

**STATE OF MICHIGAN
IN THE SUPREME COURT**
(FROM THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW)

REYES GALVAN

Plaintiff-Appellee

Supreme Court No. 163741
Court of Appeals No. 352559

v.

Washtenaw County Circuit Court
Trial Court No: 17-1249-NZ

YAM FOO POON, HWAI-TZU HONG POON
and DANIEL Y. POON, jointly and severally,

Defendants-Appellants
and Applicants

**DEFENDANT-APPELLANTS’
INDEX TO SUPPLEMENTAL EXHIBITS**

| Supplemental Exhibit Number | Page | Description |
|--------------------------------|------|--|
| I | S-2 | MCOA Order Denying Motion to Reconsider |
| II | S-4 | MCOA Opinion |
| III | S-9 | 1881 Act, 187 MCL 565.161 - 565.164 |
| IV | S-11 | 1993 PA, 92 Seller Disclosure Act |
| V | S-18 | City of Allen Park Ordinance #04-2019 Inspection and Occupancy Requirements |
| VI | S-23 | Washtenaw County Health Department Time of Sale Inspection Ordinance |

EXHIBIT I

Court of Appeals, State of Michigan

ORDER

Reyes Galvan v Yam Foo Poon

Docket No. 352559

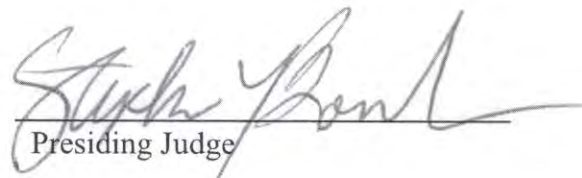
LC No. 17-001249-NZ

Stephen L. Borrello
Presiding Judge

Deborah A. Servitto

Cynthia Diane Stephens
Judges

The motion for reconsideration is DENIED.

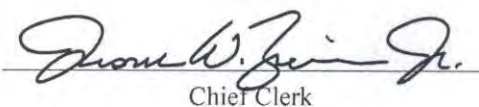

Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 30, 2021

Date


Chief Clerk

5-2

EXHIBIT II

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

REYES GALVAN,
Plaintiff-Appellant,

UNPUBLISHED
August 19, 2021

and

MINHWA KIM,
Plaintiff,

v

No. 352559
Washtenaw Circuit Court
LC No. 17-001249-NZ

YAM FOO POON, HWAI-TZU HONG POON, and
DANIEL Y. POON,
Defendants-Appellees.

Before: BORRELLO, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Plaintiff, Reyes Galvan, appeals by right the trial court's order granting defendants', Yam Foo Poon, Hwai-Tzu Hong Poon, and Daniel Y. Poon, motion for a directed verdict. We reverse and remand for further proceedings consistent with this opinion.

This case arises out of Galvan's¹ purchase of defendants' condominium unit in 2017. Prior to the purchase, plaintiffs had the home inspected. They also received a seller's disclosure form, which did not disclose any known problems with the unit, and so they made an offer, which defendants accepted. Plaintiffs received a warranty deed for the Ann Arbor property. Before moving in, Galvan painted and installed new flooring, but while doing so, he found staining on the drywall in the kitchen. Galvan contacted the condominium association and saw a number of records of previous maintenance visits for leaks and plumbing issues in the unit. Galvan also saw that one of defendants, Hwai-Tzu, had signed a unit modification responsibility form, which

¹ Minhwa Kim was a plaintiff in the proceedings below, but she is not a party on appeal.

5-4

showed that the upstairs walls had been moved and the neighboring unit encroached on Galvan's unit in the upstairs bathroom. Galvan hired a professional to remediate the moisture and mold found in the unit, and the company found that there was no firewall between Galvan's unit and the neighboring unit.

Galvan contacted the City of Ann Arbor and learned that the lack of a firewall "was a major hazard." The City of Ann Arbor's building department director sent Galvan a letter informing him that the Michigan building code required firewalls between units and that a previous owner of plaintiffs' unit had combined it with the neighboring units in 1984. It was unknown when the units were converted back into separate units, but Galvan learned that there were no firewalls between his unit and either of the neighboring units. In order to rebuild the firewalls between the units, one of plaintiffs' neighbors would need to lose square footage in their unit. As a result of the work that needed to be done on the condominium, plaintiffs moved into a separate apartment in September 2017.

In January 2018, the City of Ann Arbor sued plaintiffs and their two neighbors, seeking installation of firewalls between the units. The trial court ordered that Galvan pay \$9,000 to bring one of the neighboring walls into compliance and \$9,000 to the other neighbor in order to compensate her for the transfer of a portion of her unit to him, as was necessary in order to install the firewall. Plaintiffs did not have enough money to pay the total, so the condominium association placed a lien on the property until they paid it, which plaintiffs later did.

Plaintiffs thereafter sued defendants for fraud, misrepresentation, fraudulent concealment, silent fraud, innocent misrepresentation, breach of warranty, and loss of consortium due to the water issues, mold, and a lack of firewalls between units, which violated the City of Ann Arbor's building codes and condominium bylaws. Plaintiffs alleged that defendants accepted responsibility for the unit modifications, including the previous construction on the walls, and that defendants were aware of the water problems in the home yet failed to disclose the same.

The matter proceeded to trial and, at the end of the trial, defendants moved the court to hold as a matter of law that the building code violations did not constitute an encumbrance under the warranty deed. The trial court granted defendants' motion. Ultimately, the jury found that defendants failed to disclose material facts about the condition of the property and awarded damages for Galvan's economic losses and Kim's noneconomic losses. Plaintiffs moved the trial court for reconsideration on the directed verdict, and the trial court denied the motion on the basis that plaintiffs "failed to demonstrate a palpable error." This appeal followed.

Galvan argues that the trial court erred when it held that the building code violation was not an encumbrance. We agree.

This Court reviews de novo questions of law. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 223; 755 NW2d 686 (2008). This Court also reviews de novo a trial court's decision on a motion for a directed verdict. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 455; 750 NW2d 615 (2008). "A party is entitled to a directed verdict if the evidence, when viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law." *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 345; 871 NW2d 136 (2015).

Further, this Court reviews de novo questions of statutory interpretation. *Oakland Co Bd of Co Rd Comm'rs v Mich Prop & Cas Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). When reasonable mind may differ regarding the statutory term's meaning, judicial construction is appropriate. *Adrian School Dist v Mich Pub Sch Employees' Retirement Sys*, 458 Mich 326, 332; 582 NW2d 767 (1998).

Defendants transferred title of the property to plaintiffs under a warranty deed. MCL 565.151 governs warranty deeds and provides that a seller warrants that he or she "guarantees the quiet possession [of the real property]; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims." Black's Law Dictionary (11th ed) defines an encumbrance² as a "claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest." An encumbrance includes anything which "constitutes a burden upon the title . . . " including a "right-of-way, . . . a condition which may work a forfeiture of the estate, . . . a right to take off timber, . . . a right of dower. . . ." *Darr v First Fed Sav & L Ass'n of Detroit*, 426 Mich 11, 20; 393 NW2d 152 (1986), quoting *Post v Campau*, 42 Mich 90, 94; 3 NW 272 (1879).

Through the warranty deed, defendants were obliged to convey marketable title to plaintiffs. "Marketable title is one of such character as should assure to the vendee the quiet and peaceful enjoyment of the property, which must be free from incumbrance." *Madhavan v Sucher*, 105 Mich App 284, 287-288; 306 NW2d 481 (1981). "A title may be regarded as unmarketable if a reasonably careful and prudent man, familiar with the facts, would refuse to accept the title in the ordinary course of business." *Bartos v Czerwinski*, 323 Mich 87, 92; 34 NW2d 566 (1948).

Here, the violation of the building code ordinance constituted an encumbrance on the title as it immediately opened plaintiffs up to the risk of litigation and made their home unlivable and unmarketable. See *Praegner v Kinnebrew & Ratcliff*, 156 La 132, 136; 100 So 247 (1924) (explaining that the buyer "agreed to purchase the property and not the property plus a probable lawsuit").³⁴ Indeed, because of the building code violations, the City of Ann Arbor brought suit against plaintiffs. Ultimately, plaintiffs were forced to pay \$18,000 in order to replace the firewalls and \$27,160 for an architect. Mark St. Dennis, a real estate appraiser qualified as an expert, testified at trial that the estimated total cost of the violation was \$30,000. The condominium association put a lien on plaintiffs' property because they could not afford the total cost. Although

² We using the modern spelling of "encumbrance" rather than the archaic spelling "incumbrance" in all instances other than when directly quoting a source using the archaic spelling.

³ Although not binding, authority from other jurisdictions may be considered for its persuasive value. *Estate of Voutsaras v Bender*, 326 Mich App 667, 676; 929 NW2d 809 (2019).

⁴ See also, *Lohmeyer v Bower*, 170 Kan 442, 448; 227 P2d 102 (1951), in which the Kansas Supreme Court explained that a home that violated different ordinances and restrictions on the date of conveyance, "so encumber[ed] the title to [the home] as to expose the party holding it to the hazard of litigation and ma[d]e such title doubtful and unmarketable." *Id.* at 452.

plaintiffs eventually paid the cost and the lien was removed, this evidences the vulnerability of plaintiffs' right to their property as a result of the building code violation.

Further, St. Dennis testified that a family would not purchase that home to live in because a buyer would not be able to move into the home with these violations. See, e.g., *Bethurem v Hammett*, 736 P2d 1128, 1132 (Wy, 1987) (stating that there is "overwhelming authority for the proposition that title is unmarketable where it cannot be readily sold to a reasonably prudent person, familiar with the facts" and holding that a title was unmarketable when the extent of the encroachments would have led a reasonably prudent person to not buy the property). In fact, plaintiffs were forced to rent a separate apartment while the issues were resolved. Because of the violations and resulting costs, Galvan did not receive a property that was free of encumbrances, despite the warranty deed's guarantee that the property was free from encumbrances and that the seller would defend and pay for losses resulting from defects in the title. See MCL 565.151.

Other jurisdictions have considered similar issues. In *Oatis v Delcuze*, 226 La 751, 757; 77 So2d 28 (1954), for example, the Supreme Court of Louisiana explained that the "mere existence of the zoning regulations under the ordinance does not of itself create an encumbrance on the title to the property," but that it was the "violation of the restrictions imposed by the ordinance that affects the merchantability of the title." Similarly, in *Moyer v De Vincentis Const Co*, 107 Pa Super 588, 592; 164 A 111 (1933), the Superior Court of Pennsylvania held in favor of the buyer of a property that violated a zoning ordinance because the seller "agreed to furnish a good and marketable title free from liens and incumbrances" and the buyer "could not take possession without immediately becoming a violator of the law and subject to suit." On a different basis, in *Garrison v Berryman*, 225 Kan 644, 648; 594 P2d 159 (1979), the Supreme Court of Kansas affirmed the rescission of a contract for the sale of real property on the basis of mutual mistake because both parties knew the purpose of the sale of the land and it was later discovered that the buyer could not build on it.

The issue at hand was not whether defendants knew about or were liable for the violations, but whether the violation was an encumbrance, which it was. See *Post*, 42 Mich at 94. Plaintiffs, therefore, did not receive title to a property that was free from encumbrance and that allowed them "quiet and peaceful enjoyment of their property." *Madhavan*, 105 Mich App at 287-288. Thus, the trial court erred by directing the verdict in defendants' favor. See *Silberstein*, 278 Mich App at 455.

Reversed and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens

S-7

EXHIBIT III

FORM OF DEEDS, MORTGAGES, AND ACKNOWLEDGMENTS
Act 187 of 1881

AN ACT in relation to the form of deeds and mortgages of real estate and to the form of the acknowledgments of the same.

History: 1881, Act 187, Eff. Sept. 10, 1881.

The People of the State of Michigan enact:

565.151 Form; warranty deed.

Sec. 1. That any conveyance of lands worded in substance as follows: "A.B. conveys and warrants to C.D. (here describe the premises) for the sum of (here insert the consideration)," the said conveyance being dated and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.

History: 1881, Act 187, Eff. Sept. 10, 1881;—How. 5728;—CL 1897, 9014;—CL 1915, 11749;—CL 1929, 13321;—CL 1948, 565.151.

565.152 Form; quit claim deed.

Sec. 2. Any conveyance of lands worded in substance as follows: "A.B. quit claims to C.D. (here describe the premises) for the sum of (here insert the consideration)," the said conveyance, being duly signed, sealed, and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit claim to the grantee, his heirs, and assigns.

History: 1881, Act 187, Eff. Sept. 10, 1881;—How. 5729;—CL 1897, 9015;—CL 1915, 11750;—CL 1929, 13322;—CL 1948, 565.152.

565.153 Estates; word of creation.

Sec. 3. It shall not be necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed.

History: 1881, Act 187, Eff. Sept. 10, 1881;—How. 5730;—CL 1897, 9016;—CL 1915, 11751;—CL 1929, 13323;—CL 1948, 565.153.

565.154 Mortgage; wording; validity and enforceability.

Sec. 4. A mortgage of lands that is worded in substance as follows: "A.B. mortgages and warrants to C.D., (here describe the premises) to secure the re-payment of" (here describe the indebtedness or obligations the mortgage secures) and is signed by the grantor, is a valid and enforceable mortgage to the grantee and the grantee's heirs, assigns, successors, and personal representatives with warranty from the grantor and the grantor's legal representatives, of marketable title in the grantor, free from prior incumbrances. If the indebtedness or obligations secured are described generally, such as "all indebtedness that A.B. now and in the future owes to C.D.," and if the words "and warrant" are omitted from the form, the mortgage is valid and enforceable, but without warranty.

History: 1881, Act 187, Eff. Sept. 10, 1881;—How. 5731;—CL 1897, 9017;—CL 1915, 11752;—CL 1929, 13324;—CL 1948, 565.154;—Am. 2004, Act 422, Imd. Eff. Dec. 15, 2004.

S-9

EXHIBIT IV

SELLER DISCLOSURE ACT
Act 92 of 1993

AN ACT to require certain disclosures in connection with transfers of residential property.

History: 1993, Act 92, Eff. Jan. 10, 1994.

The People of the State of Michigan enact:

565.951 Short title.

Sec. 1. This act shall be known and may be cited as the "seller disclosure act".

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.952 Applicability of seller disclosure requirements.

Sec. 2. The seller disclosure requirements of sections 4 to 13 apply to the transfer of any interest in real estate consisting of not less than 1 or more than 4 residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a residential cooperative.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.953 Seller disclosure requirements; exceptions.

Sec. 3. The seller disclosure requirements of sections 4 to 13 do not apply to any of the following:

(a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default.

(c) Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(d) Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from 1 co-tenant to 1 or more other co-tenants.

(f) Transfers made to a spouse, parent, grandparent, child, or grandchild.

(g) Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment.

(h) Transfers or exchanges to or from any governmental entity.

(i) Transfers made by a person licensed under article 24 of Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, of newly constructed residential property that has not been inhabited.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.954 Written statement; delivery; time limits; compliance; terminating purchase agreement within certain time limits; expiration of right to terminate.

Sec. 4. (1) The transferor of any real property described in section 2 shall deliver to the transferor's agent or to the prospective transferee or the transferee's agent the written statement required by this act. If the written statement is delivered to the transferor's agent, the transferor's agent shall provide a copy to the prospective transferee or his or her agent. A written disclosure statement provided to a transferee's agent shall be considered to have been provided to the transferee. The written statement shall be delivered to the prospective transferee within the following time limits:

(a) In the case of a sale, before the transferor executes a binding purchase agreement with the prospective transferee.

(b) In the case of transfer by an installment sales contract where a binding purchase agreement has not been executed, or in the case of a lease together with an option to purchase or a ground lease coupled with improvements by the tenant, before the transferor executes the installment sales contract with the prospective

transferee.

(2) With respect to any transfer subject to subsection (1), the transferor shall indicate compliance with this act either on the purchase agreement, the installment sales contract, the lease, or any addendum attached to the purchase agreement, contract, or lease, or on a separate document.

(3) Except as provided in subsection (4), if any disclosure or amendment of any disclosure required to be made by this act is delivered after the transferor executes a binding purchase agreement, the prospective transferee may terminate the purchase agreement by delivering written notice of termination to the transferor or the transferor's agent within the following time limits:

(a) Not later than 72 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee in person.

(b) Not later than 120 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee by registered mail.

(4) A transferee's right to terminate the purchase agreement expires upon the transfer of the subject property by deed or installment sales contract.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.955 Liability for error, inaccuracy, or omission; delivery as compliance with requirements of act; conditions.

Sec. 5. (1) The transferor or his or her agent is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this act if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, or was based entirely on information provided by public agencies or provided by other persons specified in subsection (3), and ordinary care was exercised in transmitting the information. It is not a violation of this act if the transferor fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be discovered only by a person with expertise in a science or trade beyond the knowledge of the transferor.

(2) The delivery of any information required by this act to be disclosed to a prospective transferee by a public agency or other person specified in subsection (3) shall be considered to comply with the requirements of this act and relieves the transferor of any further duty under this act with respect to that item of information, unless the transferor has knowledge of a known defect or condition that contradicts the information provided by the public agency or the person specified in subsection (3).

(3) The delivery of a report or opinion prepared by a licensed professional engineer, professional surveyor, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional's license or expertise, is sufficient compliance for application of the exemption provided by subsection (1) if the information is provided upon the request of the prospective transferee, unless the transferor has knowledge of a known defect or condition that contradicts the information contained in the report or opinion. In responding to a request by a prospective transferee, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of section 7 and, if so, shall indicate the required disclosures, or parts of disclosures, to which the information being furnished applies. In furnishing the statement, the expert is not responsible for any items of information other than those expressly set forth in the statement.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.956 Disclosures; inaccuracy as result of action, occurrence, or agreement after delivery; unknown or unavailable information; basis.

Sec. 6. If information disclosed in accordance with this act becomes inaccurate as a result of any action, occurrence, or agreement after the delivery of the required disclosures, the resulting inaccuracy does not constitute a violation of this act. If at the time the disclosures are required to be made, an item of information required to be disclosed under this act is unknown or unavailable to the transferor, the transferor may comply with this act by advising a prospective purchaser of the fact that the information is unknown. The information provided to a prospective purchaser pursuant to this act shall be based upon the best information available and known to the transferor.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.957 Disclosure; form.

Sec. 7. (1) The disclosures required by this act shall be made on the following form:

SELLER'S DISCLOSURE STATEMENT

Property Address: _____
Street

S-12

Michigan
City, Village, or Township

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the seller disclosure act. This statement is a disclosure of the condition and information concerning the property, known by the seller. Unless otherwise advised, the seller does not possess any expertise in construction, architecture, engineering, or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction, and is not a substitute for any inspections or warranties the buyer may wish to obtain.

Seller's Disclosure: The seller discloses the following information with the knowledge that even though this is not a warranty, the seller specifically makes the following representations based on the seller's knowledge at the signing of this document. Upon receiving this statement from the seller, the seller's agent is required to provide a copy to the buyer or the agent of the buyer. The seller authorizes its agent(s) to provide a copy of this statement to any prospective buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the seller and are not the representations of the seller's agent(s), if any. THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order (the items below are included in the sale of the property only if the purchase agreement so provides):

| | Yes | No | Unknown | Not Available |
|-------------------------------------|-------|-------|---------|---------------|
| Range/Oven | _____ | _____ | _____ | _____ |
| Dishwasher | _____ | _____ | _____ | _____ |
| Refrigerator | _____ | _____ | _____ | _____ |
| Hood/fan | _____ | _____ | _____ | _____ |
| Disposal | _____ | _____ | _____ | _____ |
| TV antenna, TV rotor & controls | _____ | _____ | _____ | _____ |
| Electrical system | _____ | _____ | _____ | _____ |
| Garage door opener & remote control | _____ | _____ | _____ | _____ |
| Alarm system | _____ | _____ | _____ | _____ |
| Intercom | _____ | _____ | _____ | _____ |
| Central vacuum | _____ | _____ | _____ | _____ |
| Attic fan | _____ | _____ | _____ | _____ |
| Pool heater, wall liner & equipment | _____ | _____ | _____ | _____ |
| Microwave | _____ | _____ | _____ | _____ |
| Trash compactor | _____ | _____ | _____ | _____ |
| Ceiling fan | _____ | _____ | _____ | _____ |
| Sauna/hot tub | _____ | _____ | _____ | _____ |
| Washer | _____ | _____ | _____ | _____ |
| Dryer | _____ | _____ | _____ | _____ |
| Lawn sprinkler system | _____ | _____ | _____ | _____ |
| Water heater | _____ | _____ | _____ | _____ |
| Plumbing system | _____ | _____ | _____ | _____ |
| Water softener/conditioner | _____ | _____ | _____ | _____ |
| Well & pump | _____ | _____ | _____ | _____ |
| Septic tank & drain field | _____ | _____ | _____ | _____ |
| Sump pump | _____ | _____ | _____ | _____ |

S-13

| | | | | |
|---|-------|-------|-------|-------|
| City Water System | _____ | _____ | _____ | _____ |
| City Sewer System | _____ | _____ | _____ | _____ |
| Central air conditioning | _____ | _____ | _____ | _____ |
| Central heating system | _____ | _____ | _____ | _____ |
| Wall furnace | _____ | _____ | _____ | _____ |
| Humidifier | _____ | _____ | _____ | _____ |
| Electronic air filter | _____ | _____ | _____ | _____ |
| Solar heating system | _____ | _____ | _____ | _____ |
| Fireplace & chimney | _____ | _____ | _____ | _____ |
| Wood burning system | _____ | _____ | _____ | _____ |
| Explanations (attach additional sheets if necessary): | _____ | _____ | _____ | _____ |

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED, WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

1. Basement/crawl space: Has there been evidence of water? yes _____ no _____
 If yes, please explain: _____

2. Insulation: Describe, if known _____
 Urea Formaldehyde Foam Insulation (UFFI) is installed? unknown _____ yes _____ no _____

3. Roof: Leaks? yes _____ no _____
 Approximate age if known _____

4. Well: Type of well (depth/diameter, age, and repair history, if known): _____
 Has the water been tested? yes _____ no _____
 If yes, date of last report/results: _____

5. Septic tanks/drain fields: Condition, if known: _____

6. Heating System: Type/approximate age: _____

7. Plumbing system: Type: copper _____ galvanized _____ other _____
 Any known problems? _____

8. Electrical system: Any known problems? _____

9. History of infestation, if any: (termites, carpenter ants, etc.) _____

10. Environmental Problems: Are you aware of any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on the property. unknown _____ yes _____ no _____
 If yes, please explain: _____

11. Flood insurance: Do you have flood insurance on the property? unknown _____ yes _____ no _____

12. Mineral rights: Do you own the mineral rights? unknown _____ yes _____ no _____

Other Items: Are you aware of any of the following:
 1. Features of the property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property? unknown _____ yes _____ no _____
 2. Any encroachments, easements, zoning violations, or nonconforming uses? unknown _____ yes _____ no _____
 3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others), or a homeowners' association that has any authority over the property? unknown _____ yes _____ no _____

S-14

- 4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors?
unknown ___ yes ___ no ___
- 5. Settling, flooding, drainage, structural, or grading problems?
unknown ___ yes ___ no ___
- 6. Major damage to the property from fire, wind, floods, or landslides?
unknown ___ yes ___ no ___
- 7. Any underground storage tanks?
unknown ___ yes ___ no ___
- 8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?
unknown ___ yes ___ no ___
- 9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge?
unknown ___ yes ___ no ___
- 10. Any outstanding municipal assessments or fees?
unknown ___ yes ___ no ___
- 11. Any pending litigation that could affect the property or the seller's right to convey the property?
unknown ___ yes ___ no ___

If the answer to any of these questions is yes, please explain.
 Attach additional sheets, if necessary: _____

The seller has lived in the residence on the property from _____ (date) to _____ (date). The seller has owned the property since _____ (date). The seller has indicated above the condition of all the items based on information known to the seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, seller will immediately disclose the changes to buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or broker's agent.

Seller certifies that the information in this statement is true and correct to the best of seller's knowledge as of the date of seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.
BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.732, IS AVAILABLE TO THE PUBLIC. BUYERS SEEKING THAT INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.
BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, PRINCIPAL RESIDENCE EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE.
BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.

Seller _____ Date _____
 Seller _____ Date _____

Buyer has read and acknowledges receipt of this statement.

Buyer _____ Date _____ Time: _____
 Buyer _____ Date _____ Time: _____

(2) A form described in subsection (1) printed before January 1, 2006 that was in compliance with this section at that time may be utilized and shall be considered in compliance with this section until April 1, 2006.

2005, Act 163, Eff. Jan. 1, 2006.

565.958 Availability of copies.

Sec. 8. Copies of the form prescribed in section 7 shall be made available to the public by all real estate brokers and real estate salespersons.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.959 Additional disclosures.

Sec. 9. A city, township, or county may require disclosures in addition to those disclosures required by section 7, and may require disclosures on a different disclosure form in connection with transactions subject to this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.960 Disclosure; good faith.

Sec. 10. Each disclosure required by this act shall be made in good faith. For purposes of this act, "good faith" means honesty in fact in the conduct of the transaction.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.961 Other obligations created by law not limited.

Sec. 11. The specification of items for disclosure in this act does not limit or abridge any obligation for disclosure created by any other provision of law regarding fraud, misrepresentation, or deceit in transfer transactions.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.962 Disclosure; amendment.

Sec. 12. Any disclosure made pursuant to this act may be amended in writing by the transferor, but the amendment is subject to section 4.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.963 Disclosure; manner of delivery.

Sec. 13. Delivery of a disclosure statement required by this act shall be by personal delivery, facsimile delivery, or by registered mail to the prospective purchaser. Execution of a facsimile counterpart of the disclosure statement shall be considered to be execution of the original.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.964 Transfer not invalidated by noncompliance.

Sec. 14. A transfer subject to this act shall not be invalidated solely because of the failure of any person to comply with a provision of this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.965 Liability of agent.

Sec. 15. An agent of a transferor shall not be liable for any violation of this act by a transferor unless any agent knowingly acts in concert with a transferor to violate this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.966 Effective date.

Sec. 16. This act shall take effect upon the expiration of 180 days after the date of its enactment.

History: 1993, Act 92, Eff. Jan. 10, 1994.

EXHIBIT V

**STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK**

ORDINANCE #04-2019

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 10, BUILDINGS AND BUILDING REGULATIONS, BY THE ADDITION OF ARTICLE "MINIMUM HOUSING STANDARDS" AND SECTIONS 10-400 THROUGH 10-405, TO PREVENT BLIGHT BY INSURING MINIMUM MAINTENANCE OF DWELLINGS.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

Chapter 10, Buildings and Building Regulations, is hereby amended to hereafter read as follows:

Chapter 10, Buildings and Building Regulations

Article X, Minimum Housing Standards

Article X. – Minimum Housing Standards.

Sec. 10-400. - Purpose.

The purpose of this article is to help protect the health, safety and welfare of the citizens by attempting to prevent blight, avoid the creation and maintenance of a nuisance and insure minimum maintenance of dwellings through recognition of how the conditions set forth in this article can affect the general well-being and property values of residents.

Sec. 10-401. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bedroom or room occupied for sleeping purposes shall mean a room characterized by the following traits:

- (1) A room not normally used for the preparation or consumption of food.
- (2) A room so arranged that it is not necessary to go through this room in order to gain access to the principal bathroom of the dwelling unit or any other room with the exception of a secondary bath or toilet room serving that sleeping room only.
- (3) A room with solid swing-type door with stop moldings to afford privacy.
- (4) A room with adequate ventilation.
- (5) A room normally with a closet.

Dwelling shall mean any building which is wholly or partly used, or intended to be used, for living or sleeping by human occupants; provided that temporary housing shall not be regarded as a dwelling.

5-18

Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundry, pantries, foyers or communicating corridors, closets and storage spaces.

Multiple dwelling shall mean any dwelling containing more than two dwelling units.

Occupant shall mean any person, over one year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Owner shall mean any person who, alone or jointly or severally with others:

- (1) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Shall have charge, possession or control of any dwelling or dwelling unit, as owner, agent of the owner, or as executor, administrator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Rooming house shall mean any dwelling or that part thereof containing one or more rooming units in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father, or sister or brother to the owner or operator.

Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Whenever the words "dwelling," "dwelling unit," "rooming house," or "residential premises," are used in this article, they shall be construed as though they were followed by the words "or any part thereof and may be referred to as "real property".

Sec. 10-402. - Conflict with other ordinances and laws.

When a provision of this article is found to be in conflict with a provision of any state statute or any zoning, building, fire, safety or health ordinance or code of the city, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. If a provision of this article is found to be in conflict with a provision of a state statute or any other ordinance or code of the city which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this article shall be deemed to prevail.

Sec. 10-403. - Right of entry, access.

(a) The building department director or his/her designee is hereby authorized and directed to make inspections to determine the conditions of dwellings, dwelling units, rooming units and premises, located within the city, in order that they may perform their duty of safeguarding the health

and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections, the building department director or his/her designee, is hereby authorized to enter, examine and survey at any reasonable time all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit, rooming unit, or the person in charge thereof, shall give free access to such dwelling, dwelling unit or rooming unit and its premises, at any reasonable time, for the purpose of such inspection, examination and survey.

(b) Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, or its premises, at any reasonable time, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this article.

Sec. 10-404. - Inspection and occupancy requirements.

(a) It shall be unlawful for anyone, including, but not limited to, the owner, attorney, representative, lending institution, title company, real-estate firm, broker, or salesman to assist in consummating a sale, transfer, or other transaction involving a dwelling, dwelling unit, multiple dwelling or residential premises on real property in the city regardless of where the closing of the sale occurs, without first presenting the purchaser with a copy of an inspection report or certificate of occupancy issued by the building department within six months prior to the date of such sale or transfer.

(b) If the real property is sold without a certificate of occupancy then the purchaser must sign a preoccupancy agreement agreeing to correct all violations shown on the inspection report within six months of the date of the preoccupancy agreement. Preoccupancy agreements may be used for closing purposes only and do not allow occupancy of the premises.

(c) This section does not apply to the individual transfer of property through inheritance where no bona fide sale is intended and the property is occupied by the person or persons receiving the inheritance.

(d) It shall be unlawful for any person to occupy or reoccupy or for any owner or agent thereof to permit the occupation or reoccupation of any building or addition thereto, or part thereof, for any purpose, until occupancy has been approved by the building department.

(e) A certificate of occupancy shall not be issued until all violations noted on the inspection report have been corrected and required repairs have been made.

(f) In the event an owner, prospective purchaser, or transferee requests that occupancy be permitted prior to correction of all violations noted on the inspection report, and if the absence of such complete conformance does not, in the judgment of the building department, constitute material health or safety hazards, a conditional occupancy agreement may be entered into with the condition that complete conformance be achieved within a reasonable time specified by the building department, but in not more than 90 days. The building department may grant an extension of an additional 90 days for good cause; an extension may be granted only for owner-occupied property.

Sec. 10-405. - Failure to comply.

Violation of this article by any person, firm and/or corporation shall be a misdemeanor punishable as provided under section 1-14 of this Code. Each day that the violation continues shall constitute a separate and distinct violation.

Nothing in this article constitutes a waiver of the city's right to petition the circuit court for the right to take action to prevent occupancy of a property.

Further, any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

SECTION 2. Repeal. All ordinance or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance held to be so invalid shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Codification; Scrivener's Errors:

- (a). Section 1 of this Ordinance shall be codified, and all other sections shall not be codified.
- (b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Administrator, or designee, without the need for a public hearing.

SECTION 6. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 7. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the 8th day of October, 2019.

WILLIAM MATAKAS, Mayor
City of Allen Park

MICHAEL I. MIZZI, City Clerk
City of Allen Park

EXHIBIT VI



WASHTENAW COUNTY

Department of Planning & Environment
Development Services Division

**REGULATION FOR THE INSPECTION OF
RESIDENTIAL ONSITE WATER AND SEWAGE DISPOSAL SYSTEMS
AT THE TIME OF PROPERTY TRANSFER**

705 N. Zeeb Road
P.O. Box 8645
Ann Arbor, MI 48107-8645

Phone: (734) 222-3800
Fax: (734) 222-3930
Web: www.eWashtenaw.org

5-23

WASHTENAW COUNTY
Department of Planning & Environment
Development Services Division
(formerly the Department of Environment & Infrastructure Services, Environmental Health Division)

REGULATION FOR THE INSPECTION OF
RESIDENTIAL ONSITE WATER AND SEWAGE DISPOSAL SYSTEMS
AT TIME OF PROPERTY TRANSFER

ARTICLE I

Purpose

Sec. 1:1

The Washtenaw County Board of Commissioners adopts this Regulation that states the procedures, standards and enforcement that shall be used by the Washtenaw County Environmental Health Division ("Division"), under the authority of the Washtenaw County Health Officer, to manage any residential premises containing an Onsite Water and Sewage Disposal System, ("OWSDS") in order to promote the safety, health and general welfare of the community as follows:

- a) Ensure a safe and adequate supply of drinking water for those homes served by an Onsite Water Supply System ("OWSS"); and
- b) Ensure the adequate disposal of sewage from homes served by an Onsite Sewage Disposal System ("OSDS"); and
- c) It is not the intention of this regulation to cause existing systems that are currently functioning, but do not meet existing construction standards, to be brought into compliance with such standards.

Rules Adopted

Sec. 1:2

This Regulation contains minimum standards and supplements the Rules and Regulations enacted by the Michigan Department of Public Health and Washtenaw County. In addition, this Regulation supplements Michigan law as it relates to public health and environmental quality and shall supersede all local minimum standards previously enacted that are inconsistent with this Regulation.

Authority

Sec. 1:3

This Regulation is enacted pursuant to MCLA 333. 1101 et seq. as amended, MCLA 324.1701 et. seq., and MCLA 46.11, to protect the public health, safety and welfare of the citizens of Washtenaw County.

S-24

Jurisdiction**Sec. 1:4**

The Public Health Officer shall have jurisdiction to administer and enforce the provisions of this Regulation. Nothing in this Regulation, however, shall be construed to restrict or abrogate the authority of any municipality, or incorporated city, village or township in Washtenaw County to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality shall issue a license without first having obtained written approval from the Health Officer indicating that the applicant has complied with the minimum requirements of this Regulation.

Effective Date**Sec. 1:5**

This Regulation shall become effective in Washtenaw County when notice of its adoption by the Washtenaw County Board of Commissioners is published in a newspaper of general circulation within Washtenaw County, provided, however, that actual inspections shall not begin before January 3, 2000, to insure that a sufficient number of inspectors are certified and available.

ARTICLE II**Definitions****Sec. 2:1**

The following rules of language shall apply to the text of this Regulation:

- a) The word "shall" is mandatory.
- b) The word "may" is permissive.
- c) When not inconsistent with the context, words in the present tense shall include the future and words designating singular numbers shall include the plural.

Words and Terms**Sec. 2:2**

The following words and terms used in this Regulation, unless otherwise expressly stated, shall have the following meaning:

- a) **Authorized Agent:** The term "Authorized Agent" shall mean any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the seller or purchaser.
- b) **Environmental Health Division:** The term "Environmental Health Division" shall mean the Washtenaw County Environmental Health Division.
- c) **Failure:** The term "Failure" is defined as follows:
 1. The backup of sewage into a structure;
 2. Discharge of effluent onto the ground surface;
 3. The connection of an OSDS to a storm drain;
 4. Liquid level in the septic tank above the outlet invert;
 5. Structural failure of a septic tank;
 6. Discharge of sewage into any stream or other body of water;

7. The liquid level in a disposal field above the outlet holes in the pipe of such field;
 8. Unsafe water sample;
 9. Substantial nonconformance with water well construction requirements;
 10. Substantial nonconformance with water well isolation from contamination source requirements.
- d) **Health Officer:** The term "Health Officer" shall mean the Public Health Officer, the acting Public Health Officer or her/his duly authorized representative.
 - e) **Municipality:** The term "Municipality" shall mean any incorporated city, village, or township within Washtenaw County.
 - f) **OSDS:** The term "OSDS" shall mean an onsite sewage disposal system.
 - g) **Owner:** The term "Owner" shall mean any person who has legal title to any premises.
 - h) **OWSS:** The term "OWSS" shall mean an onsite water supply system.
 - i) **OWSDS:** The term "OWSDS" shall mean an onsite water and sewage disposal system.
 - j) **Person:** The term "Person" shall mean any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.
 - k) **Premises:** The term "Premises" shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, that contains any type of structure that is, was or will be inhabited either permanently or transiently, water well or septic tank, drains, drain field, underground tank or pipes or similar appurtenances containing sewage or other contaminants or combination thereof.
 - l) **Health Code Board Of Appeals/Public Health Advisory Committee:** The term "Health Code Board Of Appeals/Public Health Advisory Committee" (HCBA/PHAC) shall mean the Health Committee of the Washtenaw County Board of Commissioners.
 - m) **Substantial Conformance:** The term "Substantial Conformance" shall mean there is a minimal likelihood of degradation of groundwater and surface water, or risk to public health caused by improper construction or location of an OWSDS, or a malfunctioning OWSDS.

ARTICLE III

Limitations on Sale or Transfer Of Property

Sec. 3:1

There shall be no sale, transfer or conveyance of a parcel containing an OWSDS until the following conditions are met:

- a) The seller files an evaluation report by a Washtenaw County certified inspector to the Division; and,
- b) The Division determines, based upon such report, that the OWSDS is acceptable, or any necessary remediation is completed, or assured and

- accepted; and
- c) The Division authorizes the sale, transfer or conveyance of the parcel.

Evaluations

Sec. 3:2

Each OWSDS in Washtenaw County shall be inspected and evaluated prior to the sale, transfer or conveyance of property upon which an OWSDS is located if certification has not been done within twelve months preceding the date of property transfer. Transfers exempt from inspections include:

- a) Transfer from a spouse.
- b) Change in ownership solely to exclude a spouse.
- c) Transfer subject to life lease or life estate, (until the life lease or life estate expires).
- d) Transfer to effect foreclosure or forfeiture of real property.
- e) Transfer by redemption from a tax sale.
- f) Transfer creating or ending joint ownership if at least one person is an original owner of the property or his or her spouse.
- g) Transfer to establish or release a security interest.
- h) Premises built within the previous twenty-four months prior to date of property transfer.
- i) Premises that shall be demolished and shall not be occupied after the property transfer.
- j) New homes that have not been occupied.

The owner of a premise containing an OWSDS shall have the system evaluated by a Division certified inspector. Persons certified to perform evaluations of an OWSDS shall meet the minimum standards in Sec: 3.6 of this Article. After the evaluation is complete, the Division shall send a letter to the owner or the owner's designated representative and any prospective purchaser describing the functional status of the OWSDS and whether it is in conformance with the Washtenaw County Rules and Regulations governing the Supply of Groundwater and the Disposal of Sewage and Human Excreta.

Sec. 3:3

Reports of evaluations shall include, but are not limited to:

- a) The address of the site.
- b) The parcel identification number.
- c) The name of the owner or owner's agent.
- d) The location of the system(s).
- e) A description of the current operational or functional status of the system(s).
- f) Identification of any necessary repairs or replacement of all or portions of the system(s).
- g) The results of bacteria and nitrate drinking water test, and other water quality parameters as required by the Division.
- h) Other relevant or unusual observations related to the system(s).
- i) Recommendations to extend the life of the system(s) and to prevent the premature failure of the sewage system(s).

- j) Educational material(s) about system(s) maintenance that have been approved by the Division.
- k) Completed forms approved by the Division.

Sec. 3:4

A certified copy of the inspectors' evaluation report of an OWSDS shall be provided to the owner and a copy filed with the Division. Such reports shall be freely available to the public through the Freedom of Information Act, MCLA 15.231 et. seq.

Performance Standards

Sec. 3:5.1

The evaluation shall determine whether the system(s) adversely affects the public health and environment or violates any other applicable rules or regulations.

Sec. 3:5.2

The evaluation shall determine whether the OSDS structure and its operational status are in substantial conformance with the standards of this Regulation.

Sec. 3:5.3

OWSS shall be evaluated for:

- a) Their proximity to sources of contamination.
- b) Substantial compliance with State of Michigan construction standards.
- c) Compliance with bacteria and nitrate water quality standards as a minimum with other water quality standards in areas of known water quality concerns.

Sec. 3:5.4

Water samples shall be collected and analyzed at a laboratory certified by the Michigan Department of Environmental Quality to determine the presence of coliform bacteria, nitrates, or other contaminants as determined by the Division.

Registration and Certification

Sec. 3:6

All inspectors performing evaluations under this Regulation must be registered with the Division and certified before undertaking any evaluations. All qualified inspector applicants must file an application with the Division, pay the County registration fee and satisfactorily complete a training course approved by the Division. Prospective inspectors must demonstrate knowledge of construction practices, operational standards as well as the causes and indicators of OWSDS failures. No evaluation reports shall be accepted from individuals not certified by the Division.

Sec. 3:7

An individual shall not be permitted to install, or replace an OWSS and/or OSDS without prior approval of the Division. This section does not preclude the requirements for permits where necessary.

Sec. 3:8

The Health Officer may de-certify any inspector under one or more of the following circumstances:

- a) The individual fails to comply with the Regulation.
- b) The Health Officer determines that the individual is incompetent.
- c) The individual is unable to properly perform an evaluation of an OWSDS.
- d) The individual is negligent in the discharge of his/her duties as outlined in the certification requirements.
- e) The individual submits false or misleading information.
- f) Significant information is missing from the evaluation report and/or is not provided within three (3) business days after being requested by the Division.
- g) The inspector does not maintain the required certification as required by this Regulation.

Sec. 3:9

The Division shall give written notice to an inspector before s/he is de-certified by the Health Officer. The inspector shall be given an opportunity at an informal meeting with the Division and/or the Health Officer to demonstrate why s/he should not be de-certified. Any inspector who is de-certified may appeal that decision by following the procedure in Article XI of this Regulation.

Sec. 3:10

If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by the Division.

ARTICLE IV**Responsibilities of Various Parties****Owner****Sec. 4:1**

Owners are responsible for hiring certified inspectors to perform inspections under this Regulation prior to the sale of any premises that s/he owns. The owner must also secure a letter from the Environmental Health Division indicating the OWSDS complies with this Regulation before the sale of any premises that s/he owns. Owners are responsible for maintaining the OWSDS on their property and shall notify the Division if the inspector's evaluation report or septic tank cleaner's report indicates a failure of the system or the owner observes a failure of the system.

Environmental Health Division**Sec. 4:2**

The Responsibilities of the Division are as follows:

- a) Administer and enforce this Regulation.
- b) Maintain the most current OWSDS evaluation report as long as the property is served by an OWSDS and for three years thereafter.

- c) Maintain a list of certified inspectors qualified to perform inspections under this Regulation.
- d) Require re-mediation where there is evidence of a system failure.
- e) Create and maintain a database of systems inspected, evaluated and re-mediated as well as newly installed systems.
- f) Establish criteria for the inspection of OWSDS and the certification of inspectors and make such criteria and related forms available to the public.
- g) Require risers, observation ports and other features to facilitate evaluations when issuing permits for installation of OWSDS.
- h) Issue authorizations for sale, transfer or conveyance of property.

ARTICLE V

Fees

Sec. 5:1

Fees to cover expenses, including but not limited to overhead, labor, storage, training, etc., by the Division, may be adopted as provided in the Public Health Code (Act 368 of 1978 as amended). Fees shall be paid when inspection reports are filed with the Division. Fees must be paid before the property is transferred.

ARTICLE VI

Failure

Sec. 6:1

When an OWSDS fails, as defined in Article II, the owner, agent or other responsible party shall contact the Division and shall complete all repairs as required by the Division.

ARTICLE VII

Inspection Notification

Sec. 7:1

If, after reviewing the inspection, the Division determines that the OWSDS is not in substantial conformance as defined, then the property owner shall be subject to enforcement as provided in this Regulation. The Division shall notify in writing the owner and/or purchaser or transferee or other person with a legally recognizable interest in the property. This written notice shall be sent no later than five (5) business days after the determination is made or from the date that the inspection report of the premises is filed and reviewed by the Division. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming OWSDS.

ARTICLE VIII

Corrective Action

Sec. 8:1

Upon receiving written notice from the Division of noncompliance with this Regulation, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action and contract for services in order to bring the affected system into compliance with applicable laws. In addition, the owner, buyer or authorized agent shall place into an escrow account a deposit of a surety or performance bond or cash in an amount equal to one and one-half times the estimated cost of the contract guaranteeing performance of such contract.

The Division shall review the proposed corrective action and amend it as required to conform to federal, state and local laws, rules and regulations. All necessary corrective action shall be completed within one hundred eighty (180) days following Division approval of the proposed correction action plan. Once the Division gives final approval of the completed corrective action, the system shall be deemed to be in substantial conformance with this Regulation and any affidavit previously filed with the Registrar of Deeds shall be discharged.

If an OWSDS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the Division, which will immediately reduce or eliminate the impact of such failure until the full remediation plan can be implemented as described earlier in this Paragraph.

Sec. 8:2

A person who disputes any Division decision concerning the violation of this Regulation shall have the right to a hearing and appeal using the appeals process in Article XI. Any appeal shall not stay an owner's, buyer's or authorized agent's obligation to take measures to reduce or eliminate the impact of a failure until a full remediation plan can be determined and implemented.

ARTICLE IX

Enforcement and Compliance

Sec. 9:1

If, after investigation, the Division believes that a person is violating these Regulations, the Division shall attempt to enter a voluntary agreement with the property owner to resolve the violation. If a voluntary agreement cannot be reached, the Division may issue a violation notice to the owner. A statement of facts upon which the notice is based shall accompany the violation notice.

Sec. 9:2

The Division may, after presenting proper credentials and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and

inspect any property at reasonable times to ascertain compliance or noncompliance with this Regulation or Rules promulgated under this Regulation. This may include:

- a) Inspection at reasonable times of any parcel containing an OWSDS and related systems.
- b) Collection of evidence and information for the purpose of determining compliance with this Regulation or Rules promulgated under the Regulation.

Sec. 9:3

If an owner, transferee or purchaser does not comply with the requirements of this Regulation, a Health Officer or his/her duly authorized representative may record an affidavit that details the non-compliance with the Washtenaw County Registrar of Deeds.

ARTICLE X

Specific Enforcement Options

Violation of the Regulation

Sec. 10:1

After learning that this Regulation has been violated, the HCBA/PHAC or the Health Officer or his/her designated representative may:

- a) Issue a Cease and Desist Order and/or suspend any permit, certificate or other approval issued pursuant to this Regulation to the owner or other party violating this Regulation, and afford the owner or other interested party Notice and Opportunity for Hearing.
- b) Request that Washtenaw County Corporation Counsel file a legal action to enjoin the violation. In addition, the Health Officer may seek to recover any and all costs related to correcting, removing or abating the violation.

Issuance of Monetary Civil Penalties

Sec. 10:2

If a local health department representative or Health Officer believes that a person is violating a provision of this Regulation or an order issued pursuant to this Regulation, the representative may issue a citation within ninety (90) days after the alleged violation is discovered. The citation shall state with particularity the nature of the violation, including reference to the Section of the Regulation alleged to have been violated, the civil penalty established for such violation, if any, and a right to appeal the citation pursuant to MCLA 333.2461 and Article XI of this Regulation. The citation shall be delivered or sent by registered mail to the alleged violator.

- a) Any party issued a citation may, within ten (10) days from the date the citation is issued, request an informal conference at which time the person may indicate why s/he believes that s/he has not violated this Ordinance.
- b) Any party issued a citation may appeal the citation to the HCBA/PHAC or its designated committee within thirty (30) days after the citation is issued. The appeal shall be conducted in accordance with Article XI of this Regulation.
- c) A person aggrieved by a final decision of the Health Officer or the HCBA/PHAC

or its designated committee, may petition the Circuit Court of the County where the premises is located for review. The time period for appeal shall begin to run the day after the date of such final decision.

Schedule of Monetary Civil Penalties

Sec. 10:3

Monetary civil penalties may be imposed according to the following schedule:

| | |
|---------------------------------------|----------------|
| First violation: | Up to \$200.00 |
| Second violation: | \$500.00 |
| Third and subsequent violations each: | \$1000.00 |

Sec. 10:4

A civil penalty levied under this Section may be assessed for each violation or day that the violation continues. The civil penalty may be for a specified violation of this Ordinance or promulgated Rule, which the Health Officer has the authority and duty to enforce.

Sec. 10:5

A decision by the Health Officer not to issue a citation shall not be construed as a waiver of any other rights or remedies authorized by law or this Regulation.

Conviction of Misdemeanor

Sec. 10:6

Any person who violates this Regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$200.00 or both. Conviction by jury, court or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunction or other relief authorized by this Regulation. Each day that a violation of this Regulation exists shall constitute a separate offense.

Assessment Against the Property

Sec. 10:7

If an owner does not have his/her property evaluated as specified by this Regulation, the Division shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises.

Sec. 10:8

If the owner or party violating this Regulation refuses on demand to pay such expenses incurred by the Department to abate, correct or remove a violation, unsanitary condition or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this State.

S-33

Right to Obtain Samples**Sec. 10:9**

An inspection under Sec. 9.2 shall include the right to obtain samples where the Health Officer has reason to believe that there is a likelihood of contamination of surface water, ground water, water supply or other unsanitary conditions. Upon written notice, an owner or occupant of premises from which such inspection is sought shall co-operate with the Health Officer or his/her designated representative.

ARTICLE XI**Hearings and Appeals****Sec. 11:1**

If an owner or interested party is adversely affected by any decision under this Regulation, s/he may request in writing a Hearing before the HCBA/PHAC or its designated Committee within thirty (30) days of the date of such decision. The Health Officer shall issue a Notice of Hearing within fifteen (15) days after receiving the request. A Hearing shall then be held at the next regular meeting of the HCBA/PHAC (or its designated committee), scheduled for such purposes; provided, however, that a Hearing shall be conducted no later than sixty (60) days after the Notice of Hearing is mailed to the owner or interested party.

The HCBA/PHAC (or its designated committee) shall affirm, reverse or modify the contested decision by a majority vote of the entire Board. The decision by the HCBA/PHAC (or its designated committee) shall be in writing and state the reasons and grounds for such decision. A copy shall be furnished to the owner, any interested person, and the Health Officer within thirty (30) days of the decision.

ARTICLE XII**Miscellaneous Provisions****Severability****Sec. 12:1**

Each provision of this Regulation must be interpreted in a way that is valid under Michigan law. If any provision is held invalid, the rest of the Regulation shall remain in full effect.

Sec. 12:2

All amendments to this Ordinance shall be approved by the Washtenaw County HCBA/PHAC and the Washtenaw County Board of Commissioners after a public hearing required by Section 2442 of Act 368 of the Public Acts of 1978, as amended, has been held. All amendments shall become effective at a time provided for under Michigan law.