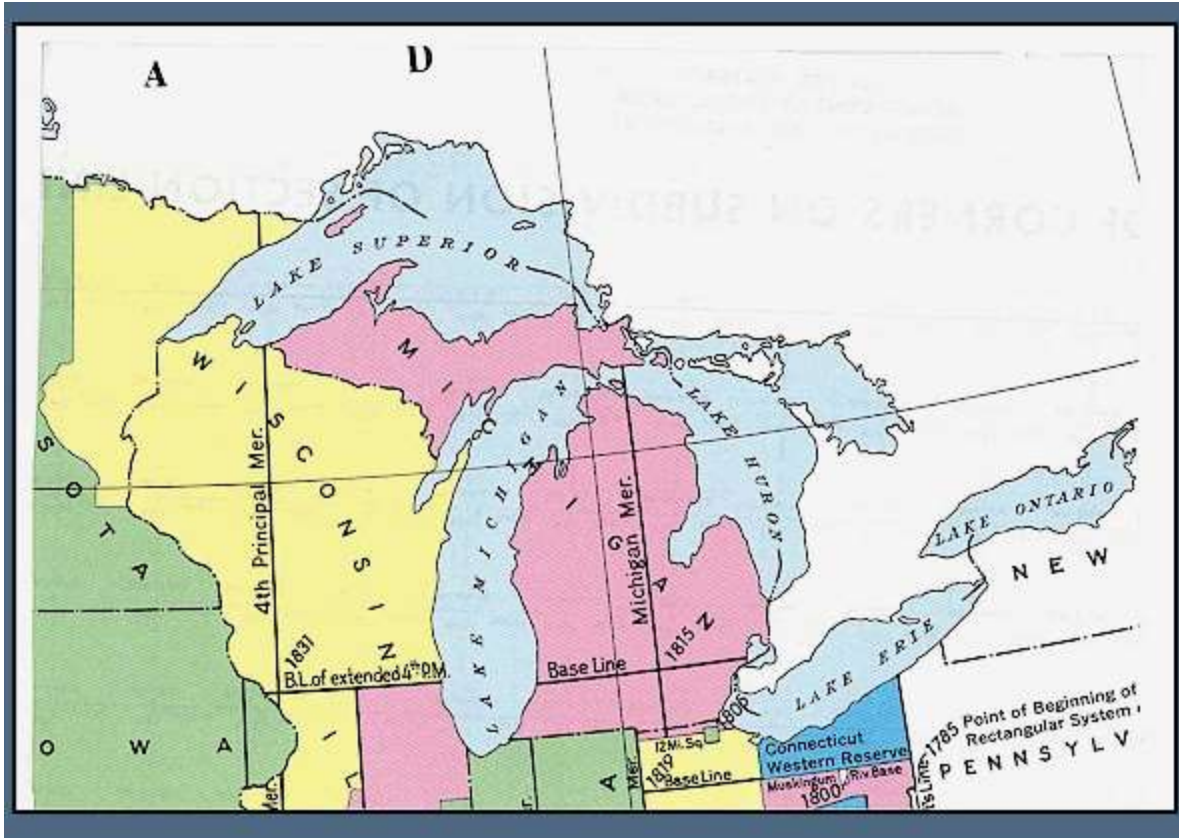
Not the same as a tax description. (N 0 DEG 35'12"E ALNG THE W LN OF E 1/2 OF NW 1/4 A DIST OF 1255.08 FT -N 83 DEG 27'57"W 536.34 FT TO C/L VAN ATTA RD -N 01 DEG 46'05"E ON C/L 68 FT -S 83 DEG 27'57" E 534.94 FT TO SD W LN -N 0 DEG 35'12"E 221.91 FT ON SD W LN -S 73 DEG 26'24"E 232 FT -S 68 DEG 56'11"E 10.80 FT -S 88 DEG 59'05"E 331 FT -N 0 DEG 49'11"E 238.34 FT -S 71 DEG 26'24"E ON C/L 207.79 FT -S 0 DEG 49'11"W 190 FT -S 29 DEG 31'17"W 954.07 FT -S 0 DEG 40'01"E 629.86 FT TO EW 1/4 LN -N 89 DEG 41' 06"W ALNG 1/4 LN 316.31 FT TO POB SEC 13 T4NR1W)

Descriptions are generally determined by surveys. (See descriptions at end of Section.)

Washington, Jefferson and Lincoln were all surveyors at one time.

Land Ordinance of 1785, as modified by Act of May 18, 1796, set out method for surveying NW Territory.

Establishes baselines and principal meridians.

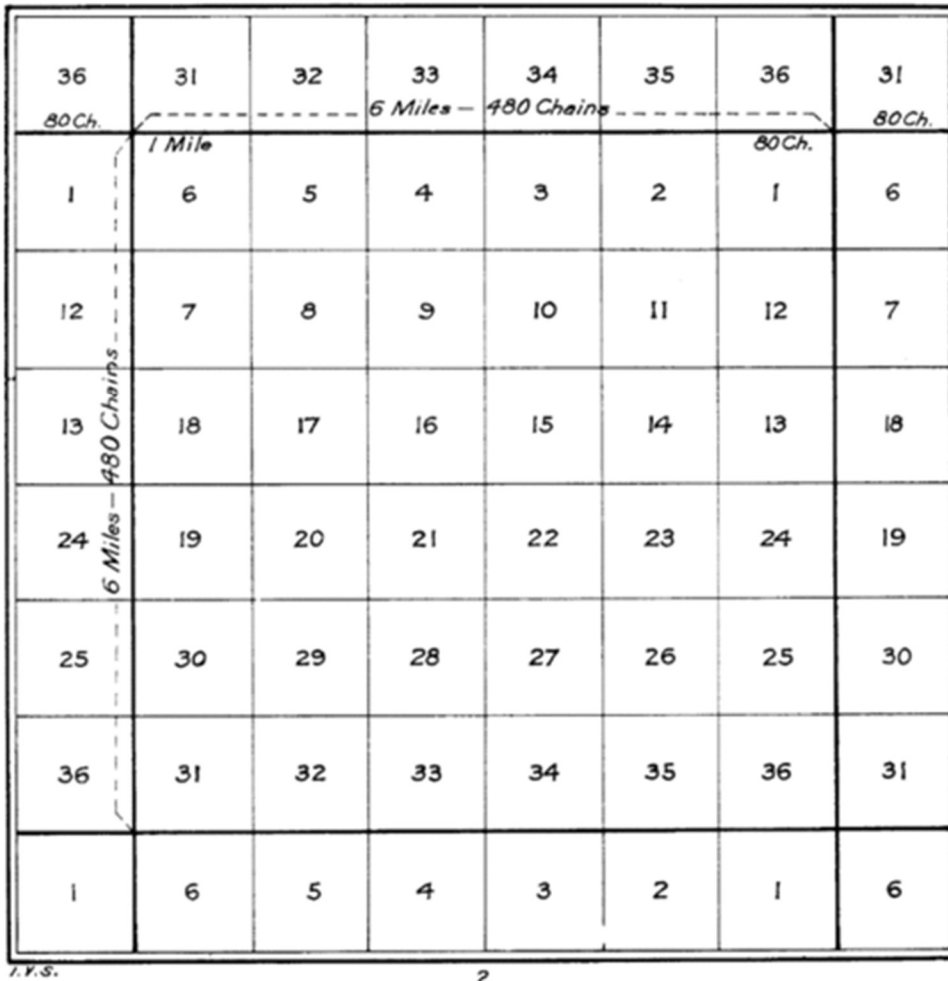


Michigan was surveyed beginning in 1815.

“Towns” and “ranges” are described with relationship to the baseline (town north or south) and principal meridian (range east or west). Town 4 North, Range 2 West (Lansing Township)

36 sections in each township, numbered starting with 1 in the NE, numbered boustrophedonically. Section 16 was dedicated for education.

**THEORETICAL
TOWNSHIP DIAGRAM
SHOWING
METHOD OF NUMBERING SECTIONS
WITH ADJOINING SECTIONS**



Ideal sections are one mile (320 rods) on a side. North and west sections of township are where curvature of the Earth is accounted for.

(1 rod=16.5 feet; 4 rods=1 chain; 1 chain=66 feet [10 chains=1 furlong; 8 furlongs=1 mile]; 100 links=1 chain; 1 link=7.92 inches)



Ideal section contains 640 acres.

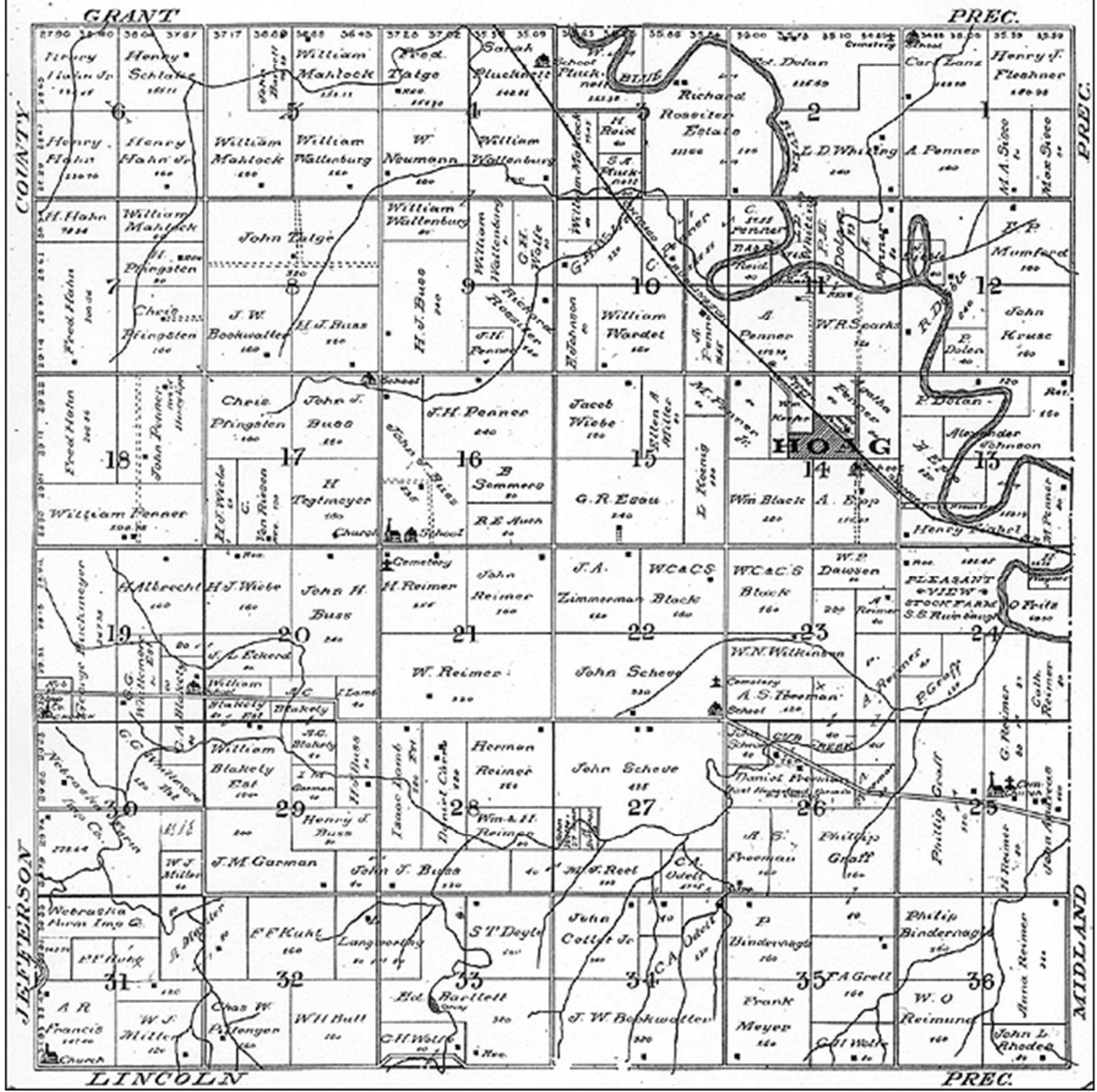
Corners of each section are marked with a monument, as is each “quarter post.”

Farmlands were frequently sold as sections (640 acres), quarter sections (160 acres) or quarter-quarter sections (40 acres).

Typical description: The southeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 17, T4N, R1W, Meridian Township, Ingham County, Michigan.

MAP OF
BLAKELY
 TOWNSHIP
Sec. 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

Township 4 North Range 5 East 4th P.M.



Section 16 was typically reserved for public schools.

Theodolite (and now GPS) allows for precise measurements of angles.

Typical metes and bounds descriptions:

Parcel A

Commencing at the Southeast corner of Lot 14, Block 55 of Refrigerator Company's Addition to the Village (now City) of Frankfort, according to the recorded Plat thereof as recorded in Liber 1 of Plats, Page 65, thence South 89 degrees 45 minutes 32 seconds West , 311.84 feet; thence North 00 degrees 07 minutes 06 seconds West 319.94 feet to the place of beginning; thence North 89 degrees 45 minutes 32 seconds East 50.00 feet; thence North 00 degrees 07 minutes 08 seconds West 30.00 feet; thence South 89 degrees 45 minutes 32 seconds West 50.00 feet; thence South to the place of beginning.

Parcel B

Land in part of the SW 1/4 of Section 27 Township 55 North, Range 34 West, City Of Hancock, Houghton County, Michigan, described as follows:

Lots 6, 7, 8, 9, 10, 11 and part of lots 5 and 12, also that part of the vacated alley adjacent to the North line of said lots 6, 7, 8, 9, 10, 11 and 12 and to the south line of said lots 5 and 6, "Amended Plat Ulseth's Addition to the City Of Hancock", as recorded in liber 2 of Plats page 36, Houghton County Records, Houghton County, Michigan, more particularly described as follows:

Beginning at the SW corner of said lot 7 ; thence N 00°00'23" W 257.73 feet (computed), 257.00 feet (record) to a point on the South right of way line of Atlantic Street (60 ft. Wide); thence along said South line N 89°59'24" E 76.03 feet; thence South 127.38 feet; thence S 89°59'24" E 169.49 feet; thence S 00°02'00" W 14.16 feet to the NW'ly corner of an existing building; thence along the face of an existing building the following three (3) courses: 1) S 12°14'06" E 23.78 feet, 2) S 74°20'57" W 4.66 feet, 3) S 12°16'36" E 18.64 feet; thence S 14°25'09" E 11.70 feet; thence S 54°53'25" E 24.43 feet; thence S 24°06'45" W 29.97 feet; thence S 00°02'00" W 20.69 feet to a point on the North right of way line of Quincy Street (60 ft. Wide); thence along said North line S 89°59'24" W 260.64 feet along said North line to the point of beginning.

Parcel C

A parcel of land in the Northeast 1/4 of Section 29, T5N, R1W, Bath Township, Clinton County, Michigan, the surveyed boundary of said parcel described as: Commencing at the Northeast corner of said Section 29; thence S00°23'41"E along the East line of said Section 29 a distance of 1144.06 feet to the point of beginning of this description; thence continuing S00°23'41"E along said East line 448.70 feet; thence S89°59'05"W 208.72 feet; thence S00°23'41"E parallel with said East line 241.73 feet to the centerline of Park Lake Road; thence S89°59'05"W along said centerline 159.23 feet; thence N00°00'55"W 200.00 feet; thence S89°59'05"W 375.58 feet; thence S00°00'55"E 200.00 feet to said centerline; thence S89°59'05"W along said centerline 66.00 feet; thence N00°00'55"W 200.00 feet; thence S89°59'05"W 323.36 feet; thence S52°51'03"W

111.27 feet to the Easterly line of Interstate 69; thence along said Easterly line the following three courses: N38°56'27"W 64.73 feet, N05°29'11"W 118.86 feet, and N39°30'50"E 212.13 feet to the Southerly line of Interstate 69; thence along said Southerly line the following six courses: N84°30'49"E 151.75 feet, N75°49'01"E 118.33 feet, N67°24'24"E 359.79 feet, N72°44'16"E 199.00 feet, N83°39'01"E 208.31 feet, and Southeasterly 144.10 feet along a curve to the right, said curve having a radius of 5879.58 feet, a delta angle of 1°24'15" and a chord of 144.10 feet bearing S74°37'08"E to the point of beginning.

Land Division Act (MCL 560.101, *et seq.*) allows land to be subdivided. MCL 560.255 allows lots to be referred to by subdivision name and lot number.

Condominium Act (MCL 559.101, *et seq.*) allows for vertical space to be subdivided, too. MCL 559.164 allows units to be conveyed by reference to the condominium name and unit number.

Surveys

Types of Surveys

ALTA/NSPS (American Land Title Association/ National Society of Professional Surveyors, as successor to the American Congress on Surveying and Mapping)

The Authority requires this for multi-family developments; see Survey Requirements.

Shows boundaries, mappable exceptions from associated title commitment, buildings, etc.

Boundary Survey

Mortgage Report/Location Survey

Topographical Survey

Things to Look For

Does the legal description match the title work?

Has the surveyor certified the survey? Does it match our requirements?

Are there encroachments, either onto or from our property?

Are there wetlands or bodies of water?

Do all the mappable exceptions to title appear on the survey?

Does it show zoning status, floodplain data?

Marketable Record Title Act—MCL 565.101, *et seq.*

Extinguishes all claims not shown within a chain of title in the official public records if that chain goes back at least 40 years (or 20 years for mineral interests).

“Official public records” means a grantor-grantee index maintained by the Register of Deeds.

Cannot have marketable record title if the land is in the hostile possession of another.

Claimant of an interest can record a notice, prescribed by statute (MCL 565.105), within the 40-year period and preserve the interest.

See Public Act 572 Amends Marketable Record Title Act Creating a Clash of Titans with Michigan Recording Act, Michigan Real Property Review, Spring & Summer 2019.

See also MCL 565.29, Unrecorded conveyance; validity against subsequent purchaser; relation of quit claim deed to good faith.

Title Standards

First published in the 1950s.

Intended to be “black-letter law” for determining title issues.

Allowed attorneys reviewing abstracts to determine what issues should be raised and what should not; provides same aid for title insurers now.

The Title Standards Committee was the precursor to the Real Property Law Section.

Title Insurance

Insures title to real property, subject to certain exceptions noted in the policy.

“Title company” is typically an agent of an underwriter but can be a direct operation of an underwriter.

The underwriter is the entity actually providing the insurance.

Title insurance in Michigan is not the practice of law; the insurer is making a business decision regarding what to insure against and what not to.

Title insurance is an indemnity policy, not a casualty policy.

Indemnity

Insures that the state of title at a given date and time is as the policy describes.

If title is other than described, and the policy holder suffers a loss, the title company will indemnify the policy holder (or defend in court).

Casualty (e.g. hazard insurance): Insurer will pay the policy holder if an insured risk, e.g. a fire, occurs, and the policy holder suffers a loss.

Commitments and policies

Form title commitments and policies are developed by the American Land Title Association.

Title company will initially provide a commitment; describes the state of title before the prospective transaction occurs.

Lists who the current owner is.

Lists the type of estate the transferor has—generally the owner in fee simple.

Lists the type(s) of policy(ies) to be issued, and in what amount(s).

Owner's policy.

Loan policy

With standard exceptions

Without standard exceptions

Includes the legal description of the property to be insured.

Lists document(s) necessary to create the estate(s) to be insured.

Lists exceptions to title that will not be insured against.

Lists exceptions that may be insured against, and the requirements for having them removed.

Title company will issue a policy after closing, once all necessary documents have been recorded and the premium has been paid.

Policy will list the insured and the amount of insurance.

Policy will describe the estate insured.

Policy will be either an owner's policy or a Loan policy.

Policy will include legal description of the insured property.

Policy will list the exceptions for which the title company will not provide coverage.

If a title company is "insuring over" an exception, the company will generally list the exception in the policy, the provide for affirmative coverage.

Policy does not cover matters known to the insured but not known to the company.

Premium is based on type and amount of policy.

Typically, seller pays for the owner's policy, and the buyer/borrower pays for the loan policy.

Endorsements are attachments to the policy and provide additional coverage.

Pending disbursement endorsement is used by lenders that are disbursing funds for construction in a series of draws.

Endorsement is issued at the time of each draw, for the amount of that draw.

Insures the lender that there are no construction liens that would be in front of the amount of mortgage loan proceeds the endorsement indicates can be disbursed.

Comprehensive endorsement covers:

Violations of covenants that are listed as exceptions.

The forced removal of encroachments

Surface disturbance caused by the exercise of oil, gas or mineral interests.

Zoning endorsement insures that the property is zoned appropriately for the proposed use (new construction) or for the existing use.

Endorsements may require additional premium payments.

Liability on owner's policy can last forever; lender's policy ends when loan is repaid.

Generally, a lender must demonstrate a loss before the title company will pay.

Frequently there is a gap between the closing and the recording of documents.

In general, title company does not cover interests recorded during the gap.

MSHDA requires that in multi-family closings, the title company insure against interests recorded in the gap.

Marked up commitment

Title agent lines through requirements that have been met and interests (e.g. mortgages) that have terminated.

Agent indicates changes in owner.

Agent dates and signs mark-up.

Pro forma policy

Title company prepares a "mock up" of what the policy to be issued will look like.

Agent signs and dates pro forma at closing, creating a policy.

Home owners and single-family lenders may receive a "short form" policy.

Title searches

Similar to an abstract—lists documents that affect title to a parcel.

No insurance provided.

Generally, considerably cheaper than title insurance.

Construction Liens

Intention of the Construction Lien Act (MCL 570.1101, *et seq.*) is 1) to assure that people who add value to property during construction will get paid for their work, and 2) to protect owners from paying twice for work.

Construction liens are entirely creatures of statute; act is to be liberally construed, and “substantial compliance” is sufficient to meet requirements of the act (MCL 570.1302).

Process begins with recording and posting a Notice of Commencement.

Somewhat different procedures apply to one- or two-unit structures if the owner lives in one of the units (see MCL 570.1108, 1108a and 1114).

“Design professionals” may record a “Notice of Professional Services Contract” prior to the Notice of Commencement.

Form of Notice of Commencement is prescribed by Statute.

Notice of Commencement, together with a blank Notice of Furnishing must be posted on the property.

Failure to record or post extends the time for subcontractors, suppliers and laborers to provide notices of furnishing.

The owner cannot permit actual construction to begin until the Notice of Commencement is recorded and posted.

The owner should not make a payment to the contractor without having the contractor provide a sworn statement.

Statement should list all the subcontractors the contractor has contracts with, the total amount of each contract, the amount already paid, the amount of the current draw and the amount to complete.

Must be in statutory form.

Prepared for each draw.

With each draw request, in addition to the sworn statement, the contractor should provide lien waivers from the preceding draw.

Each subcontractor, supplier or laborer can also provide the owner with a notice of furnishing, which tells the owner the person providing the notice is doing work on the project.

The owner can require subcontractors to provide sworn statements and lien waivers.

If the owner pays pursuant to the sworn statement, and no one not listed on it has provided a Notice of Furnishing, the owner is protected from having to pay again if an unpaid subcontractor files a lien.

Providing a false sworn statement with intent to defraud can be punishable by up to 10 years in prison and 3 times the dollar amount of what the amount of the statement was.

Intricate sets of time limits for providing all the notices.

If a subcontractor doesn't get paid:

- Must record a Claim of lien within 90 days of last labor or material for the project;

- Must bring an action to foreclose the lien within one year of recording the claim of lien;

- May sue on the contract, instead.

All liens have priority as of the date of the first actual improvements to the property.

Real Property Taxes

MCL 211.1 *et seq.* is the Michigan General Property Tax Act.

"Tax day" is December 31 of the year before the year being taxed; whatever the tax status of the property is on tax day is how it will be taxed for the next year. (MCL 211.2)

Property tax is typically an *ad valorem* tax—according to value.

The rate of tax is expressed in mills; one mill means \$1 of tax paid for every \$1,000 of a property's value.

Principal residence (homestead) exemption (MCL 211.7cc)

- A taxpayer is entitled to a limit on the number of mills that can be charged for the school aid fund for the taxpayer's principal residence.

- Limitation is 18 mills, or the millage charged in 1993, whichever is less.

- A taxpayer (or the taxpayer and spouse) can only have one property subject to the limitation (or a similar limitation from another state).

- As an exception to the tax day rule, this limitation may be claimed in the course of a tax year: by June 1 for summer taxes, and November 1 for winter taxes.

Uncapping

- In general, property is to be assessed at 50% of its true cash value (MCL 211.27a).

- Taxable value of property, as opposed to assessed value, cannot annually increase by more than the lesser of 5% or the rate of inflation.

- Taxable value of the property can increase to the assessed value ("uncapping") if the property is transferred. Examples of transfers:

Transfer by deed or land contract;

Changes in the beneficiaries of a trust;

Leases in which the term, including any renewal options, is more than 35 years, and the lessee can purchase the property for a “bargain purchase option”;

Sale of more than 50% of an ownership entity.

Land Bank 5/50 tax

MCL 211.1025 created the “eligible tax reverted property specific tax.”

Property that a land bank sells is exempt from *ad valorem* property taxes, and subject to the eligible tax reverted property specific tax for a period of 5 years.

The amount of the tax is the same as the *ad valorem* property taxes would have been if the property were not exempt.

The tax is split, with 50% going to the land bank and 50% to the local taxing authorities.

Because it is a specific tax rather than an *ad valorem* tax, MSHDA’s PILOT exemption doesn’t apply.

Under MCL 211.1025a, the land bank may rescind the 5/50 exemption.

Tax forfeiture and foreclosure (MCL 211.78-78s)

Timeline:

Taxes are billed by the taxing governmental unit in year 1 (July and December).

Delinquent taxes are turned over to the foreclosing governmental unit (“FGU”; typically the county treasurer, but could be the State) for collection in March of year 2; fees are added.

Property is forfeited to the FGU in March of year 3; fees are added.

FGU serves notices of show cause hearing and foreclosure hearing on interested parties in October and November of year 3.

Show cause hearing occurs in January of year 4.

Foreclosure hearing occurs in February of year 4.

Circuit court enters judgment of foreclosure in March of year 4.

Property must be redeemed by March 31 of year 4, or the property becomes the property of the FGU on April 1.

All interested parties must receive due process notice (*Mennonite Board of Missions v Adams*, 462 US 791 (1983); *Dow v State*, 396 Mich 192, 240 NW2d 450 (1976)).

Equalization

Equalization is intended to carry out the constitutional mandate that all property in the State should be assessed uniformly, rather than having some jurisdictions assessed high and others low.

Begins at county level; each county, or groups of counties, must have an equalization department.

County boards of commissioners are required to submit their county equalization rolls to the State Tax commission, to have those rolls equalized across counties.

Recording

Properly recording documents provides constructive notice to all would-be purchasers.

Recording occurs at the county Register of Deeds office; office of Register of deeds may be combined with the County Clerk's office; office is at the county seat.

Recording requirements (MCL 565.201):

- Name of grantor(s) must be the same in the signature line (and signature) and the acknowledgment.

- Name of grantor(s) must be typed or printed under the grantor(s)' signature.

- The name of the notary public must be stamped or printed under the notary's signature.

- The address of each grantee must be typed or printed on the document.

- Signature(s) of the grantor(s) must be acknowledged by a notary public.

Each sheet of the document must comply with the following (MCL 565.201):

- The first page must have a 2 ½ inch margin at the top, and all other margins, on each page must be at least ½ inch.

- The first line of the first page must identify the recordable event the document evidences.

- Must be printed, typed or otherwise not less than the equivalent of 10-point type.

- Must be legibly printed in black ink on white paper of not less than 20-pound weight

- Cannot be smaller than 8 ½ X 11, or bigger than 8 ½ X 14.

- Must have the name and address of the drafter

Documents executed out-of-state must comply with that state's recording requirements, not Michigan's.

Documents such as plats that otherwise have their own recording requirements must comply with those requirements.

Prior to 2002, all documents also required two witnesses.

Documents may now be recorded electronically.

A deed or other document conveying an interest in land that purportedly is held by a survivor of either a joint tenancy or a tenancy by the entireties must be accompanied by the death certificate of the other tenant (MCL 565.48).

The Register of Deeds is required to maintain a grantor/grantee index.

The Register of Deeds is required to collect a transfer tax for each conveyance of property, \$0.55 per \$500 for the county (MCL 207.504), and \$3.75 per \$500 for the state (MCL 207.525).

Important exceptions:

Instruments where the consideration is less than \$100.

Instruments to confirm title already vested in the grantee.

Instruments in which the grantor is the United States, this state, or state or federal agencies.

Deeds given in foreclosure, or in lieu of foreclosure, of a loan made, guaranteed or insured by the United States, this state, or a state agency.

If an instrument is exempt from transfer tax, it must state on its face the specific exemption to both the state and county tax.

An instrument may omit the amount of consideration, but the grantee must execute an affidavit indicating the value of the consideration, which affidavit will not be recorded.

All deeds conveying unplatted property must contain the following language:

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

Pursuant to the Land Division Act, each deed of unplatted property must also contain the number of splits of the property the grantor is transferring to the grantee (MCL 560.109).

MCL 565.29 creates Michigan's race/notice statute.

A good-faith purchaser for value who records that purchaser's deed/mortgage/easement/etc. before a previously granted interest in that property is recorded takes free of that interest.

If the purchaser has actual knowledge of the previous conveyance, the purchaser is not a good-faith purchaser.

If the previous conveyance is recorded, it provides constructive notice of that conveyance whether the purchaser has actual knowledge or not, and the purchaser is not a good-faith purchaser.

To impart constructive notice, the document must be recorded in conformity with the recording requirements.

Possession of property by someone who is neither the grantor nor the grantee imparts inquiry notice that the possessor may have a prior interest in the property.

Corrective Documents

Affidavits

MCL 565.451a permits the recording of affidavits to correct certain enumerated issues:

Birth, age, sex, marital status, death, name, residence, identity, capacity, relationship, family history, heirship, homestead status and service in the armed forces of parties named in deeds, wills, mortgages and other instruments affecting real property.

Knowledge of the happening of any condition or event that may terminate an estate or interest in real property.

Knowledge of surveyors registered under the laws of this state with respect to the existence and location of monuments and physical boundaries, such as fences, streams, roads, and rights of way of real property.

Knowledge of surveyors registered under the laws of this state reconciling conflicting and ambiguous descriptions in conveyances with descriptions in a regular chain of title.

Knowledge of facts incident to possession or the actual, open, notorious, and adverse possession of real property.

Knowledge of the purchaser of real property sold upon foreclosure or conveyed in lieu of foreclosure of a mortgage ... held by a fiduciary or other representative, as to the authority of the purchaser to purchase the real property and as to the terms and conditions upon which the real property is to be held and disposed of.

Knowledge of a person with respect to an unrecorded mortgage if the affidavit recites the names of the parties to the unrecorded mortgage and is accompanied by a copy of the unrecorded mortgage. ...

If an affidavit relates to anything else, it is not entitled to be recorded and thus does not impart constructive notice.

MCL 565.452 requires the Register of Deeds to record the affidavit "in the manner that deeds are recorded." This may result in the affidavit's not appearing in the chain of title because it is indexed under the affiant's name.

MCL 565.451c requires that the affidavit have a legal description attached, or to refer to a document that has the correct legal description. If it refers to a document in the chain of title, that might pull the affidavit in, too.

MCL 565.451d allows for recording affidavits to correct “Errors and omissions relating to the proper place of recording, and scrivener's errors and scrivener's omissions.” Also appears to allow re-recording.

Should/can never record an affidavit that would change a legal description or a grantee or grantor.

Amendments

An amendment is executed by the original parties, and they agree to change the original document in one or more specific ways.

Amendments are generally preferable to affidavits.

There is no question that the parties agreed to the amendment.

Amendment will be indexed properly.

Zoning

Counties, townships, and cities and villages are all authorized to adopt zoning ordinances (MCL 125.201, *et seq.*, MCL 125.271, *et seq.* and MCL 125.493, *et seq.*, respectively); no common-law right to adopt zoning ordinances.

Zoning ordinances typically regulate the use that properties may be put to.

Zoning ordinances also typically regulate the height and setback of buildings, the density of population, the size of lots, and the amount of parking required.

Variances allow a variance from what the zoning ordinance would otherwise require or prohibit.

A nonconforming use is a valid conforming use that was already in place when a zoning ordinance prohibiting such a use was adopted.

A nonconforming use is a vested right that the local unit of government cannot take away.

Generally, a nonconforming use cannot be expanded.

Zoning ordinances generally prohibit reconstructing a nonconforming use if it suffers a certain degree of damage.

Dower and Homestead

Dower in Michigan was abolished by MCL 558.30, effective April 6, 2017; only a widow whose husband died before that date can elect dower.

[Previously, “[t]he widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof,” MCL 558.1.]

Neither spouse may create a valid lien on property that is their homestead without the signature of the other spouse, unless the lien is a purchase-money lien (MCL 600.6023(1)(g)).

Previously was a Title Standard.

Title companies continue to view the former 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”) as good law.